



DÁIL ÉIREANN

**AN BILLE UM CHINNTEOIREACTH CHUIDITHE (CUMAS),
2013**

ASSISTED DECISION-MAKING (CAPACITY) BILL 2013

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

DÁIL ÉIREANN

AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS), 2013 —ROGHCHOISTE

ASSISTED DECISION-MAKING (CAPACITY) BILL 2013 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 10, line 1, to delete “This Act” and substitute “Subject to *subsection (3)**, this Act”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 2.]

2. In page 10, between lines 4 and 5, to insert the following:

“(3) *Part 8** and the other provisions of this Act in so far as they relate to an advance healthcare directive or designated healthcare representative, or both, shall come into operation on such day or days as the Minister for Health, after consultation with the Minister, may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the Part proposed to be inserted by amendment 253.]

SECTION 2

3. In page 10, to delete line 9.

—An tAire Dlí agus Cirt agus Comhionannais.

4. In page 10, between lines 13 and 14, to insert the following:

“ “Act of 2014” means the Companies Act 2014;”.

—An tAire Dlí agus Cirt agus Comhionannais.

5. In page 10, between lines 13 and 14, to insert the following:

“ “advance healthcare directive” shall be construed in accordance with *section 55**;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 253.]

6. In page 10, line 23, to delete “mental” and substitute “decision-making”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 2]

7. In page 10, line 27, to delete “*section 16*” and substitute “*section 13**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This is a reference to the section proposed to be inserted by amendment 86.*]

8. In page 10, line 29, to delete “*section 16*” and substitute “*section 13**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This is a reference to the section proposed to be inserted by amendment 86.*]

9. In page 10, line 31, to delete “*section 16*” and substitute “*section 13**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This is a reference to the section proposed to be inserted by amendment 86.*]

10. In page 10, to delete lines 32 and 33.

—An tAire Dlí agus Cirt agus Comhionannais.

11. In page 11, line 2, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

12. In page 11, between lines 3 and 4, to insert the following:

“ “customary occasion” means—

- (a) the occasion or anniversary of a birth, marriage or civil partnership, or
- (b) any other occasion on which gifts are customarily made within families or among friends or associates;”.

—An tAire Dlí agus Cirt agus Comhionannais.

13. In page 11, line 17, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

14. In page 11, between lines 18 and 19, to insert the following:

“ “designated healthcare representative” has the meaning assigned to it by *section 55**;

“Director” has the meaning given to it in *section 55*;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This is a reference to the section proposed to be inserted by amendment 253.*]

15. In page 11, to delete lines 24 to 27.

—An tAire Dlí agus Cirt agus Comhionannais.

16. In page 11, line 29, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 2]

17. In page 11, to delete lines 36 and 37.

—An tAire Dlí agus Cirt agus Comhionannais, Anne Ferris.

18. In page 12, lines 3 and 4, to delete “, attorney or informal decision-maker” and substitute “or attorney”.

—Anne Ferris.

19. In page 12, line 3 and 4, to delete “or informal decision-maker for the relevant person” and substitute “, designated healthcare representative or person referred to in *section 53(1)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

20. In page 12, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

21. In page 12, lines 15 and 16, to delete “is being called into” and substitute “is in”.

—An tAire Dlí agus Cirt agus Comhionannais.

22. In page 12, line 16, to delete “be called into” and substitute “be in”.

—An tAire Dlí agus Cirt agus Comhionannais.

23. In page 12, between lines 21 and 22, to insert the following:

“ “owner”, in relation to a nursing home, includes a person managing a nursing home, mental health facility, or residential facility for persons with disabilities, or a director (including a shadow director within the meaning of section 222 of the Act of 2014) of, or a shareholder in or an employee or agent of, a company which owns or manages such a home or facility;”.

—An tAire Dlí agus Cirt agus Comhionannais.

24. In page 12, between lines 25 and 26, to insert the following:

“ “personal welfare”, in relation to a relevant person, means one or more of the following matters:

- (a) accommodation, including whether or not the relevant person should live in a nursing home or residential facility;
- (b) participation by the relevant person in employment, education or training;
- (c) participation by the relevant person in social activities;
- (d) decisions on any social services provided or to be provided to the relevant person;
- (e) healthcare;
- (f) other matters relating to the relevant person’s well-being;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 2]

25. In page 12, between lines 25 and 26, to insert the following:

“ “property and affairs”, in relation to a relevant person, means one or more of the following matters:

- (a) the custody, control and management of some or all of the relevant person’s property or property rights;
- (b) the sale, exchange, mortgaging, charging, gift or other disposition of the relevant person’s property;
- (c) the acquisition of property by the relevant person, or on his or her behalf;
- (d) the carrying on, on behalf of the relevant person, of any profession, trade or business which may lawfully be carried on by a person other than the relevant person;
- (e) the making of a decision which will have the effect of dissolving a partnership in which the relevant person is a partner;
- (f) the carrying out of any contract entered into by the relevant person;
- (g) the discharge of the relevant person’s debts or other obligations, whether or not any such debt or obligation is legally enforceable against the relevant person;
- (h) the execution or exercise of any of the powers or discretions vested in the relevant person as a tenant for life;
- (i) providing, to the extent that the relevant person might have been expected to do so, for the needs of a decision-making assistant, a co-decision-maker, an attorney, a designated healthcare representative or a decision-making representative, for the relevant person or of other persons;
- (j) the conduct of proceedings before any court or tribunal, whether in the name of the relevant person or on his or her behalf;
- (k) making an application for housing, social welfare or other benefits or otherwise protecting or advancing the interests of the relevant person in relation to those matters;
- (l) other matters relating to the relevant person’s property and affairs;”.

—An tAire Dlí agus Cirt agus Comhionannais.

26. In page 12, to delete lines 26 to 28.

—An tAire Dlí agus Cirt agus Comhionannais.

27. In page 12, between lines 28 and 29, to insert the following:

“ “registered medical practitioner” has the meaning assigned to it by section 2 of the Medical Practitioners Act 2007;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 2]

28. In page 12, lines 44 and 45, to delete “, subject to *section 17(3)*,”.
—An tAire Dlí agus Cirt agus Comhionannais.
29. In page 13, line 4, to delete “decision-making representative order” and substitute “decision-making representation order”.
—An tAire Dlí agus Cirt agus Comhionannais.
30. In page 13, line 8, to delete “and”.
—An tAire Dlí agus Cirt agus Comhionannais.
31. In page 13, line 14, to delete “relevant person;” and substitute the following:
“relevant person, and
(e) in relation to a decision made, or to be made, by a designated healthcare representative on behalf of a relevant person, means a decision by the representative pursuant to the exercise or proposed exercise, as the case may be, of his or her relevant powers;”
—An tAire Dlí agus Cirt agus Comhionannais.
32. In page 13, line 18, to delete “being called into” and substitute “in”.
—An tAire Dlí agus Cirt agus Comhionannais.
33. In page 13, line 19, to delete “called into” and substitute “in”.
—An tAire Dlí agus Cirt agus Comhionannais.
34. In page 13, between lines 29 and 30, to insert the following:
“ “relevant powers” has the meaning assigned to it by *section 55**;”
—An tAire Dlí agus Cirt agus Comhionannais.
[**This is a reference to the section proposed to be inserted by amendment 253.*]
35. In page 13, line 33, to delete “Public Guardian” and substitute “Director”.
—An tAire Dlí agus Cirt agus Comhionannais.
36. In page 13, line 37, to delete “*section 18(2)*” and substitute “*section 14(2)**”.
—An tAire Dlí agus Cirt agus Comhionannais.
[**This is a reference to the section proposed to be inserted by amendment 87.*]
37. In page 13, line 40, to delete “*section 24(1)*” and substitute “*section 23(4)**”.
—An tAire Dlí agus Cirt agus Comhionannais.
[**This is a reference to the subsection proposed to be inserted by amendment 126.*]
- SECTION 3
38. In page 14, lines 21 and 22, to delete “decision-making assistance agreement,”.
—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 3]

39. In page 14, lines 22 and 23, to delete “or enduring power of attorney” and substitute “, enduring power of attorney or advance healthcare directive”.

—An tAire Dlí agus Cirt agus Comhionannais.

40. In page 14, line 24, to delete “understand” and substitute “understand, at the time that a decision is to be made,”.

—An tAire Dlí agus Cirt agus Comhionannais.

41. In page 14, line 24, to delete “a” and substitute “the”.

—An tAire Dlí agus Cirt agus Comhionannais.

42. In page 14, line 26, to delete “the time the decision is made” and substitute “that time”.

—An tAire Dlí agus Cirt agus Comhionannais.

43. In page 14, line 30, after “information” to insert “long enough to make a voluntary choice”.

—An tAire Dlí agus Cirt agus Comhionannais.

44. In page 14, line 34, to delete “assisted” and substitute “assistive”.

—An tAire Dlí agus Cirt agus Comhionannais.

45. In page 14, line 41, to delete “simple” and substitute “clear”.

—An tAire Dlí agus Cirt agus Comhionannais.

46. In page 14, after line 45, to insert the following:

“(5) The fact that a person lacks capacity in respect of a decision on a particular matter at a particular time does not prevent him or her from being regarded as having capacity to make decisions on the same matter at another time.

(6) The fact that a person lacks capacity in respect of a decision on a particular matter does not prevent him or her from being regarded as having capacity to make decisions on other matters.”.

—An tAire Dlí agus Cirt agus Comhionannais.

47. In page 15, to delete lines 7 and 8.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 4

48. In page 15, line 9, to delete “*sections 15 and 110*” and substitute “*sections 15, 58(6)(b)*, 62(2)** and 110*”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 256.]

**This is a reference to the section proposed to be inserted by amendment 260.]

49. In page 15, between lines 20 and 21, to insert the following:

“(2) An application to the Circuit Court under this Act may be made—

[SECTION 4]

- (a) in such office of, or attached to, the Circuit Court within the circuit concerned,
 - (b) in such combined court office (within the meaning of section 14 of the Courts and Court Officers Act 2009) within the circuit concerned, or
 - (c) in such office of the Courts Service, within the circuit concerned, designated by the Courts Service for the purpose of this Act,
- as may be prescribed by rules of court.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 6

- 50.** In page 15, line 35, after “Minister” to insert “or the Minister for Health”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 8

- 51.** In page 16, to delete line 29.

—An tAire Dlí agus Cirt agus Comhionannais.

- 52.** In page 16, lines 31 and 32, to delete all words from and including “his” in line 31 down to and including line 32 and substitute the following:

“dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property.”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 53.** In page 16, between lines 32 and 33, to insert the following:

“(c) be proportionate to the significance and urgency of the matter the subject of the intervention, and

(d) be as limited in duration in so far as is practicable after taking into account the particular circumstances of the matter the subject of the intervention.”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 54.** In page 17, to delete line 17 and substitute the following:

“(e) act at all times in good faith and for the benefit of the relevant person, and”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 9

- 55.** In page 18, to delete lines 9 and 10.

—An tAire Dlí agus Cirt agus Comhionannais.

- 56.** In page 18, to delete lines 11 and 12.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 10]

SECTION 10

57. In page 18, lines 15 and 16, to delete “who has also attained that age”.

—An tAire Dlí agus Cirt agus Comhionannais.

58. In page 18, between lines 22 and 23, to insert the following:

“(3) A decision-making assistance agreement may be revoked by the appointer or by the decision-making assistant at any time and, subject to agreement between the appointer and the decision-making assistant, may be varied at any time.”.

—An tAire Dlí agus Cirt agus Comhionannais.

59. In page 18, line 23, to delete “may” and substitute “shall”.

—An tAire Dlí agus Cirt agus Comhionannais.

60. In page 18, line 28, after “execution” to insert “, variation and revocation”.

—An tAire Dlí agus Cirt agus Comhionannais.

61. In page 18, line 40, after “appointer” to insert “, by a person other than the proposed decision-making assistant”.

—An tAire Dlí agus Cirt agus Comhionannais.

62. In page 18, lines 41 to 43, to delete “that he or she understands the duties and obligations of a decision-making assistant” and substitute the following:

“that he or she understands and undertakes to act in accordance with the functions of a decision-making assistant”.

—An tAire Dlí agus Cirt agus Comhionannais.

63. In page 19, line 2, after “assistant” to insert “by a person other than the appointer or the proposed decision-making assistant”.

—An tAire Dlí agus Cirt agus Comhionannais.

64. In page 19, line 3, to delete “making” and substitute “execution, variation or revocation”.

—An tAire Dlí agus Cirt agus Comhionannais.

65. In page 19, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

66. In page 19, lines 25 and 26, to delete “or attorney (under an enduring power of attorney registered under *section 46*)” and substitute the following:

“, attorney (under an enduring power of attorney registered under *section 46*) or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

67. In page 19, line 28, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 10]

68. In page 19, lines 34 and 35, to delete “or attorney (under an enduring power of attorney registered under *section 46*)” and substitute the following:

“, attorney (under an enduring power of attorney registered under *section 46*) or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

69. In page 19, line 37, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

70. In page 19, between lines 37 and 38, to insert the following:

“(7) A decision-making assistance agreement shall be invalidated, to the extent that it relates to any relevant decision, where there is—

(a) an advance healthcare directive—

(i) made by the relevant person,

(ii) the terms of which conflict with the decision-making assistance agreement, and

(iii) that does not provide for a designated healthcare representative, or, where it does provide for a designated healthcare representative, the powers of the designated healthcare representative do not extend to the relevant decision concerned,

and

(b) the relevant person lacks capacity in respect of the relevant decision.”.

—An tAire Dlí agus Cirt agus Comhionannais.

71. In page 20, to delete lines 24 to 27.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 11

72. In page 20, lines 28 and 29, to delete “for an appointer”.

—An tAire Dlí agus Cirt agus Comhionannais.

