

Assisted Decision-Making (Capacity) Act 2015

- [Introduction](#)
- [What is capacity?](#)
- [New decision-making arrangements](#)
- [Changes to current decision-making arrangements](#)
- [The Decision Support Service](#)
- [Criminal offences under the Assisted Decision Making \(Capacity\) Act 2015](#)
- [Further information](#)

Introduction

The [Assisted Decision-Making \(Capacity\) Act 2015](#) is a law that establishes a new legal framework for [supported decision-making](#) in Ireland. It allows people to make legal agreements on how they can be supported to make decisions about their personal welfare, property and affairs.

These new regulations may help you, if you don't have the capacity to make decisions, now or in the future, without help.

People who may have difficulty making decisions include (for example) people with intellectual disabilities, acquired brain injury, mental health difficulty or dementia.

The Act also allows you to plan for a time when you might lose your capacity in 2 types of future planning arrangements, known as [Advance healthcare directives](#) and [Enduring power of attorney](#).

Decision support arrangements only apply to people aged over 18.

The Act came into effect on 26 April 2023.

What is capacity?

Capacity is your ability to understand when a decision is being made and the nature and consequences of the decision in the context of the available choices. You are always presumed to have capacity.

The new legislation sets out a *functional test* for the assessment of capacity. This means that your ability to make a decision is assessed based on the decision that has to be made at that time. You do not lose your capacity to make decisions in general.

The test for capacity recognises that your capacity can change over time, meaning you might need more or less support in the future.

You lack the capacity to make a specific decision if you are unable to:

- Understand the information relevant to the decision
- Retain that information long enough to make a voluntary choice
- Use or weigh that information as part of the process of making the decision, or
- Communicate your decision

You do not lack capacity simply because you:

- Need information to be explained to you in an appropriate way considering your circumstances
- Can only retain the relevant information for a short period of time
- Lacked capacity for a particular decision at one time but you may no longer lack capacity to make that decision, or
- Lack capacity for some decisions but you have capacity to make decisions on other matters

New decision-making arrangements

The Act creates new [decision-making arrangements](#) to support people who have issues with making decisions:

- [Decision-making assistance agreements](#)
- [Co-decision-making agreements](#)
- [Decision-making representation orders](#)

It also makes changes to some existing arrangements:

- [Advance healthcare directives](#)
- [Enduring power of attorney](#)

Changes to current decision-making arrangements

Since 26 April 2023, applications for adults to become a [ward of court](#) can no longer be made.

If you are currently an adult ward of court, or you are a ward who will turn 18 before 26 October 2025, your wardship will be reviewed by the courts and you will be discharged from wardship within 3 years. The courts will decide what decision support arrangement, if any, you need. An application can also be made to court for this review to happen before then.

If you are a ward of court under 18 who is still under 18 on 26 October 2025, your wardship will be reviewed within 6 months of turning 18.

[Advance healthcare directives](#) and [enduring powers of attorney](#) are already recognised in Ireland but the 2015 Act establishes a legal framework for them.

The Decision Support Service

The [Decision Support Service](#) is a service that promotes the rights and interests of people who may need support with decision-making.

The Decision Support Service will :

- Regulate and [register decision support arrangements](#)
- Supervise the actions of decision supporters
- Maintain a panel of experts who will act as decision-making representatives, special and general visitors
- Review and investigate [complaints made under the Act](#)
- Promote awareness and provide information about the Act

You can [contact the Decision Support Service](#) and read their [frequently asked questions](#).

Criminal offences under the Assisted Decision Making (Capacity) Act 2015

The Act introduces specific criminal offences.

It is an offence to use fraud, coercion, or undue influence to force another person to make, change or revoke a [decision-making assistance agreement](#), [co-decision-making agreement](#), [enduring power of attorney](#) or [advance healthcare directive](#).

A person guilty of such an offence is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both, and on conviction to a fine of up to €50,000 or imprisonment for a term up to 5 years.

Making a false statement when registering a [co-decision-making agreement](#) or [enduring power of attorney](#) is also an offence. A person found guilty of this offence is liable on summary conviction to a class A fine or imprisonment for a term up to 6 months, or both, and on conviction to a fine of up to €15,000 or imprisonment for up to 2 years, or both.

If you are appointed to support somebody in one of the arrangements, it is an offence if you ill-treat or wilfully neglect the person. Anyone guilty of such an offence is liable on summary conviction to a class A fine or imprisonment for term not exceeding 12 months, or both, and on conviction to a fine of up to €50,000 or imprisonment for up to 5 years, or both.

If you fail to engage with an [investigation of the Decision Support Service](#) or obstruct such an investigation you may be liable on summary conviction to a class A fine.

Further information

You can read [A Guide to the Legal Aspects of Caring](#) and the [Practical Guide for Family Carers on the Assisted Decision-Making \(Capacity\) Act 2015](#) from Community Law and Mediation and Family Carers Ireland.

You can get further information from the Decision Support Service.

Decision Support Service

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