

The Assisted Decision Making (Capacity) Act 2015: Considerations for Mental Health Services

The Relevant person - a recalibration for the centrality of rights or just more semantics?

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Assisted Decision-Making (Capacity) Act 2015

“An Act to provide for the reform of the law relating to persons who require or may require assistance in exercising their decision-making, whether immediately or in the future”

- Signed into law 30th December 2015; not yet fully commenced



United Nations Convention on the Rights of Persons with Disabilities

Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 12.2 Equal recognition before the law

States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

-Ratified by Ireland April 2019

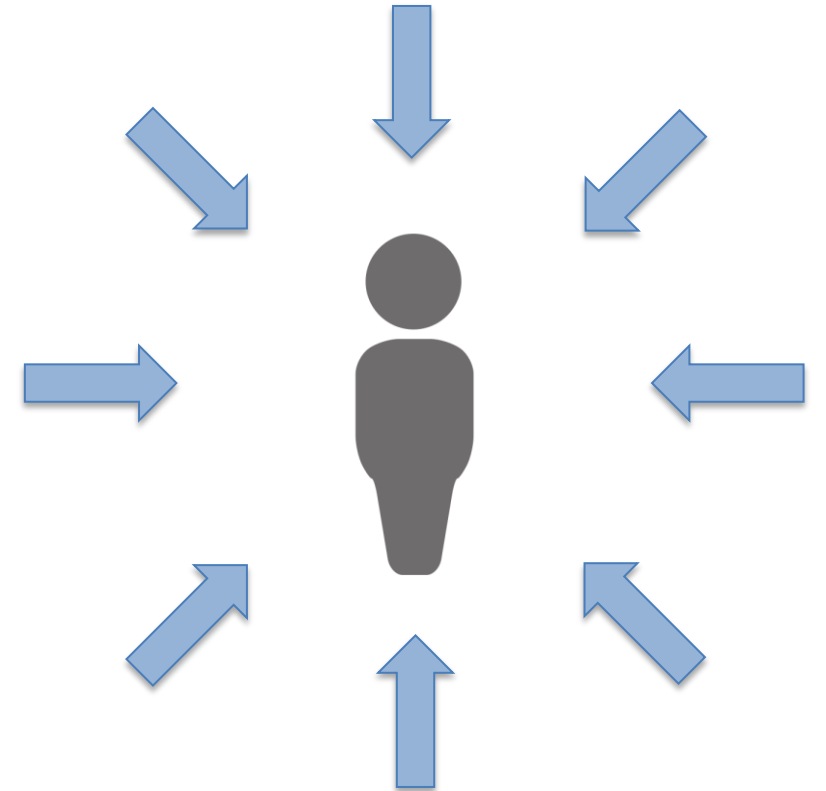




“Nothing about me without me”

The 'Relevant Person' in the Assisted Decision-Making (Capacity) Act 2015

- a person whose capacity is in question or may shortly be in question in respect of one or more than one matter,
- a person who lacks capacity in respect of one or more than one matter, or
- a person who falls within paragraphs (a) and (b) at the same time but in respect of different matters