73. In page 20, to delete lines 30 to 39 and substitute the following:

“(a) to assist the appointer to obtain any information or personal records (in this section referred to as “relevant information”) that the appointer is entitled to and that is or are required in relation to a relevant decision,

(b) to advise the appointer by explaining relevant information and considerations relating to a relevant decision,

(c) to ascertain the will and preferences of the appointer on a matter the subject or to be the subject of a relevant decision and to assist the appointer to communicate them.”.

[SECTION 11]

—An tAire Dlí agus Cirt agus Comhionannais.

74. In page 21, line 1, to delete “for an appointer”.

—An tAire Dlí agus Cirt agus Comhionannais.

75. In page 21, line 7, to delete “for an appointer”.

—An tAire Dlí agus Cirt agus Comhionannais.

76. In page 21, between lines 11 and 12, to insert the following:

“(4) A decision-making assistant shall not make a decision on behalf of the appointer.”

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 12

77. In page 21, between lines 13 and 14, to insert the following:

“(a) the person has not attained the age of 18 years,”

—An tAire Dlí agus Cirt agus Comhionannais.

78. In page 21, line 17, to delete “or”.

—An tAire Dlí agus Cirt agus Comhionannais.

79. In page 21, line 20, to delete “appointer.” and substitute “appointer, or”.

—An tAire Dlí agus Cirt agus Comhionannais.

80. In page 21, between lines 20 and 21, to insert the following:

“(c) the person has been convicted of an offence under *section 113*.”

—An tAire Dlí agus Cirt agus Comhionannais.

81. In page 21, line 24, to delete “*paragraph (a) or (b)*” and substitute “*paragraph (a)*, (a), (b) or (c)***”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the paragraph proposed to be inserted by amendment 77.]

[**This is a reference to the paragraph proposed to be inserted by amendment 80.]

82. In page 21, line 29, to delete “or” where it secondly occurs.

—An tAire Dlí agus Cirt agus Comhionannais.

83. In page 21, line 32, to delete “appointer,” and substitute “appointer, or”.

—An tAire Dlí agus Cirt agus Comhionannais.

84. In page 21, between lines 32 and 33, to insert the following:

“(c) the decision-making assistant is convicted of an offence under *section 113*.”

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 12]

85. In page 21, line 36, to delete “*paragraph (a) or (b)*” and substitute “*paragraph (a), (b) or (c)**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the paragraph proposed to be inserted by amendment 84.]

SECTION 13

86. In page 21, after line 41, to insert the following:

“PART 4*

CO-DECISION-MAKING AGREEMENTS

Definitions

13. In this Part—

“appointer” means a co-decision-maker appointer;

“co-decision-maker”, in relation to an appointer, means the suitable person who the appointer appoints under *section 14***, to jointly make with the appointer decisions on the appointer’s personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27****;

“co-decision-making agreement” means a co-decision-making agreement referred to in *section 14(3)*** as such agreement is in force from time to time;

“co-decision-maker appointer” means a person who appoints under *section 14*** a suitable person to jointly make with the first-mentioned person decisions on the first-mentioned person’s personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27****;

“Register” means the register established and maintained by the Director in accordance with *section 21*****;

“suitable” shall be construed in accordance with *section 14(2)***.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*The proposed new Part comprehends the inclusion of amendments 86 to 101.]

**This is a reference to the section proposed to be inserted by amendment 87.]

***This is a reference to the section proposed to be inserted by amendment 100.]

****This is a reference to the section proposed to be inserted by amendment 94.]

87. In page 21, after line 41, to insert the following:

“Co-decision-making agreement

14. (1) Subject to the provisions of this section, a person who has attained the age of 18 years and who considers that his or her capacity is in question or may shortly be in question may appoint a suitable person who has also attained that age to jointly make with the relevant person one or more than one decision on the first-mentioned person’s

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personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27**.

- (2) A person is suitable for appointment as a co-decision-maker if he or she—
 - (a) is a relative or friend of the appointer who has had such personal contact with the appointer over such period of time that a relationship of trust exists between them, and
 - (b) is capable of effectively performing the functions which he or she will have as a co-decision-maker.
- (3) An appointment as a co-decision-maker shall be made in writing in a co-decision-making agreement which is in compliance with *subsection (4)* and regulations made under *section 27**.
- (4) An appointer, in his or her co-decision-making agreement—
 - (a) shall not include a matter which is the subject of a decision-making order, decision-making representation order or enduring power of attorney (whether registered or not) in respect of him or her, or
 - (b) notwithstanding the definition of “property and affairs” in *section 2*, shall not include provision for the disposal of his or her property by way of gift.
- (5) A co-decision-making agreement shall contain the following:
 - (a) the name, date of birth and contact details of the appointer;
 - (b) subject to *subsection (6)*, the signature of the appointer and the date that he or she signed the agreement;
 - (c) the name, date of birth and contact details of the co-decision-maker;
 - (d) the signature of the co-decision-maker and the date that he or she signed the agreement;
 - (e) the signatures of the 2 witnesses referred to in *subsection (7)*.
- (6) A co-decision-making agreement may be signed on behalf of the appointer by a person who has attained the age of 18 years and who is not one of the witnesses referred to in *subsection (7)* if—
 - (a) the appointer is unable to sign the agreement,
 - (b) the appointer is present and directs that the agreement be signed on his or her behalf by that person, and
 - (c) the signature of the person is witnessed in accordance with *subsection (7)*.
- (7) (a) The appointer, or the person signing on his or her behalf in accordance with *subsection (6)*, and the co-decision-maker shall sign the co-decision-making agreement in the presence of each other and in the presence of 2 witnesses—
 - (i) each of whom has attained the age of 18 years, and
 - (ii) of whom at least one is not an immediate family member of the appointer or

[SECTION 13]

the co-decision-maker.

- (b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the appointer (or the person signing on his or her behalf) and the signature of the co-decision-maker by applying his or her own signature to the co-decision-making agreement.
- (8) An appointer may, in a co-decision-making agreement, appoint more than one person as a co-decision-maker but may not appoint more than one co-decision-maker in respect of the same relevant decision.
- (9) An appointer may, in the co-decision-making agreement, appoint one or more than one person to act as a co-decision-maker if the co-decision-maker appointed in the agreement dies or becomes disqualified to be such co-decision-maker.
- (10) Prior to entering into a co-decision-making agreement, the intending appointer and the proposed co-decision-maker may, individually or jointly, seek the assistance of the Director with regard to making and entering into the co-decision-making agreement.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 100.]

88. In page 21, after line 41, to insert the following:

“Persons who shall not be appointed as co-decision-makers

15. (1) Subject to *subsection (3)*, a person shall not be suitable for appointment as a co-decision-maker if he or she—
- (a) has been convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,
 - (b) has been the subject of a safety or barring order in relation to the relevant person or a child of the relevant person,
 - (c) is an undischarged bankrupt or currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,
 - (d) is a person in respect of whom a declaration has been made under section 819 of the Act of 2014,
 - (e) is a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,
 - (f) is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the relevant person,

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- (g) has been convicted of an offence under *section 113*, or
 - (h) has been found by the court to be unsuitable to perform the role of co-decision-maker or other intervener under this Act, whether in connection with the relevant person or another relevant person.
- (2) Subject to *subsection (3)*, where, subsequent to the appointment of a co-decision-maker—
- (a) the co-decision-maker is convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,
 - (b) a safety or barring order is made against the co-decision-maker in relation to the relevant person or a child of the relevant person,
 - (c) the co-decision-maker becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,
 - (d) the co-decision-maker becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014,
 - (e) the co-decision-maker becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,
 - (f) the co-decision-maker becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the relevant person,
 - (g) the co-decision-maker is convicted of an offence under *section 113*,
 - (h) the co-decision-maker—
 - (i) enters into a decision-making assistance agreement as a relevant person,
 - (ii) enters into a co-decision-making agreement as a relevant person,
 - (iii) has an enduring power of attorney registered in respect of himself or herself,
or
 - (iv) becomes the subject of an order under *Part 4*,

the co-decision-making agreement concerned shall be invalidated, to the extent that it relates to the appointment of that co-decision-maker, with effect from the day on which the co-decision-maker falls within any of *paragraphs (a) to (h)*.

- (3) *Subsections (1)(c), (d) and (e) and subsections (2)(c), (d) and (e)* shall not apply as respects the appointment of a person as a co-decision-maker relating only to relevant decisions on the personal welfare of the appointer.

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- (4) Where a co-decision-making agreement has been invalidated and a person, without knowledge of the invalidation, deals with the appointer and the co-decision-maker, the transaction between them shall, in favour of that person, be as valid as if the co-decision-making agreement had been in force.”.

—An tAire Dlí agus Cirt agus Comhionannais.

89. In page 21, after line 41, to insert the following:

“Functions of a co-decision-maker

16. (1) A co-decision-maker shall advise the appointer respecting matters the subject or to be the subject of relevant decisions, and shall share with the appointer the authority to make relevant decisions and may do all things necessary to give effect to the authority vested in him or her.
- (2) In exercising his or her functions, a co-decision-maker shall—
- (a) advise the appointer by explaining relevant information and considerations relating to a relevant decision,
 - (b) ascertain the will and preferences of the appointer on a matter the subject or to be the subject of a relevant decision and assist the appointer to communicate them,
 - (c) assist the appointer to obtain any information or personal records (in this section referred to as “relevant information”) that the appointer is entitled to and that is required in relation to a relevant decision,
 - (d) assist the appointer to make and express a relevant decision, and
 - (e) endeavour to ensure that the appointer’s relevant decisions are implemented.
- (3) A co-decision-maker shall not—
- (a) attempt to obtain information that is not reasonably required for making a relevant decision, or
 - (b) use relevant information for a purpose other than in relation to a relevant decision.
- (4) A co-decision-maker shall take reasonable steps to ensure that relevant information—
- (a) is kept secure from unauthorised access, use or disclosure, and
 - (b) is safely disposed of when no longer required.
- (5) A co-decision-maker shall be entitled to be reimbursed out of the assets of the appointer in respect of his or her fair and reasonable expenses which are—
- (a) reasonably incurred in performing his or her functions as co-decision-maker,
 - (b) vouched in a manner acceptable to the Director, and
 - (c) included in any reports submitted by the co-decision-maker under *section 23**.
- (6) A co-decision-maker is not entitled to remuneration for performing his or her functions as co-decision-maker.

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- (7) A co-decision-maker shall notify the Director if the appointer's capacity—
- (a) improves to the extent that he or she has capacity in relation to the matters which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker, or
 - (b) deteriorates to the extent that he or she lacks capacity in relation to the matters which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker.
- (8) A co-decision-maker—
- (a) shall acquiesce in a relevant decision made by the appointer, and
 - (b) shall not refuse to sign a document referred to in *section 19(8)***,
- unless it is reasonably foreseeable that the relevant decision will result in harm to the appointer or to another person.”.

—An tAire Dli agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 96.]

[**This is a reference to the subsection proposed to be inserted by amendment 92.]

90. In page 21, after line 41, to insert the following:

“Restrictions on co-decision-makers

17. (1) Where there is both a co-decision-maker and a decision-making representative for a relevant person—
- (a) the co-decision-maker shall not exercise any function granted to the decision-making representative and which is exercisable by the decision-making representative, and
 - (b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the functions of the decision-making representative which are exercisable by the decision-making representative.
- (2) Where there is both a co-decision-maker and an attorney (under an enduring power of attorney registered under *section 46*) for a relevant person—
- (a) the co-decision-maker shall not exercise any power granted to the attorney and which is exercisable by the attorney, and
 - (b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the powers of the attorney which are exercisable by the attorney.
- (3) Where there is both a co-decision-maker and a designated healthcare representative for a relevant person—
- (a) the co-decision-maker shall not exercise any relevant powers of the designated healthcare representative which are exercisable by the designated healthcare

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representative, and

- (b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative.
- (4) Where there is a co-decision-maker for a relevant person who has made an advance healthcare directive that is applicable and the directive—
- (a) does not provide for a designated healthcare representative, or
 - (b) does provide for a designated healthcare representative, but the powers of the designated healthcare representative do not extend to the relevant decision concerned,
- the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the terms of the advance healthcare directive.
- (5) Where there is more than one co-decision-maker for a relevant person (whether in the same co-decision-making agreement or pursuant to different co-decision-making agreements), each co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the functions exercisable by another co-decision-maker.
- (6) A co-decision-maker for a relevant person shall not have authority to make decisions jointly with a relevant person, other than in relation to those specified in respect of him or her in the co-decision-making agreement.”.

—An tAire Dlí agus Cirt agus Comhionannais.

91. In page 21, after line 41, to insert the following:

“Application for registration of co-decision-making agreement

18. (1) A co-decision-making agreement shall not enter into force until it has been registered in accordance with *section 19**.
- (2) An application to register a co-decision-making agreement shall be made in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27*** and shall be signed by both the appointer and the co-decision-maker (“the applicants”).
- (3) The applicants shall, at the same time as making an application to register a co-decision-making agreement, jointly give notice, in such form as shall be prescribed by regulations made under *section 27***, of the application and a copy of the co-decision-making agreement to the following persons:
- (a) a spouse or civil partner of the appointer;
 - (b) a cohabitant of the appointer;
 - (c) any child of the appointer who has attained the age of 18 years;

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- (d) any decision-making assistant for the appointer;
 - (e) any decision-making representative for the appointer;
 - (f) any attorney for the appointer;
 - (g) any designated healthcare representative for the appointer.
- (4) An application under *subsection (2)* shall be accompanied by the following:
- (a) the co-decision-making agreement;
 - (b) a statement by the appointer that he or she—
 - (i) understands the implication of entering into the co-decision-making agreement and has read and understands the information contained therein, or has had such information explained to him or her,
 - (ii) wishes to enter into the co-decision-making agreement with the co-decision-maker,
 - (iii) is aware that he or she may, with the consent of the co-decision-maker, vary the co-decision-making agreement, and
 - (iv) is aware that he or she may revoke the co-decision-making agreement;
 - (c) a statement by the co-decision-maker that he or she—
 - (i) understands the implication of entering into the co-decision-making agreement and has read and understands the information contained therein,
 - (ii) understands and undertakes to act in accordance with the functions of a co-decision-maker,
 - (iii) understands and undertakes to act in accordance with the guiding principles,
 - (iv) understands and undertakes to comply with the reporting obligations,
 - (v) understands the provisions of this Part relating to variation, revocation and invalidation of co-decision-making agreements;
 - (d) a statement as to why the less intrusive measure of a decision-making assistance agreement was not chosen;
 - (e) details of any existing decision-making assistance agreement, co-decision-making agreement, decision-making order, decision-making representation order, power of attorney (whether an enduring power or otherwise and whether registered or not) or advance healthcare directive in respect of the appointer;
 - (f) a statement by a registered medical practitioner and such other healthcare professional of a class as may be prescribed by regulations made under *section 27*** that in his or her opinion—
 - (i) the appointer has capacity to make a decision to enter into the co-decision-making agreement,
 - (ii) the appointer requires assistance in exercising his or her decision-making in

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respect of the matters contained in the co-decision-making agreement, and

- (iii) the appointer has capacity to make the decision or decisions specified in the co-decision-making agreement with the assistance of the person who is proposed as co-decision-maker;
- (g) references, in such form as shall be prescribed by regulations made under *section 27***, by two persons as to the personal character of the co-decision-maker;
- (h) details of the notice given pursuant to *subsection (3)*; and
- (i) the appropriate fee, as prescribed by regulations made under *section 27***.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 92.]

[**This is a reference to the section proposed to be inserted by amendment 100.]

92. In page 21, after line 41, to insert the following:

“Registration of co-decision-making agreement

19. (1) On receipt of an application under *section 18**, the Director shall review the application and any objections received under *section 20*** and shall carry out such enquiries as may be necessary in order to determine whether—

- (a) the application is in accordance with *section 18** (or *section 24**** in the case of an application to register a varied co-decision-making agreement),
- (b) the co-decision-making agreement is in accordance with the will and preferences of the appointer,
- (c) the appointer understands the effect of having entered into the agreement,
- (d) the co-decision-maker is a suitable person within the meaning of *section 14(2)*****, and
- (e) the co-decision-maker is not a person who falls under *section 15(1)******.

(2) Following the review under *subsection (1)* and subject to *section 20***, the Director shall—

- (a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (e) of subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or
- (b) where he or she is of the view that one or more of the criteria set out in *paragraphs (a) to (e) of subsection (1)* is not satisfied, notify the applicants of that view and provide reasons for that view and give the applicants an opportunity, within a reasonable timeframe specified by the Director, to respond.

(3) Following a review of any response submitted by the applicants pursuant to *subsection (2)(b)*, the Director shall—

- (a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (e) of*

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subsection (1) are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or

- (b) where he or she remains of the view that one or more of the criteria set out in *paragraphs (a) to (e) of subsection (1)* is not satisfied, refuse to register the co-decision-making agreement concerned and notify the applicants of that fact.
- (4) Following registration of a co-decision-making agreement, the Director shall send an authenticated copy of the agreement to the applicants.
- (5) A document purporting to be a copy of a co-decision-making agreement which has been authenticated by the Director shall be evidence of the contents of the agreement and the date upon which it was registered.
- (6) A relevant decision which is made within the scope of a registered co-decision-making agreement shall not be challengeable on the grounds that the appointer did not have the capacity to make the decision.
- (7) Where a co-decision-making agreement is registered, a relevant decision made otherwise than jointly by the appointer and the co-decision-maker is void.
- (8) (a) Subject to *paragraph (b)*, where a relevant decision requires the signing of any document, the document is void unless both the appointer and the co-decision-maker sign the document.

(b) Where the appointer is unable to make his or her signature, a document may be signed on the appointer's behalf by a person who has attained the age of 18 years if the appointer is present and directs that the document be signed on his or her behalf by that person.
- (9) In this section "authenticated" means bearing the signature of the Director, the date of his or her signature and the date of registration of the co-decision-making agreement concerned."

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 91.]

**This is a reference to the section proposed to be inserted by amendment 93.]

***This is a reference to the section proposed to be inserted by amendment 97.]

****This is a reference to the subsection proposed to be inserted by amendment 87.]

*****This is a reference to the subsection proposed to be inserted by amendment 88.]

93. In page 21, after line 41, to insert the following:

“Objections to registration

- 20. (1) Any one of the persons referred to in *section 18(3)** may, within 5 weeks of the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed registration.
- (2) An objection under *subsection (1)* shall be made in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section*

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27** and may be made on one of the following grounds:

- (a) the appointer lacks capacity to make a decision to enter into the co-decision-making agreement;
 - (b) the appointer has capacity in respect of the matters which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;
 - (c) the appointer lacks capacity in respect of the matters which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker;
 - (d) entry into the co-decision-making agreement is not in accordance with the will and preferences of the appointer;
 - (e) the co-decision-maker is not a suitable person within the meaning of *section 14(2)****;
 - (f) the co-decision-maker falls within *section 15(1)*****;
 - (g) fraud or undue influence was employed to induce the appointer to enter into the co-decision-making agreement.
- (3) Where the Director receives an objection in accordance with *subsection (2)*, he or she shall review the objection and consult with the appointer and co-decision-maker and such other persons as he or she considers relevant and shall—
- (a) where he or she is of the view that the objection is not well founded, proceed, subject to *section 19(2)******, to register the co-decision-making agreement concerned, or
 - (b) where he or she is of the view that the objection is well founded, make an application to the court for a declaration as to whether or not the co-decision-making agreement concerned should be registered.
- (4) The court, pursuant to an application to it under *subsection (3)(b)*, may—
- (a) declare that the co-decision-making agreement concerned should be registered,
 - (b) declare that the co-decision-making agreement concerned should not be registered, or
 - (c) make such other declaration or order as it considers appropriate.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 91.]

**This is a reference to the section proposed to be inserted by amendment 100.]

***This is a reference to the subsection proposed to be inserted by amendment 87.]

****This is a reference to the subsection proposed to be inserted by amendment 88.]

*****This is a reference to the subsection proposed to be inserted by amendment 92.]

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94. In page 21, after line 41, to insert the following:

“Register of co-decision-making agreements

21. (1) The Director shall establish and maintain a register (“the Register”) of co-decision-making agreements which have been registered.
- (2) The Register shall be in such form as the Director deems appropriate.
- (3) The Director shall make the Register available for inspection by—
- (a) a body or class of persons prescribed by regulations made under *section 27** for this purpose, and
 - (b) a person who satisfies the Director that he or she has a legitimate interest in inspecting the Register.
- (4) The Director may issue an authenticated copy of a co-decision-making agreement, or part thereof, on the Register on payment of the prescribed fee to—
- (a) a body or class of persons prescribed by regulations made under *section 27** for this purpose, and
 - (b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.
- (5) The Director shall keep a record of any body or person who has inspected the Register or received an authenticated copy from him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 100.]

95. In page 21, after line 41, to insert the following:

“Review of co-decision-making agreements

22. (1) The Director shall conduct a review of each co-decision-making agreement on the Register not earlier than 3 months before and not later than 3 months after the first anniversary of the date of registration of the agreement and thereafter at intervals not exceeding one year.
- (2) In conducting a review under this section, the Director shall carry out such enquiries, including, in particular, consulting with the appointer and co-decision-maker as well as any special visitor or general visitor who has had contact with the appointer or co-decision-maker, as are necessary to determine whether—
- (a) *paragraphs (b), (c) and (d) of section 19(1)** continue to apply,
 - (b) the co-decision-maker is not a person who falls under *section 15(2)***,
 - (c) the co-decision-maker has effectively performed and continues to be likely to effectively perform his or her functions as co-decision-maker,
 - (d) the co-decision-maker has complied with the requirements under this Act that are

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relevant to him or her, and

- (e) the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)**** continue to apply.
- (3) In order to determine whether the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)**** continue to apply, the Director shall require statements to that effect to be submitted to him or her by—
 - (a) the same registered medical practitioner who provided the original statement under *section 18(4)(f)**** or, where that practitioner is not available, another registered medical practitioner, and
 - (b) the same healthcare professional who provided the original statement under *section 18(4)(f)**** or, where that practitioner is not available, another healthcare professional of the class prescribed by regulations made under *section 27*****.
- (4) Where, following a review under *subsection (1)*, the Director is of the view that one or more of the criteria in *paragraphs (a) to (e) of subsection (2)* is not, or is no longer satisfied, he or she shall notify the co-decision-maker and appointer of that view and provide reasons and give the appointer and the co-decision-maker an opportunity to respond within a time period specified by the Director.
- (5) Where, at the expiry of the period specified under *subsection (4)* and following a review of any response submitted by the appointer or the co-decision-maker or both pursuant to that subsection, the Director remains of the view that one or more of the criteria set out in *paragraphs (a) to (e) of subsection (2)* is not satisfied, he or she shall notify the appointer and the co-decision-maker of that view and make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 92.]

**This is a reference to the subsection proposed to be inserted by amendment 88.]

***This is a reference to the paragraph proposed to be inserted by amendment 91.]

****This is a reference to the section proposed to be inserted by amendment 100.]

96. In page 21, after line 41, to insert the following:

“Reports by co-decision-maker

- 23. (1) A co-decision-maker shall, within 12 months after the co-decision-making agreement appointing him or her as co-decision-maker has been registered, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such co-decision-maker during the relevant period.
- (2) Every such report submitted to the Director shall be in such form as shall be prescribed by regulations made under *section 27** and shall include details of all transactions relating to the appointer’s finances which are within the scope of the co-

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decision-making agreement and details of all expenses paid to and claimed by the co-decision-maker in the relevant period.

- (3) Every such report shall be approved by the appointer in such a manner as shall be prescribed by regulations made under *section 27**.
- (4) Where a co-decision-maker fails to submit a report in accordance with this section or submits an incomplete report, the Director shall notify the co-decision-maker concerned of his or her failure and give him or her such period of time as is specified in the notice to submit a complete report.
- (5) Where a co-decision-maker fails to comply with *subsection (4)*, the Director shall make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.
- (6) In this section “relevant period” means the period of time to which the report relates which shall be the period between the date of registration of the co-decision-making agreement or the date of submission of the previous report, as the case may be, and the date immediately preceding the date of submission of the report concerned.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 100.]

97. In page 21, after line 41, to insert the following:

“Variation of co-decision-making agreement

24. (1) The terms of a co-decision-making agreement which has been registered may be varied by agreement between the appointer and the co-decision-maker.
- (2) Subject to *section 14(6)**, a varied co-decision-making agreement shall include the signature of the appointer and the co-decision-maker (“the applicants”) and shall be witnessed in accordance with *section 14(7)**.
- (3) An application to register a varied co-decision-making agreement shall be made in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27***.
- (4) The applicants shall, at the same time as making an application to register a varied co-decision-making agreement, give notice, in such form as shall be prescribed by regulations made under *section 27***, to the persons specified in *section 18(3)**** and the application shall be accompanied by the following:
 - (a) the varied co-decision-making agreement;
 - (b) a statement outlining the variation and why it was considered necessary;
 - (c) a statement by a registered medical practitioner and such other healthcare professional as shall be prescribed by regulations made under *section 27*** that in his or her opinion—
 - (i) the appointer has capacity to vary the co-decision-making agreement, and
 - (ii) the appointer requires assistance in exercising his or her decision-making in

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respect of the matters contained in the varied co-decision-making agreement,
and

- (iii) the appointer has capacity to make the decision or decisions specified in the varied co-decision-making agreement with the assistance of the co-decision-maker concerned;
 - (d) details of the notice given;
 - (e) any change to the information provided pursuant to *section 18(4)(e)***** on the application to register the co-decision-making agreement,
 - (f) the appropriate fee, as prescribed by regulations made under *section 27***.
- (5) *Sections 19****** to *23****** shall apply to a varied co-decision-making agreement as they apply to a co-decision-making agreement and, accordingly, in the case of their application to a varied co-decision-making agreement, a reference to “co-decision-making agreement” in those sections shall be read as if ‘varied co-decision-making agreement’ were substituted for “co-decision-making agreement”.
- (6) An application to register a varied co-decision-making agreement shall not be made less than 6 months from the date of registration of the co-decision-making agreement which it varies, unless a shorter period is agreed by the Director.
- (7) Upon registration of a varied co-decision-making agreement, the Director shall remove from the Register the co-decision-making agreement which it varies.
- (8) A varied co-decision-making agreement shall not enter into force until it has been registered.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 87.]

**This is a reference to the section proposed to be inserted by amendment 100.]

***This is a reference to the subsection proposed to be inserted by amendment 91.]

****This is a reference to the paragraph proposed to be inserted by amendment 91.]

*****This is a reference to the section proposed to be inserted by amendment 92.]

*****This is a reference to the section proposed to be inserted by amendment 96.]

98. In page 21, after line 41, to insert the following:

“Revocation of co-decision-making agreement and removal from Register

25. (1) A co-decision-making agreement may be revoked at any time by the appointer or the co-decision-maker or both.
- (2) The revocation of a co-decision-making agreement shall be in writing and shall be in such form as shall be prescribed by regulations made under *section 27**.
- (3) Subject to *section 14(6)***, the revocation of a co-decision-making agreement shall be signed by the person or persons making the revocation and, in the case of a revocation by the appointer, his or her signature shall be acknowledged by 2 witnesses and

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*sections 14(6)** and (7)** shall apply with the necessary modifications.*

- (4) Upon receipt of a revocation of a co-decision-making agreement made in accordance with this section, the Director shall remove the co-decision-making agreement to which the revocation relates from the Register.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 100.]