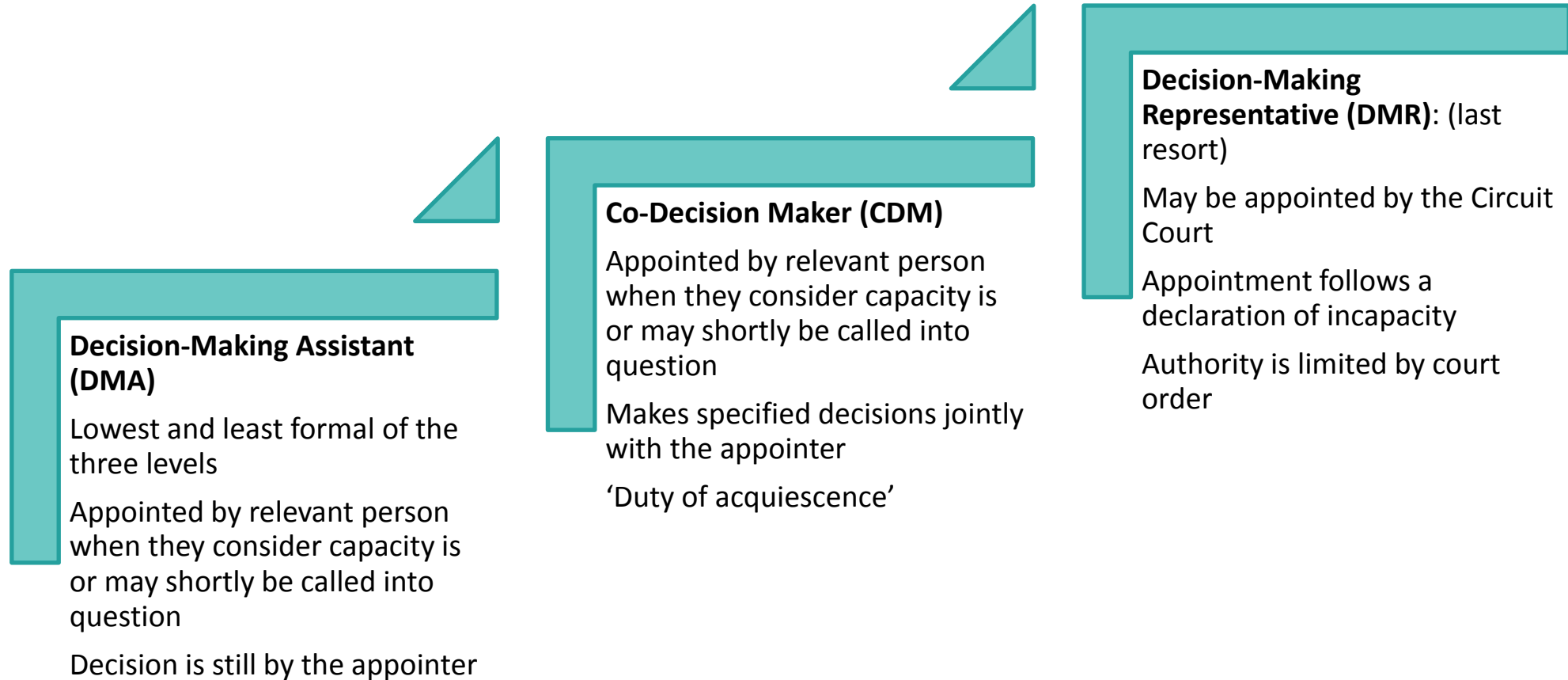


Supported decision-making: personal welfare

- Accommodation, including whether or not the relevant person should live in a designated centre;
- Participation in employment, education or training;
- Participation in social activities;
- Provision of social services;
- Healthcare
- “...other matters relating to the relevant person’s wellbeing”



Tiered framework of 'Decision Supporters'



Advance Planning : Enduring Powers of Attorney (EPA)



- EPAs extended: can be authorised to make healthcare decisions (not included in 'personal care' under 1996 Act).
- New reporting requirements
- Subject to complaints and investigations procedures

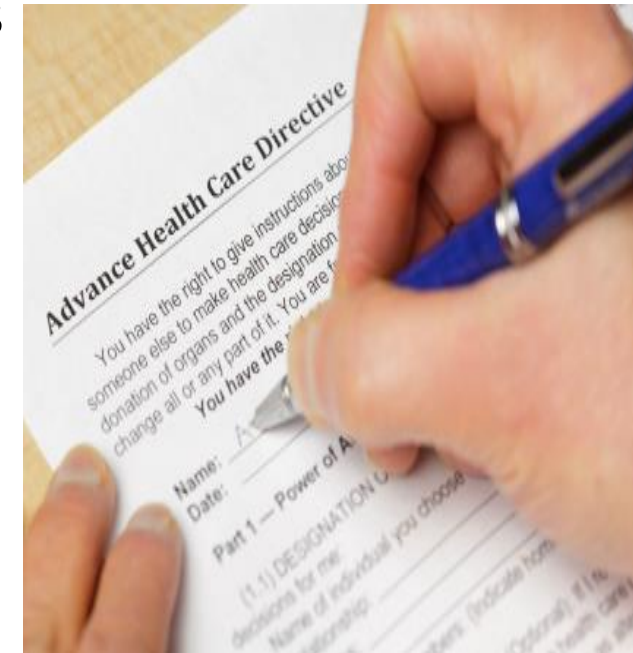
Advance Planning : Advance Healthcare Directive (AHD) (Part 8)

- Purpose:
 - to enable persons to be treated according to their will and preferences
 - to provide healthcare professionals with information about treatment choices

- 'Treatment' includes therapeutic, preventative, diagnostic, palliative intervention for physical or mental health

- Distinguishes refusal of treatment from request for treatment

- Directive-maker may appoint a Designated Healthcare Representative (DHR) as agent



Advance Healthcare Directive/Mental Health Act

- A specific refusal of treatment set out in an AHD is *as effective as if made contemporaneously by the directive-maker when he or she had capacity*

- Exception: section 85(7):
 - If directive-maker is detained under the MHA 2001 or conditionally discharged under the Criminal Law (Insanity) Act 2006, then AHD is not binding if it relates to treatment for mental disorder
 - AHD is still binding if the refusal of treatment relates to physical illness

- Amending legislation is before the Oireachtas to remove this exception in relation to the MHA.

Regulation of Decision Supporters

- Eligibility and disqualification criteria apply
- Supervised by the Decision Support Service
- Reporting duties
- Subject to complaints and investigation process
- Shall comply with Guiding Principles, including:
 - *Permit, encourage and facilitate, in so far as practicable, the relevant person to participate, or improve his or her ability to participate, as fully as possible in the intervention*

Cultural Shift?

- Move away from the medical model of capacity
- Key elements, presumption of capacity and functional assessment are already in place in common law and policy
- Person-centred care and support is already the expected standard
- We've been here before...



Concluding Comments

Thank You

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