[**This is a reference to the subsection proposed to be inserted by amendment 87.]

99. In page 21, after line 41, to insert the following:

“Complaints

26. (1) A person may make a complaint to the Director concerning one or more of the following matters:
- (a) the conduct or proposed conduct of a co-decision-maker, including whether he or she has acted, is acting, or is proposing to act outside the scope of his or her functions;
 - (b) the suitability of a co-decision-maker in relation to an appointer;
 - (c) a co-decision-making agreement not being in accordance with the will and preferences of an appointer;
 - (d) that the appointer did not, at the time of entry into the co-decision-making agreement, have capacity to make a decision to enter the agreement;
 - (e) that fraud or undue pressure was used to induce the appointer to enter into the co-decision-making agreement;
 - (f) that the appointer has capacity in respect of one or more of the decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;
 - (g) that the appointer no longer has capacity in respect of one or more than one of the decisions which are the subject of the co-decision-making agreement even with the assistance of the co-decision-maker.
- (2) Following the receipt of a complaint, the Director shall carry out an investigation and, where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to any matter specified in the complaint.
- (3) The Director may, notwithstanding that no complaint has been received, carry out an investigation and make an application to court for a determination in relation to any matter specified in *subsection (1)*.
- (4) In addition to making a determination pursuant to an application under *subsection (2)* or *(3)*, the court may—
- (a) either of its own motion or pursuant to an application by the Director, order that a co-decision-making agreement be removed from the register, and

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(b) make any other order that it thinks fit.”.

—An tAire Dlí agus Cirt agus Comhionannais.

100. In page 21, after line 41, to insert the following:

“Regulations

27. The Minister shall make regulations as respects co-decision-making agreements, including—

- (a) prescribing the form of a co-decision-making agreement,
- (b) prescribing the form of an application to register a co-decision-making agreement and varied co-decision-making agreement,
- (c) prescribing the form of notice of an application to register a co-decision-making agreement and varied co-decision-making agreement,
- (d) prescribing the form of an objection to the registration of a co-decision-making agreement and varied co-decision-making agreement,
- (e) prescribing the form of a report to be submitted by a co-decision-maker to the Director,
- (f) prescribing the form of revocation of a co-decision-making agreement,
- (g) prescribing the form of references as to the personal character of a co-decision-maker,
- (h) prescribing the bodies or classes of persons who may inspect the Register and receive an authenticated copy of a co-decision-making agreement,
- (i) prescribing the fees to be paid in connection with—
 - (i) an application to register a co-decision-making agreement or varied co-decision-making agreement,
 - (ii) an objection to an application to register a co-decision-making agreement or varied co-decision-making agreement, and
 - (iii) the issue of an authenticated copy of a co-decision-making agreement,and
- (j) prescribing the class of healthcare professionals under *section 18(4)(f)**.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the paragraph proposed to be inserted by amendment 91.]

101. In page 21, after line 41, to insert the following:

“Applications to Court

28. Where, pursuant to an application to it under *section 22** or *23***, the court must determine whether a co-decision-maker should continue as co-decision-maker for an

[SECTION 13]

appointer, the court shall have regard to all of the circumstances of the case, including in particular—

- (a) the capacity of the appointer,
- (b) the appointer’s willingness to continue to participate in the co-decision-making agreement concerned,
- (c) the suitability of the co-decision-maker,
- (d) the performance by the co-decision-maker of his or her functions, and
- (e) the views of the Director.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 95.]

[**This is a reference to the section proposed to be inserted by amendment 96.]

SECTION 14

102.In page 22, line 10, before “(1) An application” to insert the following:

“(1) Subject to *subsections (1) and (2)*, a relevant person, or any person who has attained the age of 18 years and who has a *bona fide* interest in the welfare of a relevant person, may make an application to the court under this Part.”.

—An tAire Dlí agus Cirt agus Comhionannais.

103.In page 22, between lines 25 and 26, to insert the following:

“(3) The relevant person who is the subject of the application is entitled to legal representation in accordance with the changes made under *section 32* of this Act.”.

—Pádraig Mac Lochlainn.

104.In page 22, line 29, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

105.In page 22, lines 32 to 35, to delete all words from and including “(and” in line 32 down to and including “order)” in line 35.

—An tAire Dlí agus Cirt agus Comhionannais.

106.In page 22, between lines 37 and 38, to insert the following:

“(h) a designated healthcare representative for the relevant person,”.

—An tAire Dlí agus Cirt agus Comhionannais.

107.In page 23, line 18, to delete “appropriate and practicable manner” and substitute “appropriate, practicable and less intrusive manner”.

—An tAire Dlí agus Cirt agus Comhionannais.

108.In page 23, line 21, to delete “appropriate and practicable manner” and substitute “appropriate, practicable and less intrusive manner”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 14]

109.In page 23, lines 27 to 29, to delete all words from and including “or” in line 27 down to and including “*section 46*” in line 29 and substitute the following:

“, power of attorney (whether an enduring power or otherwise and whether or not the power is registered under *section 46*) or advance healthcare directive”.

—An tAire Dlí agus Cirt agus Comhionannais.

110.In page 23, line 31, to delete “co-decision-making order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

111.In page 23, to delete lines 34 to 45, and in page 24, to delete lines 1 to 9.

—Pádraig Mac Lochlainn.

112.In page 23, between lines 37 and 38, to insert the following:

“(b) In respect of proceedings or proposed proceedings under *Part 4*, the court shall appoint a legal representative to a relevant person unless he or she proposes to engage one.”.

—Alan Farrell.

113.In page 24, lines 22 to 24, to delete all words from and including “(and” in line 22 down to and including “order)” in line 24.

—An tAire Dlí agus Cirt agus Comhionannais.

114.In page 24, line 25, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

115.In page 24, line 27, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

116.In page 24, line 39, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

117.In page 24, lines 41 and 42, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

118.In page 25, line 1, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

119.In page 25, between lines 6 and 7, to insert the following:

“(11) Judges hearing and determining proceedings under this Part and legal practitioners appearing in such proceedings shall not wear wigs or gowns.”.

[SECTION 14]

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 15

120.In page 25, between lines 23 and 24, to insert the following:

“(2) Where the court makes a declaration pursuant to *subsection (1)(a)*, it shall, unless it is clear to the court at that time that the relevant person does not intend to enter into a co-decision-making agreement, allow the relevant person such period of time as the court considers necessary (and taking account of the time periods set out in *Part 4*) to register a co-decision-making agreement.”.

—An tAire Dlí agus Cirt agus Comhionannais.

121.In page 25, between lines 37 and 38, to insert the following:

“(5) In deciding on an application of capacity under *subsection (1)*, a court shall have regard to—

- (a) the standard criteria for assessing capacity, as issued by the Minister upon enactment of this Act, and
- (b) the determination of capacity as issued by at least one medical practitioner and one clinical psychologist in consultation with such other health and social care professionals, who are to be appointed by the court for the purpose of such a determination, and who shall be bound by the standard criteria in *paragraph (a)*.”.

—Pádraig Mac Lochlainn.

SECTION 16

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 17

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 18

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 19

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 20

122.In page 31, between lines 22 and 23, to insert the following:

“(h) the proposed appointee is an employee or agent of an approved centre in which the relevant person resides or is receiving treatment, unless the proposed appointee is a spouse or civil partner, parent, child or sibling of the relevant person.”.

[SECTION 20]

—Pádraig Mac Lochlainn.

123. In page 31, between lines 40 and 41, to insert the following:

“(f) the co-decision-maker becomes an employee or agent of an approved centre in which the relevant person resides or is receiving treatment, where the co-decision maker is not a spouse or civil partner, parent, child or sibling of the relevant person.”.

—Pádraig Mac Lochlainn.

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 21

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 22

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 23

124. In page 34, to delete lines 24 to 30 and substitute the following:

“**23.** (1) This section applies where—

(a) the court has made a declaration which falls within *paragraph (a) of section 15(1)*, but—

(i) there is no suitable person to act as co-decision-maker for the relevant person, or

(ii) where there is a suitable person to act as co-decision-maker for the relevant person, a co-decision-making agreement in respect of the relevant person is not registered in accordance with *Part 4* within the period (which may be extended at the court’s discretion) set down by the court,

or

(b) the court has made a declaration in respect of a relevant person which falls within *paragraph (b) of section 15(1)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

125. In page 34, line 41, after “person” to insert “in relation to his or her personal welfare or property and affairs, or both”.

—An tAire Dlí agus Cirt agus Comhionannais.

126. In page 34, between lines 41 and 42, to insert the following:

“(3) In making a decision-making order or decision-making representation order in relation to personal welfare, the court shall have regard to the terms of any advance healthcare directive made by the relevant person and ensure that the terms of the order are not

[SECTION 23]

inconsistent with the terms of the directive.

- (4) When considering the suitability of a person to be a decision-making representative for a relevant person, the court shall have regard to the following:
- (a) the known will and preferences of the relevant person;
 - (b) the desirability of preserving existing relationships within the family of the relevant person;
 - (c) the relationship (if any) between the relevant person and the proposed representative;
 - (d) the compatibility of the proposed representative and the relevant person;
 - (e) whether the proposed representative will be able to perform the functions to be vested in him or her;
 - (f) any conflict of interest.
- (5) Where the court appoints a decision-making representative to make decisions on the relevant person's property and affairs, it shall have regard to the following:
- (a) the size, nature and complexity of the relevant person's financial affairs;
 - (b) any professional expertise, qualification or experience required to manage the relevant person's financial affairs;
 - (c) the capability of the proposed representative to manage the relevant person's property and affairs;
 - (d) the financial expertise and support available to the proposed representative.”.

—An tAire Dlí agus Cirt agus Comhionannais.

127.In page 34, lines 43 and 44, to delete “or able”.

—An tAire Dlí agus Cirt agus Comhionannais.

128.In page 34, line 45, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

129.In page 35, line 2, to delete “and”.

—An tAire Dlí agus Cirt agus Comhionannais.

130.In page 35, between lines 2 and 3, to insert the following:

“(b) the Director shall comply with a request by the court under *paragraph (a)*, and”.

—An tAire Dlí agus Cirt agus Comhionannais.

131.In page 35, lines 7 and 8, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 23]

132. In page 35, line 8, to delete “may” and substitute “shall”.

—An tAire Dlí agus Cirt agus Comhionannais.

133. In page 35, line 20, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

134. In page 35, between lines 27 and 28, to insert the following:

“(7) In making a decision-making representation order, the court shall require the decision-making representative, or decision-making representatives if there is more than one, to sign a statement indicating that he or she—

(a) understands and undertakes to act in accordance with the powers conferred and the duties imposed on him or her by the court, and

(b) understands and undertakes to act in accordance with the guiding principles set out in *section 8*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

135. In page 35, line 28, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

136. In page 35, lines 36 and 37, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

137. In page 35, line 41, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

138. In page 35, lines 47 and 48, to delete “in the interests of the relevant person” and substitute “in accordance with the guiding principles”.

—An tAire Dlí agus Cirt agus Comhionannais.

139. In page 36, line 3, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 24

140. In page 36, lines 33 and 34, to delete “section 150 of the Act of 1990” and substitute “section 819 of the Act of 2014”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 24]

141. In page 36, lines 36 and 37, to delete “by virtue of Part VII of the Act of 1990, or” and substitute “within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,”.

—An tAire Dlí agus Cirt agus Comhionannais.

142. In page 36, line 37, to delete “or”.

—Pádraig Mac Lochlainn.

143. In page 36, in line 46, to delete “relevant person.” and substitute the following:

“relevant person, or

- (h) upon further investigation by the court, the proposed appointee has other conflicts of interest that would be detrimental to the welfare of the relevant person.”.

—Pádraig Mac Lochlainn.

144. In page 36, line 46, to delete “person.” and substitute “person, or”.

—An tAire Dlí agus Cirt agus Comhionannais.

145. In page 36, between lines 46 and 47, to insert the following:

“(h) the proposed appointee has been convicted of an offence under *section 113*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

146. In page 37, line 15, to delete “section 150 of the Act of 1990” and substitute “section 819 of the Act of 2014”.

—An tAire Dlí agus Cirt agus Comhionannais.

147. In page 37, lines 17 and 18, to delete “by virtue of Part VII of the Act of 1990, or” and substitute “within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,”.

—An tAire Dlí agus Cirt agus Comhionannais.

148. In page 37, between lines 28 and 29, to insert the following:

“(g) the decision-making representative is convicted of an offence under *section 113*, or

(h) the decision-making representative—

- (i) enters into a decision-making assistance agreement,
- (ii) enters into a co-decision-making agreement,
- (iii) has an enduring power of attorney registered in respect of him or her, or
- (iv) becomes the subject of an order under *Part 4*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 24]

149. In page 37, line 29, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

150. In page 37, lines 47 and 48, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

151. In page 38, line 7, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

152. In page 38, between lines 8 and 9, to insert the following:

“(b) A decision-making representative for a relevant person who has restrained (as referred to in *section 27*) the relevant person at any time during the 12 months to which such report relates shall include in the report details of each such restraint and the date on which, and the place where, such restraint occurred.”.

—An tAire Dlí agus Cirt agus Comhionannais.

153. In page 38, line 9, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

154. In page 38, between lines 14 and 15, to insert the following:

“(8) Where a decision-making representation order authorises a decision-making representative to make decisions in relation to a relevant person’s property and affairs, the decision-making representative shall—

- (a) within 3 months of his or her appointment as decision-making representative for the relevant person, submit to the Director a statement of facts, to include a schedule of assets and liabilities and a projected statement of income and expenditure,
- (b) keep proper accounts and financial records in respect of all income and expenditure in connection with the property and assets of the relevant person,
- (c) submit the accounts and records referred to in *paragraph (b)* to the Director at least once every 12 months or within such shorter period as the Director may decide,
- (d) make available for inspection by the Director or by a special visitor, at any reasonable time, the accounts and records referred to in *paragraph (b)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

155. In page 38, line 15, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 24]

156. In page 38, line 18, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

157. In page 38, line 21, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

158. In page 38, line 38, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

159. In page 38, lines 47 and 48, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

160. In page 39, to delete lines 9 to 14.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 25

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 26

161. In page 39, to delete lines 39 to 46 and in page 40, to delete lines 1 to 35 and substitute the following:

“26. (1) A decision-making representative may not dispose of the property of the relevant person by way of gift unless specific provision to that effect is made by the court in the decision-making representation order.”.

—An tAire Dlí agus Cirt agus Comhionannais.

162. In page 40, lines 37 and 38, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

163. In page 40, to delete lines 42 to 47 and in page 41, to delete lines 1 to 11 and substitute the following:

“(a) gifts made on customary occasions to persons (including the decision-making representative) who are related or connected to the relevant person and in relation to whom the relevant person might be expected to make gifts, and

(b) gifts to any charity to which the relevant person made or might be reasonably be expected to make gifts.”.

—An tAire Dlí agus Cirt agus Comhionannais.

164. In page 41, line 14, after “assets” to insert “and financial obligations”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 26]

165. In page 41, line 17, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

166. In page 41, lines 19 and 20, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

167. In page 41, to delete lines 22 to 24 and substitute the following:

“(b) An order under *paragraph (a)*—

- (i) shall not be made unless there is no person who is suitable and willing to act as decision-making representative in relation to the property and affairs of the relevant person, and
- (ii) may require some or all of the property of the relevant person which is money to be lodged into court.”.

—An tAire Dlí agus Cirt agus Comhionannais.

168. In page 41, lines 26 and 27, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 27

169. In page 41, lines 35 and 36, to delete “Without prejudice to the generality of *section 25(a)(ii)*, nothing” and substitute “Nothing”.

—An tAire Dlí agus Cirt agus Comhionannais.

170. In page 41, between lines 38 and 39, to insert the following:

“(2) A decision-making representative for a relevant person shall not have authority to make decisions on behalf of a relevant person other than those specified in the decision-making representation order.”.

—An tAire Dlí agus Cirt agus Comhionannais.

171. In page 42, between lines 11 and 12, to insert the following:

“(4) Where there is both a decision-making representative and a designated healthcare representative for a relevant person—

- (a) the decision-making representative shall not exercise any relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative, and
 - (b) the decision-making representative shall exercise any powers which the decision-making representative is authorised to exercise in a manner which is not inconsistent with the relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative.
- (5) Where there is a decision-making representative for a relevant person who has made an advance healthcare directive that—
- (a) does not provide for a designated healthcare representative, or

[SECTION 27]

- (b) where it does provide for a designated healthcare representative, the powers of the designated healthcare representative do not extend to the relevant decision concerned,

the decision-making representative shall exercise any powers which the decision-making representative is authorised to exercise in a manner which is not inconsistent with the terms of the advance healthcare directive.”

—An tAire Dlí agus Cirt agus Comhionannais.

172.In page 42, line 14, after “treatment” to insert “or consent to the withdrawal of life-sustaining treatment”.

—An tAire Dlí agus Cirt agus Comhionannais.

173.In page 42, to delete lines 15 to 25 and substitute the following:

“(5) A decision-making representative for a relevant person shall not do an act that is intended to restrain the relevant person unless—

- (a) the relevant person lacks capacity in relation to the matter in question or the decision-making representative reasonably believes that the relevant person lacks such capacity,
- (b) the decision-making representative reasonably believes that it is necessary to do the act in order to prevent harm to the relevant person or to another person,
- (c) the decision-making representative reasonably believes that the act is the least restrictive measure that may be taken in order to prevent harm to the relevant person or to another person, and
- (d) the act is a proportionate response to the likelihood of the harm referred to in *paragraph (b) and (c)* and to the seriousness of such harm.”

—Pádraig Mac Lochlainn.

174.In page 42, line 16, after “unless” to insert “there are exceptional emergency circumstances and”.

—An tAire Dlí agus Cirt agus Comhionannais.

175.In page 42, line 21, after “prevent” to insert “an imminent risk of serious”.

—An tAire Dlí agus Cirt agus Comhionannais.

176.In page 42, line 30, before “restricts” to insert “intentionally”.

—An tAire Dlí agus Cirt agus Comhionannais.

177.In page 42, line 30, to delete “movement” and substitute “voluntary movement or behaviour”.

—An tAire Dlí agus Cirt agus Comhionannais.

178.In page 42, between lines 33 and 34, to insert the following:

- “(d) administers or causes to be administered any medication that has the purpose and/or effect of sedating or otherwise restraining or restricting the liberty of

[SECTION 27]

movement of the relevant person.”.

—Pádraig Mac Lochlainn.

179.In page 42, to delete lines 34 to 38 and substitute the following:

“(7) A decision-making representative for a relevant person who restrains the relevant person pursuant to this section shall cease the restraint immediately upon the restraint no longer being necessary in order to prevent an imminent risk of serious harm to the relevant person or to another person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

180.In page 42, between lines 41 and 42, to insert the following:

“(9) The Director shall establish and maintain a register of decision-making representation orders.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 29

181.In page 43, line 23, after “may” to insert “be made to the court at any time by the relevant person or”.

—An tAire Dlí agus Cirt agus Comhionannais.

182.In page 43, line 24, to delete “be made to the court at any time”.

—An tAire Dlí agus Cirt agus Comhionannais.

183.In page 43, line 25, to delete “*paragraphs (a)*” and substitute “*paragraphs (b)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

184.In page 43, line 34, to delete “last reviewed” and substitute “made or last reviewed, as appropriate.”.

—An tAire Dlí agus Cirt agus Comhionannais.

185.In page 44, lines 4 and 5, to delete “decision-making representative order” and substitute “decision-making representation order”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 30

186.In page 44, line 31, after “professionals” to insert “, or other relevant experts,”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 31

187.In page 44, line 39, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 32

188.In page 45, to delete lines 1 to 9 and substitute the following:

“(a) in section 26 by substituting the following for subsection (1):

[SECTION 32]

“(1) Subject to sections 24 and 29 and to the other provisions of this section and to regulations (if any) made under section 37, the Board shall grant legal advice under this section to an applicant if, in the opinion of the Board, and except where the applicant is exempt under the provisions in subsection (3AA), the applicant satisfies the criteria in respect of financial eligibility specified in section 29 and in such regulations (if any) as aforesaid.”,

(b) by inserting the following subsection after subsection 26(3):

“(3AA) A party to an application under *Part 4 of the Assisted Decision-Making (Capacity) Act 2015* shall qualify for legal advice free of any contribution and irrespective of a party’s financial eligibility under subsection (1) of this section or under section 29 of this Act.”,

—Pádraig Mac Lochlainn.

SECTION 33

189. In page 45, between lines 21 and 22, to insert the following:

“PART 5*

WARDS

Definitions — Part 5

33. In this Part—

“ward” means a relevant person in the wardship of a wardship court;

“wardship court” means the High Court or Circuit Court exercising its jurisdiction under this Part and, in relation to a ward, means that court which made the order by virtue of which the ward is a ward.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This Part comprehends the inclusion of amendments 189 to 194.]

[Acceptance of this amendment involves the deletion of section 33 of the Bill.]

SECTION 34

190. In page 45, between lines 29 and 30, to insert the following:

“Review of capacity of wards who are adults

34. (1) An application for the review of the capacity of a ward who has attained the age of 18 years by the date of commencement of this Part may, with the consent of the wardship court, be made to the wardship court at any time by—

(a) the ward, or

(b) such other person as appears to the wardship court to have a sufficient interest or expertise in the welfare of the ward.

[SECTION 34]

- (2) Notwithstanding *subsection (1)*, the wardship court shall, within 3 years from the date of commencement of this Part, review the capacity of a ward who—
 - (a) reaches the age of 18 years by that date, or
 - (b) reaches the age of 18 years within 2 years and 6 months from that date.
- (3) Where a ward reaches the age of 18 years after the period specified in *subsection (2)(b)*, he or she shall have his or her capacity reviewed by the wardship court within 6 months of reaching that age.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 34 of the Bill.*]

SECTION 35

191. In page 46, before line 1, to insert the following:

“Declarations following review and discharge from wardship

35. (1) The wardship court, after reviewing the capacity of the ward, shall—
- (a) declare that the ward does not lack capacity, or
 - (b) make one or more than one of the following declarations:
 - (i) that the ward lacks capacity, unless the assistance of a suitable person as a co-decision-maker is made available to him or her, to make one or more than one decision;
 - (ii) that the ward lacks capacity, even if the assistance of a suitable person as a co-decision-maker were made available to him or her.
- (2) Where the wardship court makes a declaration pursuant to *subsection (1)(a)*, it shall immediately discharge the ward from wardship and shall order that the property of the former ward be returned to him or her and give such directions as it thinks appropriate having regard both to the discharge and the circumstances of the former ward.
- (3) Where the wardship court makes a declaration pursuant to *subsection (1)(b)(i)*, it shall, on registration of a co-decision-making agreement, discharge the ward from wardship and shall order that the property of the former ward be returned to him or her and give such directions as it thinks appropriate having regard both to the discharge and the circumstances of the former ward.
- (4) Where the court makes a declaration pursuant to *subsection (1)(b)(i)* but—
- (a) there is no suitable person to act as co-decision-maker for the former ward, or
 - (b) a co-decision-making agreement in respect of the former ward is not registered in accordance with *Part 4** within a period set down by the wardship court,
- the wardship court shall (subject to it allowing for any extension of the period set down by it pursuant to *paragraph (b)*)—
- (i) as if it had made a declaration under *section 35(1)(b)(ii)*, make such orders under *Part 4* as it considers appropriate as if the wardship court were the court under

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Part 4, and

- (ii) order that the property of the former ward be returned to him or her upon the appointment of a decision-making representative in respect of the former ward.
- (5) Where, following the review of the capacity of a ward, the wardship court makes a declaration pursuant to *section 35(1)(c)*, it shall—
 - (a) make such orders as it considers appropriate under *Part 4* as if the wardship court were the court under *Part 4*, and
 - (b) order that the property of the former ward be returned to him or her upon the appointment of a decision-making representative in respect of the former ward.
- (6) Subject to *subsection (7)* and this Part, the Lunacy Regulation (Ireland) Act 1871 is repealed.
- (7) Subject to this Part, nothing in *subsection (6)* shall affect the validity of any order—
 - (a) made by the wardship court within its jurisdiction, and
 - (b) which was in force immediately before the commencement of this Part.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the Part proposed to be inserted by amendment 86.]

[Acceptance of this amendment involves the deletion of section 35 of the Bill.]

192.In page 46, line 11, to delete “the third anniversary of the commencement of this section” and substitute “six months from the date of enactment of this Act”.

—Pádraig Mac Lochlainn.

SECTION 36

193.In page 47, between lines 10 and 11, to insert the following:

“Director and wards who are adults

36. The wardship court may, after consultation with the Director, in respect of—

- (a) a ward—
 - (i) who was a ward immediately before the commencement of this section, and
 - (ii) who has attained the age of 18 years,or
- (b) a class of wards—
 - (i) who were wards immediately before the commencement of this section, and
 - (ii) each member of which has attained the age of 18 years,

direct the Director to exercise his or her functions in relation to that ward, or that class of wards, as the case may be, as if the ward or class of wards were the subject of a declaration under *section 15(1)(b)* that the ward, or the wards who fall within that class,

[SECTION 36]

lacked capacity, and the wardship court may, in order to give effect to its direction, give such other directions as it thinks appropriate having regard to the circumstances of the ward or the members of that class of wards, as the case may be.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 36 of the Bill.]

SECTION 37

194. In page 47, between lines 30 and 31, to insert the following:

“Director and wards who are minors

37. The wardship court may, after consultation with the Director, in respect of a ward—

- (a) who was a ward immediately before the commencement of this section, and
- (b) who has not attained the age of 18 years,

direct the Director to exercise such of his or her functions as the court specifies in relation to that ward as if the ward were the subject of a declaration under *section 15(1)(b)* that the ward lacked capacity, and the wardship court may, in order to give effect to its direction, give such other directions as it thinks appropriate having regard to the circumstances of the ward.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 37 of the Bill.]

SECTION 38

195. In page 48, to delete line 20.

—An tAire Dlí agus Cirt agus Comhionannais.

196. In page 48, to delete lines 21 to 22.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 40

197. In page 49, line 36, to delete “may” and substitute “shall”.

—An tAire Dlí agus Cirt agus Comhionannais.

198. In page 50, lines 38 and 39, to delete “that the attorney understands the duties and obligations of an attorney” and substitute “that he or she understands and undertakes to act in accordance with the functions of an attorney”.

—An tAire Dlí agus Cirt agus Comhionannais.

199. In page 51, line 3, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

200. In page 51, lines 29 to 30, to delete “section 150 of the Act of 1990” and substitute “section 819 of the Act of 2014”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 40]

201.In page 51, lines 32 and 33, to delete “by virtue of Part VII of the Act of 1990” and substitute “within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter”.

—An tAire Dlí agus Cirt agus Comhionannais.

202.In page 53, line 31, to delete “*section 17(2) or 23(2)*” and substitute “*section 23(2)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

203.In page 53, to delete lines 41 to 46.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 41

204.In page 54, line 19, after “unless” to insert “there are exceptional emergency circumstances and”.

—An tAire Dlí agus Cirt agus Comhionannais.

205.In page 54, line 24, after “prevent” to insert “an imminent risk of serious”.

—An tAire Dlí agus Cirt agus Comhionannais.

206.In page 54, line 33, before “restricts” to insert “intentionally”.

—An tAire Dlí agus Cirt agus Comhionannais.

207.In page 54, line 33, to delete “movement” and substitute “voluntary movement or behaviour”.

—An tAire Dlí agus Cirt agus Comhionannais.

208.In page 54, to delete lines 37 to 40 and substitute the following:

“(6) An attorney for a donor who restrains the donor pursuant to this section shall cease the restraint immediately upon the restraint no longer being necessary in order to prevent an imminent risk of serious harm to the donor or to another person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 44

209.In page 56, line 30, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 45

210.In page 56, line 37, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 46

211.In page 57, line 18, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

212.In page 57, line 25, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 46]

213.In page 57, line 32, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

214.In page 57, line 35, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

215.In page 58, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

216.In page 58, lines 8 and 9, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 47

217.In page 58, line 40, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

218.In page 58, lines 44 and 45, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 48

219.In page 59, line 3, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

220.In page 59, line 7, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

221.In page 59, line 9, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

222.In page 59, line 13, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

223.In page 59, line 15, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 49

224.In page 60, line 13, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

225.In page 60, lines 15 and 16, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

226.In page 60, line 27, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 49]

227. In page 61, line 6, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 52

228. In page 63, line 31, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

229. In page 63, line 44, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 53

230. In page 64, lines 3 to 5, to delete “(in this section and *section 53* referred to as an “informal decision-maker”)”.

—An tAire Dlí agus Cirt agus Comhionannais.

231. In page 64, line 5, to delete “decision-making assistant,”.

—An tAire Dlí agus Cirt agus Comhionannais.

232. In page 64, line 6, to delete “or attorney” and substitute “, attorney or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

233. In page 64, lines 6 and 7, to delete “the informal decision-maker” and substitute “he or she”.

—An tAire Dlí agus Cirt agus Comhionannais.

234. In page 64, line 8, after “action” to insert “in good faith for the benefit of the relevant person”.

—An tAire Dlí agus Cirt agus Comhionannais.

235. In page 64, line 13, to delete “An informal decision-maker” and substitute “A person referred to in *subsection (1)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

236. In page 64, line 18, to delete “informal decision-maker” and substitute “person referred to in *subsection (1)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

237. In page 64, between lines 19 and 20, to insert the following:

“(3) The informal decision maker has a duty to explain to the relevant person the options available to them in respect of assisted decision-making, under *Part 3* of this Act, and co-decision-making, under *Part 4, Chapter 4* of this Act.”.

—Pádraig Mac Lochlainn.

238. In page 64, to delete lines 20 to 33.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 53]

239. In page 64, to delete lines 34 to 42 and substitute the following:

“(5) Where a person referred to in *subsection (1)* takes or authorises the taking of an action pursuant to this section in respect of a relevant person, nothing in this section shall be construed to relieve the person from his or her civil liability for loss or damage, or his or her criminal liability, arising from his or her negligence in taking the action or authorising the taking of the action, as the case may be.”.

—An tAire Dlí agus Cirt agus Comhionannais.

240. In page 64, to delete lines 43 to 48, and in page 65, to delete lines 1 and 2.

—An tAire Dlí agus Cirt agus Comhionannais.

241. In page 65, between lines 2 and 3, to insert the following:

“(7) (a) An informal decision-maker shall at all times act according to the known will and preferences of the relevant person.

(b) The will and preferences will be assumed to be known to the informal decision-maker where—

(i) the informal decision-maker is aware, from personal experiences, of the will and preferences of the relevant person, or

(ii) there is evidence, which the informal decision-maker is aware of, or ought to be aware of, that indicates the will and preferences of the relevant person.

(c) An informal decision-maker shall be not be subject to this subsection where the action relating to the known will and preferences of the relevant person is contrary to the informal decision-maker’s duties under *section 54(3)* of this Act.”.

—Pádraig Mac Lochlainn.

Section opposed.

—Anne Ferris.

SECTION 54

242. In page 65, line 4, to delete “an informal decision-maker” and substitute “a person”.

—An tAire Dlí agus Cirt agus Comhionannais.

243. In page 65, line 7, to delete “*subsection (3)*” and substitute “*subsection (4)**”.

—Pádraig Mac Lochlainn.

[*This is a reference to the subsection proposed to be inserted by amendment 252.]

244. In page 65, line 8, to delete “an informal decision-maker” and substitute “a person”.

—An tAire Dlí agus Cirt agus Comhionannais.

245. In page 65, line 15, to delete “or”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 54]

246. In page 65, line 17, to delete “or attorney for the relevant person,” and substitute “, attorney or designated healthcare representative for the relevant person, or”.

—An tAire Dlí agus Cirt agus Comhionannais.

247. In page 65, between lines 17 and 18, to insert the following:

“(d) the terms of an advance healthcare directive made by the relevant person—

(i) that does not provide for a designated healthcare representative, or, where it does provide for a designated healthcare representative, the powers of the designated healthcare representative do not extend to the action concerned, and

(ii) the relevant person lacks capacity.”

—An tAire Dlí agus Cirt agus Comhionannais.

248. In page 65, line 18, to delete “informal decision-maker” and substitute “person”.

—An tAire Dlí agus Cirt agus Comhionannais.

249. In page 65, line 19, after “decision” to insert “or advance healthcare directive, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

250. In page 65, between lines 19 and 20, to insert the following:

“(3) Subject to *subsection (4)**, nothing in *section 53* shall be construed as authorising an informal decision-maker to take an action or authorise the taking of an action in respect of a relevant person which involves that person being admitted to or detained in a mental health service and/or the administration of medicine for the treatment of mental illness save in accordance with the Mental Health Act 2001.”

—Pádraig Mac Lochlainn.

[*This is a reference to the subsection proposed to be inserted by amendment 252.]

251. In page 65, lines 20 and 21, to delete “an informal decision-maker” and substitute “a person”.

—An tAire Dlí agus Cirt agus Comhionannais.

252. In page 65, between lines 28 and 29, to insert the following:

“(4) Subject to *subsection (3)**, nothing in *section 53* shall be construed as authorising an informal decision-maker to restrain a relevant person, save where the informal decision maker reasonably believes that the relevant person lacks capacity in relation to the matter in question and such restraint is necessary to prevent immediate harm to the relevant person or other person and is the least restrictive measure that may be taken in order to prevent harm to the relevant person or to another person. For the purposes of this section restraint shall be construed in accordance with *section 27(6)*.”

—Pádraig Mac Lochlainn.

[*This is a reference to the subsection proposed to be inserted by amendment 250.]

[SECTION 54]

Section opposed.

—Anne Ferris.

SECTION 55

253. In page 65, between lines 28 and 29, to insert the following:

“PART 8*

ADVANCE HEALTHCARE DIRECTIVES

Definitions (*Part 8*)

55. In this Part—

“advance healthcare directive”—

- (a) in relation to a person who has capacity, means an advance expression made by the person, in accordance with *sections 57** and 58****, of his or her will and preferences concerning treatment decisions that may arise in respect of him or her if he or she subsequently lacks capacity, and
- (b) in relation to a designated healthcare representative, means the advance expression referred to in *paragraph (a)* under which the representative was designated as such representative,

which has not been revoked pursuant to *section 57(7)***;

“applicable”, in relation to an advance healthcare directive, shall be construed in accordance with *section 58****;

“designated healthcare representative”, in relation to a directive-maker, means the named individual designated, pursuant to *section 60*****, by the directive-maker, in his or her advance healthcare directive, to exercise the relevant powers;

“directive-maker”—

- (a) in relation to an advance healthcare directive, means the person who made the directive, and
- (b) in relation to a designated healthcare representative, means the person who made the advance healthcare directive under which the representative was designated as such representative;

“Minister” means the Minister for Health;

“relevant powers”, in relation to a designated healthcare representative, means—

- (a) the power conferred on the representative under *section 61(1)(a)******, and
- (b) the powers (if any) conferred on the representative under the advance healthcare directive as read with *section 61(1)(b)******;

“treatment”, in relation to a person, means an intervention that is or may be done for a

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therapeutic, preventative, diagnostic, palliative or other purpose related to the physical or mental health of the person, and includes life-sustaining treatment;

“valid”, in relation to an advance healthcare directive, shall be construed in accordance with *section 58****;

“writing” includes voice and video recording and speech recognition technologies.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**The proposed new Part comprehends the inclusion of amendments 253 to 264.*]

[***This is a reference to the section proposed to be inserted by amendment 255.*]

[****This is a reference to the section proposed to be inserted by amendment 256.*]

[*****This is a reference to the section proposed to be inserted by amendment 258.*]

[******This is a reference to the paragraph proposed to be inserted by amendment 259.*]

254. In page 65, between lines 28 and 29, to insert the following:

“Purpose of this Part

56. (1) The purpose of this Part is to—

- (a) enable persons to be treated according to their will and preferences, and
 - (b) provide healthcare professionals with important information about persons in relation to their treatment choices.
- (2) A relevant person who has attained the age of 18 years and who has capacity is entitled to refuse treatment within the meaning of *section 55** for any reason (including a reason based on his or her religious beliefs) notwithstanding that the refusal—
- (a) appears to be an unwise decision,
 - (b) appears not to be based on sound medical principles, or
 - (c) may result in his or her death.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This is a reference to the section proposed to be inserted by amendment 253.*]

255. In page 65, between lines 28 and 29, to insert the following:

“Making of advance healthcare directives, etc.

57. (1) A person who has attained the age of 18 years and who has capacity may make an advance healthcare directive which is in compliance with the requirements of this section applicable to it and in compliance with the regulations (if any) made under *subsection (12)*.

- (2) A refusal of treatment set out in an advance healthcare directive shall be complied with if the following 3 conditions are met:

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- (a) at the time in question the directive-maker lacks capacity to give consent to the treatment;
 - (b) the treatment to be refused is clearly identified in the directive;
 - (c) the circumstances in which the refusal of treatment is intended to apply are clearly identified in the directive.
- (3) (a) A request for a specific treatment set out in an advance healthcare directive is not legally binding but shall be taken into consideration during any decision-making process which relates to treatment for the directive-maker if that specific treatment is relevant to the medical condition for which the directive-maker may require treatment.
- (b) Where a request for a specific treatment set out in an advance healthcare directive is not complied with in a decision-making process referred to in *paragraph (a)*, the healthcare professional concerned, involved in that decision-making process, shall—
- (i) record the reasons for not complying with the request in the directive-maker's healthcare record, and
 - (ii) give a copy of those reasons as so recorded to the person's designated healthcare representative (if any) as soon as is practicable after they have been recorded but, in any case, not later than 7 working days after they have been recorded.
- (4) An advance healthcare directive shall be in writing.
- (5) (a) An advance healthcare directive shall contain the following:
- (i) the name, date of birth and contact details of the directive-maker;
 - (ii) subject to *paragraph (b)*, the signature of the directive-maker, and the date that the directive-maker signed the directive;
 - (iii) the name, date of birth and contact details of the designated healthcare representative (if any);
 - (iv) the signature of the designated healthcare representative (if any), the date that the representative signed the directive and the acknowledgement of the directive-maker;
 - (v) the signatures of the 2 witnesses in accordance with *subsection (6)*.
- (b) An advance healthcare directive may be signed on behalf of the directive-maker by a person who has attained the age of 18 years and who is not one of the witnesses referred to in *subsection (6)(a)* if—
- (i) the directive-maker is unable to sign the directive,
 - (ii) the directive-maker is present and directs that the directive be signed on his or her behalf by that person, and
 - (iii) the signature of the person is witnessed in accordance with *subsection (6)*.

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- (6) (a) The directive-maker, or the person signing on his or her behalf in accordance with *subsection (5)*, and the designated healthcare representative (if any) shall sign the advance healthcare directive in the presence of each other (where applicable) and in the presence of 2 witnesses—
- (i) each of whom has attained the age of 18 years, and
 - (ii) of whom at least one is not an immediate family member of the directive-maker.
- (b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the directive-maker (or the person signing on his or her behalf) and the signature of the designated healthcare representative (if any) by applying his or her own signature to the advance healthcare directive.
- (7) (a) A directive-maker who has capacity may revoke his or her advance healthcare directive in writing.
- (b) Subject to *paragraph (c)*, a directive-maker who has capacity may, in writing, alter his or her advance healthcare directive.
- (c) An alteration referred to in *paragraph (b)* of an advance healthcare directive is of no effect unless it is signed and witnessed in accordance with *subsections (5) and (6)* as if the alteration itself were an advance healthcare directive.
- (8) An advance healthcare directive made outside the State but which substantially complies with the requirements of this Part applicable to an advance healthcare directive shall have the same force and effect in the State as if it were made in the State.
- (9) The Minister may, for the guidance of persons wishing to make advance healthcare directives, specify forms of such directives, not inconsistent with this Part, that such persons may use or adapt in making their respective advance healthcare directives.
- (10) The Minister's power under *subsection (9)* may be exercised in such a way as to specify forms of advance healthcare directives to provide for particular circumstances or particular cases, as the Minister thinks appropriate.
- (11) The Minister may publish any forms of advance healthcare directives that he or she has specified under *subsection (9)* in such manner that he or she thinks appropriate, including by the use of a website on the internet.
- (12) The Minister may make regulations as respects advance healthcare directives, including regulations relating to—
- (a) requiring the directive-maker to give notice of the making of an advance healthcare directive—
 - (i) to the Director, and
 - (ii) to other specified persons, and whether or not by reference to persons who, under this Act, are required to be notified of an application made under this Act,

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and

- (b) requiring the Director to establish and maintain a register of advance healthcare directives so notified to him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

256. In page 65, between lines 28 and 29, to insert the following:

“Validity and applicability of advance healthcare directive

58. (1) An advance healthcare directive is not valid if the directive-maker—

- (a) did not make the directive voluntarily, or
- (b) while he or she had capacity to do so, has done anything clearly inconsistent with the directive remaining as his or her fixed decision.

(2) An advance healthcare directive is not applicable if—

- (a) at the time in question the directive-maker still has capacity to give or refuse consent to the treatment in question,
- (b) the treatment in question is not broadly recognisable as the specific treatment set out in the directive that is requested or refused, or
- (c) in the case of any specific treatment set out in the directive that is requested or refused, the circumstances set out in the directive as to when such specific treatment is to be requested or refused, as the case may be, are materially absent or different.

(3) An advance healthcare directive is not applicable to life-sustaining treatment unless this is substantiated by a statement in the directive by the directive-maker to the effect that the directive is to apply to that treatment even if his or her life is at risk.

(4) (a) An advance healthcare directive is not applicable to the administration of basic care to the directive-maker.

- (b) In *paragraph (a)* “basic care” includes (but is not limited to) warmth, shelter, oral nutrition, oral hydration and hygiene measures but does not include artificial nutrition or artificial hydration.

(5) Where an ambiguity arises as to the validity or applicability of an advance healthcare directive—

- (a) the healthcare professional concerned shall, in an effort to address the ambiguity—
 - (i) consult with the directive-maker’s designated healthcare representative (if any) or, if there is no designated healthcare representative, the directive-maker’s family and friends, and
 - (ii) seek the opinion of a second healthcare professional,

and

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- (b) if, after the healthcare professional has complied with *paragraph (a)*, the ambiguity still has not been addressed, the healthcare professional shall address the ambiguity in favour of the preservation of the directive-maker's life.
- (6) (a) Where a directive-maker lacks capacity and is pregnant, but her advance healthcare directive does not specifically state whether or not she intended a specific refusal of treatment set out in the directive to apply if she were pregnant, and it is considered by the healthcare professional concerned that complying with the refusal of treatment would have a deleterious effect on the unborn, there shall be a presumption that treatment shall be provided or continued.
- (b) Where a directive-maker lacks capacity and is pregnant and her advance healthcare directive sets out a specific refusal of treatment that is to apply even if she were pregnant, and it is considered by the healthcare professional concerned that the refusal of treatment would have a deleterious effect on the unborn, an application shall be made to the High Court to determine whether or not the refusal of treatment should apply.
- (c) In determining an application under *paragraph (b)*, the High Court shall have regard to the following:
 - (i) the potential impact of the refusal of treatment on the unborn;
 - (ii) if the treatment that is refused were given to the directive-maker, the invasiveness and duration of the treatment and the risk of harm to the directive-maker;
 - (iii) any other matter which the High Court considers relevant to the application.
- (7) (a) Subject to *subsections (1) to (6)* and *paragraph (b)*, an advance healthcare directive shall be complied with unless, at the time when it is proposed to treat the directive-maker, his or her treatment is regulated by Part 4 of the Mental Health Act 2001 or he or she is the subject of a conditional discharge order under section 13A (inserted by section 8 of the Criminal Law (Insanity) Act 2010) of the Criminal Law (Insanity) Act 2006.
- (b) Notwithstanding *paragraph (a)*, where a refusal of treatment set out in an advance healthcare directive by a directive-maker relates to the treatment of a physical illness not related to the amelioration of a mental disorder of the directive-maker, the refusal shall be complied with.”

—An tAire Dlí agus Cirt agus Comhionannais.

257. In page 65, between lines 28 and 29, to insert the following:

“Effect of advance healthcare directive

59. (1) A specific refusal of treatment set out in an advance healthcare directive is as effective as if made contemporaneously by the directive-maker when he or she had capacity to make that decision.
- (2) (a) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has complied, or purportedly complied, with a

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specific refusal of treatment set out in an advance healthcare directive and who, at the time in question, had reasonable grounds to believe, and did believe, that the refusal was valid and applicable.

- (b) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has not complied with a specific refusal of treatment set out in an advance healthcare directive who, at the time in question, had reasonable grounds to believe, and did believe, that the refusal was not valid or applicable, or both.
- (3) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has, at the time in question, not acted in compliance with an advance healthcare directive if—
 - (a) he or she had, at that time, no grounds to believe that the directive existed, or
 - (b) if he or she had, at that time, grounds to believe that the directive existed but—
 - (i) had no immediate access to the directive or its contents, and
 - (ii) the urgency of the medical condition of the directive-maker was such that the healthcare professional could not reasonably delay taking appropriate medical action until he or she did have such access.
- (4) Nothing in this Part shall be construed as affecting any civil or criminal liability of a person that might otherwise arise under the common law or an enactment (other than this Act) as a result of a failure to comply with a valid and applicable advance healthcare directive.
- (5) Nothing in this Part shall to be taken to affect—
 - (a) the law relating to murder or manslaughter, or
 - (b) the operation of section 2 of the Criminal Law (Suicide) Act 1993.”.

—An tAire Dlí agus Cirt agus Comhionannais.

258. In page 65, between lines 28 and 29, to insert the following:

“Designated healthcare representative

60. (1) (a) Subject to *subsection (2)*, a directive-maker may designate, in his or her advance healthcare directive, a named individual to exercise the relevant powers.
- (b) If the designated individual agrees to exercise the relevant powers, he or she shall sign the advance healthcare directive to confirm his or her willingness to do so in accordance with the known will and preferences of the directive-maker as determined by reference to the directive.
- (2) Subject to *subsection (3)*, an individual shall not be designated in an advance healthcare directive to exercise the relevant powers if—
- (a) the individual has not attained the age of 18 years,
 - (b) the individual has been convicted of an offence in relation to the person or

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property of the directive-maker or the person or property of a child of the directive-maker,

- (c) a safety or barring order has been made against the individual in relation to the directive-maker or a child of the directive-maker,
 - (d) the individual is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the directive-maker resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
 - (e) the individual provides personal care or healthcare services to the directive-maker for compensation unless the individual is—
 - (i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
 - (ii) the primary carer of the directive-maker.
- (3) Where, subsequent to the designation in an advance healthcare directive of an individual to exercise the relevant powers—
- (a) the individual is convicted of an offence in relation to the person or property of the directive-maker or the person or property of a child of the directive-maker,
 - (b) a safety or barring order is made against the individual in relation to the directive-maker or a child of the directive-maker,
 - (c) the individual becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the directive-maker resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, where the individual is not a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
 - (d) the individual provides personal care or healthcare services to the directive-maker for compensation where the individual is not—
 - (i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
 - (ii) the primary carer of the directive-maker,

the directive shall be invalidated, to the extent that it relates to that individual exercising the relevant powers, with effect from the day on which the individual falls within any of *paragraphs (a) to (d)*.

- (4) A designated healthcare representative for a directive-maker acts as the agent of the directive-maker when he or she exercises the relevant powers.
- (5) An advance healthcare directive shall, unless it provides otherwise, be invalidated to

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the extent that it relates to a designated healthcare representative who is the spouse of the directive-maker and subsequently—

- (a) the marriage is annulled or dissolved either—
 - (i) under the law of the State, or
 - (ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,
 - (b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,
 - (c) a written agreement to separate is entered into between the spouses, or
 - (d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.
- (6) An advance healthcare directive shall, unless it provides otherwise, be invalidated to the extent that it relates to a designated healthcare representative who is the civil partner of the directive-maker and subsequently—
- (a) the civil partnership is dissolved,
 - (b) a written agreement to separate is entered into between the civil partners, or
 - (c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.
- (7) Subject to *section 2(2)*, an advance healthcare directive shall, unless it provides otherwise, be invalidated to the extent that it relates to a designated healthcare representative who is the cohabitant of the directive-maker and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (8) The invalidation of part of an advance healthcare directive under *subsections (3), (5), (6) or (7)* shall not of itself affect a relevant decision made prior to the occurrence of the event which caused such invalidation.”.

—An tAire Dlí agus Cirt agus Comhionannais.

259. In page 65, between lines 28 and 29, to insert the following:

“Functions and scope of authority of designated healthcare representatives

61. (1) (a) A designated healthcare representative has, by virtue of this paragraph, the power to ensure that the terms of the advance healthcare directive are complied with.
- (b) A directive-maker may, in his or her advance healthcare directive, confer on his or her designated healthcare representative one or both of the following 2 powers:
- (i) the power to advise and interpret what the directive-maker’s will and preferences are regarding treatment as determined by the representative by reference to the relevant advance healthcare directive;

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- (ii) the power to consent to or refuse treatment, up to and including life-sustaining treatment, based on the known will and preferences of the directive-maker as determined by the representative by reference to the relevant advance healthcare directive.
- (2) Nothing in this Part shall be construed as imposing any civil or criminal liability on a designated healthcare representative who, in exercising his or her relevant powers, acted in good faith and in accordance with what, at the time in question, he or she reasonably believed to be the will and preferences of the relevant directive-maker by reference to the relevant advance healthcare directive.
- (3) A designated healthcare representative shall—
 - (a) as soon as is practicable after making a relevant decision but, in any case, not later than 7 working days after making the decision, make and keep a record in writing of the decision, and
 - (b) produce that record for inspection at the request of—
 - (i) the directive-maker if he or she has regained capacity, or
 - (ii) the Director.
- (4)
 - (a) The Director shall receive and consider complaints and allegations in relation to the way in which a designated healthcare representative is exercising his or her relevant powers.
 - (b) The Director shall review any complaint referred to in *paragraph (a)* and, if satisfied that the complaint has substance, shall conduct an investigation into the matter.
 - (c) The Director may, following the completion of an investigation under *paragraph (b)*, decide to, as appropriate—
 - (i) take no further action, or
 - (ii) make an application to the court.
- (5) The court may determine an application under *subsection (4)(c)* by—
 - (a) if it is satisfied that the designated healthcare representative has behaved, is behaving or is proposing to behave in a manner outside the scope of his or her relevant powers, making an order invalidating the advance healthcare directive to the extent that it relates to the representative exercising those powers with effect from the date, or the occurrence of the event, specified in the order for the purpose, or
 - (b) if it is not so satisfied, declining to make any such order.
- (6)
 - (a) A designated healthcare representative may only exercise the relevant powers when and for so long as the directive-maker lacks capacity.
 - (b) A designated healthcare representative shall not delegate any of the relevant powers and, accordingly, any instrument purporting to effect such a delegation is void.

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- (7) A directive-maker may designate, in his or her advance healthcare directive, a named individual to be the directive-maker's alternate designated healthcare representative if the original designated healthcare representative dies, or is unable (whether by reason of lack of capacity or otherwise) or declines to act, provided that the named individual is qualified to act as such under *section 60** at the time concerned, and, accordingly, the other provisions of this Part shall, with all necessary modifications, be construed to take account of any such advance healthcare directive.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 258.]

260. In page 65, between lines 28 and 29, to insert the following:

“Role of courts

- 62.** (1) On an application (being an application that does not involve considerations relating to life-sustaining treatment) made to it by any interested party, the court may make a declaration as to whether—
- (a) an advance healthcare directive is valid,
 - (b) an advance healthcare directive is applicable, or
 - (c) a designated healthcare representative is acting in accordance with the relevant powers.
- (2) On an application (being an application that involves considerations relating to life-sustaining treatment) made to it by any interested party, the High Court may make a declaration as to whether—
- (a) an advance healthcare directive is valid,
 - (b) an advance healthcare directive is applicable, or
 - (c) a designated healthcare representative is acting in accordance with the relevant powers.
- (3) Whilst awaiting a decision of the High Court relating to an application under *subsection (2)*, nothing in the advance healthcare directive concerned shall be construed to prevent a person from—
- (a) providing life-sustaining treatment to the directive-maker, or
 - (b) doing any act which he or she reasonably believes to be necessary to prevent—
 - (i) a serious deterioration in the health of the directive-maker, or
 - (ii) if the directive-maker is a pregnant woman, a deleterious effect on the unborn.”.

—An tAire Dlí agus Cirt agus Comhionannais.

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261. In page 65, between lines 28 and 29, to insert the following:

“Offences

63. (1) A person who uses fraud, coercion or undue influence to force another person to make, alter or revoke an advance healthcare directive shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (2) A person who knowingly creates, falsifies or alters, or purports to revoke, an advance healthcare directive on behalf of another person without that other person’s consent in writing when the other person has the capacity to do so shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (3) The reference in *subsection (1)* to coercion or undue influence includes any case where a person’s access to, or continued stay in, a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, is contingent (whether in whole or in part) on the person having to make, alter or revoke an advance healthcare directive.”.

—An tAire Dlí agus Cirt agus Comhionannais.

262. In page 65, between lines 28 and 29, to insert the following:

“Codes of practice

64. (1) In this section—
- “body concerned”, in relation to a person concerned, means the body responsible for hearing complaints about failures to maintain professional standards in respect of the profession practised by the person concerned;
- “code of practice” includes part of a code of practice and, in relation to a code of practice published under *subsection (3)*, means such code as in force from time to time under this section;
- “person concerned”, in relation to a code of practice, means a person for whom the code is providing guidance;
- “working group” means the working group established under *subsection (2)*.
- (2) The Minister shall establish a multidisciplinary working group of suitable persons willing and able to make recommendations to the Director in relation to codes of

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practice.

- (3) The Director may prepare and publish a code of practice, based (whether in whole or in part) on recommendations made to him or her by the working group as to the contents of the code, for the purposes of the guidance of designated healthcare representatives or healthcare professionals, or both, or with respect to such other matters concerned with this Part as the Director thinks appropriate.
- (4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (3)*—
 - (a) make available, to the persons whom the Director considers appropriate having regard to the matters to which the code relates, in such manner as the Director considers appropriate, a draft of the code,
 - (b) invite the persons to whom he or she has made the draft available to make representations in writing on it to the Director within a period determined by the Director, being a period of not less than 30 days from the date of making the draft available to those persons,
 - (c) consider, jointly with the working group, the representations (if any) received, and
 - (d) make, after consultation with the working group, any modifications that he or she considers appropriate to the draft.
- (5) The Director shall not publish a code of practice under *subsection (3)* except with the consent of the Minister.
- (6) Where the Director publishes a code of practice under *subsection (3)*, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* and such notice shall specify—
 - (a) the persons or classes of persons for whom the code is providing guidance,
 - (b) the date from which the code has effect, and
 - (c) the place where a copy of the code may be viewed, inspected or purchased.
- (7) The Director shall publish, on the website on the internet or by the other electronic means referred to in *section 56(2)(p)*, a copy of each code of practice published under *subsection (3)*, as each such code is in force from time to time, on and from the date on which each such code has effect.
- (8) The Director shall arrange for that part of the website on the internet or other electronic means referred to in *section 56(2)(p)*, of the Act which contains a code of practice pursuant to *subsection (7)* to ordinarily be accessible by members of the public.
- (9) Subject to *subsection (10)*, the Director may, after consultation with the working group, amend or revoke a code of practice published under *subsection (3)*.
- (10) *Subsections (4) and (5)* shall, with all necessary modifications, apply to a code of practice that the Director proposes to amend or revoke under *subsection (9)* as

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subsections (4) and (5) apply to a code of practice that the Director proposes to publish under *subsection (3)*.

- (11) Where the Director amends or revokes a code of practice published under *subsection (3)*, the Director shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—
- (a) the code to which the amendment or revocation, as the case may be, relates and, if applicable, particulars of the amendment,
 - (b) the persons or classes of persons in respect of whom the code is so amended or revoked, as the case may be, and
 - (c) the date from which the amendment or revocation, as the case may be, shall have effect.
- (12) A document bearing the seal of the Courts Service and purporting to be a code of practice published under *subsection (3)* or, where such a code has been amended under this section, the code as so amended, shall be admissible in any legal proceedings.
- (13) A person concerned shall have regard to a code of practice published under *subsection (3)* when performing any function under this Act in respect of which the code provides guidance.
- (14) Where it appears to a court, tribunal, or body concerned, conducting any proceedings that—
- (a) a provision of a code of practice published under *subsection (3)*, or
 - (b) a failure to comply with a code of practice published under *subsection (3)*,
- is relevant to a question arising in the proceedings, the provision or failure, as the case may be, shall be taken into account in deciding the question.”.

—An tAire Dlí agus Cirt agus Comhionannais.

263. In page 65, between lines 28 and 29, to insert the following:

“Persons who may make applications to relevant court under this Part, etc.

65. (1) An application to the relevant court under this Part (other than an application by the directive-maker concerned) shall be made on notice to—
- (a) the directive-maker,
 - (b) the persons referred to in *paragraphs (c) to (i)* of *subsection (3)* (other than any such person who is the applicant), and
 - (c) such other persons as may be specified in rules of court.
- (2) Subject to *subsection (3)*, an application to the relevant court under this Part shall not be made unless the person making the application has received the consent of the court to the making of the application, which consent may be sought by way of an *ex parte* application.

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- (3) *Subsection (2)* shall not apply to an application to the relevant court under this Part made by—
- (a) the directive-maker,
 - (b) the Director,
 - (c) a spouse or civil partner of the directive-maker,
 - (d) the cohabitant of the directive-maker,
 - (e) a decision-making assistant for the directive-maker,
 - (f) a co-decision-maker for the directive-maker,
 - (g) a decision-making representative for the directive-maker,
 - (h) an attorney for the directive-maker,
 - (i) a designated healthcare representative for the directive-maker, or
 - (j) a person specified for that purpose in an existing order of the court under this Part where the application relates to that order.
- (4) An application to the relevant court under this Part (including an *ex parte* application under *subsection (2)*) shall state—
- (a) the applicant's connection with the directive-maker,
 - (b) the benefit to the directive-maker sought to be achieved by the application, and
 - (c) the reasons why the application is being made, in particular—
 - (i) the reason why the benefit to the directive-maker sought to be achieved has failed to be achieved in any other appropriate and practicable manner taken prior to the making of the application, and
 - (ii) the reason why, in the opinion of the applicant, no other appropriate and practicable manner to achieve that benefit remains to be taken prior to the making of the application.
- (5) In every application to the relevant court under this Part, the applicant shall inform the court of the existence of—
- (a) any decision-making assistance agreement, co-decision-making agreement, power of attorney (whether an enduring power or otherwise and whether or not the power is registered under *section 46*) or advance healthcare directive created by the directive-maker, and
 - (b) any decision-making order made in respect of the directive-maker,
- which, to the applicant's knowledge, still has any force or effect.
- (6) (a) Subject to *paragraph (c)*, a party to proceedings under this Part before the relevant court who retains legal representation for the purposes of the proceedings shall be liable for the costs of the legal representation.
- (b) Section 28 of the Act of 1995 shall apply to proceedings or proposed proceedings

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under this section which relate to *section 62(1)* or (2)**.

(c) Where—

- (i) an application to the relevant court is made under this Part, and
- (ii) the applicant has been unsuccessful in obtaining legal aid in relation to the application because he or she fails to satisfy the criteria in respect of financial eligibility specified in section 29 of the Act of 1995 as read with any regulations made under section 37 of that Act,

the relevant court may, if it is satisfied that the interests of justice require it to do so, order that all or part of the legal costs (if any) incurred by the applicant in relation to the application be paid out of the assets (if any) of the directive-maker who is the subject of the application.

(7) Rules of court shall make provision—

- (a) as to the manner and form in which proceedings under this Part are to be commenced,
- (b) as to the persons entitled to be notified of, and be made parties to, such proceedings, and
- (c) as to what may be received as evidence in such proceedings and the manner in which it is to be presented.

(8) Hearings of applications under this Part shall—

- (a) be conducted with the least amount of formality consistent with the proper administration of justice, and
- (b) be heard and determined otherwise than in public.

(9) In this section “relevant court” means the court or the High Court, as appropriate.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsections proposed to be inserted by amendment 260.]

264. In page 65, between lines 28 and 29, to insert the following:

“Review of this Part

66. The Minister shall cause a review of the functioning of this Part to be carried out before the fifth anniversary of the date of commencement of this Part.”.

—An tAire Dlí agus Cirt agus Comhionannais.

265. In page 65, lines 34 and 35, to delete all words from and including “(1) The” in line 34 down to and including line 35 and substitute the following:

“(1) The Courts Service shall appoint a person to be known as the Director of the Decision Support Service to perform the functions conferred on the Director by this Act.”.

—An tAire Dlí agus Cirt agus Comhionannais.

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266. In page 65, to delete lines 36 to 39 and substitute the following:

“(2) The Director shall—

- (a) be appointed by the Courts Service on the recommendation of the Public Appointments Service after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held, and
- (b) have the appropriate experience, qualifications, training and expertise to enable him or her to efficiently and effectively perform the functions conferred on him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

267. In page 65, lines 40 and 41, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

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268. In page 66, to delete all words from and including “(1) The” in line 5 down to and including line 44, to delete page 67, and in page 68, to delete lines 1 to 7 and substitute the following:

“(1) The Director shall have, in addition to the functions assigned to him or her by any other provision of this Act, the following functions:

- (a) to promote public awareness of this Act and matters (including the United Nations Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006) relating to the exercise of their capacity by persons who require or may shortly require assistance in exercising their capacity;
- (b) to promote public confidence in the process of dealing with matters which affect persons who require or may shortly require assistance in exercising their capacity;
- (c) to provide information and guidance to relevant persons in relation to their options under this Act for exercising their capacity;
- (d) to provide information and guidance to decision-making assistants, co-decision-makers, decision-making representatives, designated healthcare representatives and attorneys in relation to the performance of their functions under this Act;
- (e) to supervise, in accordance with the provisions of this Act, compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions under this Act;
- (f) to provide information and guidance in relation to the management of property and financial affairs to relevant persons and to decision-making assistants, co-decision-makers, decision-making representatives and attorneys;
- (g) to provide information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons;
- (h) to identify and make recommendations for change of practices in organisations and bodies in which the practices may prevent a relevant person from exercising

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his or her capacity under this Act;

- (i) to establish a website on the internet or provide, or arrange for the provision of, other electronic means by which to disseminate information to members of the public relevant to the performance of the Director's functions and which will, in the opinion of the Director, assist members of the public to understand the operation of this Act and the Director's role in relation thereto;
 - (j) to make recommendations to the Minister on any matter relating to the operation of this Act.
- (2) The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of his or her functions.”.

—An tAire Dlí agus Cirt agus Comhionannais.

269.In page 66, between lines 19 and 20, to insert the following:

- “(d) the promotion of public awareness of matters (including the principles of self-determination and autonomy as set out in Council of Europe Recommendation CM/REC(2009)11 on Principles Concerning Continuing Powers of Attorney and Advance Directives for Incapacity and Council of Europe Recommendation CM/REC(2014)2 on the Promotion of Human Rights of Older People) relating to the making of an Enduring Power of Attorney and an Advance Healthcare Directive when a person has capacity to provide for the eventuality when he or she may lack decision-making capacity.”.

—Niall Collins.

270.In page 66, between lines 31 and 32, to insert the following:

- “(f) to establish and maintain a register of Advance Healthcare Directives,”.

—Niall Collins.

271.In page 68, between lines 5 and 6, to insert the following:

- “(s) to provide advice and guidance to family members, informal carers and healthcare professionals who support relevant persons in exercising their legal capacity,”.

—Anne Ferris.

272.In page 68, line 9, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

273.In page 68, to delete lines 11 to 16.

—An tAire Dlí agus Cirt agus Comhionannais.

274.In page 68, to delete lines 17 to 21.

—An tAire Dlí agus Cirt agus Comhionannais.

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275. In page 68, to delete lines 22 to 39.

—An tAire Dlí agus Cirt agus Comhionannais.

276. In page 68, to delete lines 40 to 43.

—An tAire Dlí agus Cirt agus Comhionannais.

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277. In page 68, between lines 43 and 44, to insert the following:

“Investigations by Director

57. (1) The Director may investigate, either on his or her own initiative or in response to a complaint made to him or her by any person, complaints in relation to any action of a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person which may involve a breach of his or her functions as decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney, as the case may be, or a breach of a provision of this Act.
- (2) The Director may, to enable him or her to perform his or her functions under *subsection (1)*—
- (a) summon witnesses to attend before him or her,
 - (b) examine on oath the witnesses attending before him or her,
 - (c) require any such witness to produce to him or her any document in the power or control of the witness,
 - (d) by notice in writing, require any person to provide him or her with such written information as the Director considers necessary to enable him or her to carry out his or her functions.
- (3) The Director may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (4) The Director may seek resolution of complaints in such manner (including by any informal means) as the Director considers appropriate and reasonable.
- (5) The Director shall draw up procedures in relation to the making and investigation of complaints as he or she considers appropriate and shall cause the procedures to be published.
- (6) An investigation by the Director under this Act shall be conducted otherwise than in public.
- (7) A person who—
- (a) fails to comply with a requirement under this section,
 - (b) hinders or obstructs—
 - (i) the Director in the performance of his or her functions, or

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- (ii) one or more of the Director's staff duly authorised to act on behalf of the Director,

shall be guilty of an offence and shall be liable on summary conviction to a class A fine.”.

—An tAire Dlí agus Cirt agus Comhionannais.

278.In page 68, line 44, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

279.In page 69, line 1, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

280.In page 69, line 6, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

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281.In page 69, lines 11 and 12, to delete “Office of the Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

282.In page 69, line 15, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

283.In page 69, line 16, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

284.In page 69, line 17, to delete “Office of the Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

285.In page 69, line 20, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

286.In page 69, line 24, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

287.In page 69, line 27, to delete “Office of the Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

288.In page 69, to delete lines 30 to 33 and substitute the following:

“(5) The numbers and grades of staff to be appointed under this section and the conditions (including those relating to remuneration and allowances) of their appointment shall be determined by the Courts Service with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 58]

289. In page 69, lines 37 and 38, to delete “Office of the Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

290. In page 69, line 40, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 59

291. In page 70, line 3, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

292. In page 70, line 10, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

293. In page 70, lines 13 and 14, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

294. In page 70, line 15, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

295. In page 70, between lines 22 and 23, to insert the following:

“(5) The Director may direct a special visitor or general visitor to visit—

- (a) a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person, or
- (b) a relevant person for whom there is a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney or in respect of whom an order has been made under *section 28*,

and, subsequent to the visit, to submit to the Director a report on such matters concerning the person visited as the Director may specify in the direction.

(6) Subject to *subsection (7)*, for the purpose of enabling the Director to carry out his or her functions under this Act, he or she may direct a special or general visitor to—

- (a) at any reasonable time, examine and take copies of—
 - (i) any health record,
 - (ii) any record of, or held by, the Health Service Executive and compiled in connection with its social services function, and
 - (iii) any record held by an institution responsible for the care or treatment of persons, including any hospital or other institution for the care or treatment of mentally ill or intellectually disabled persons and any public or private institution for the care of elderly or infirm persons,

in so far as the record concerned relates to a relevant person, or

(b) interview a relevant person in private or otherwise than in public.

(7) *Subsection (6)* shall not entitle the Director to direct a general visitor to examine and

[SECTION 59]

take copies of any health record of a relevant person unless the general visitor is a registered medical practitioner.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 60

296.In page 70, line 23, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

297.In page 71, line 6, to delete “private” and substitute “public”.

—An tAire Dlí agus Cirt agus Comhionannais.

298.In page 71, line 12, after “interests” to insert “and the will and preferences”.

—An tAire Dlí agus Cirt agus Comhionannais.

299.In page 71, line 17, after “interests” to insert “or the will and preferences”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 61

300.In page 71, between lines 29 and 30, to insert the following:

“Panels to be established by the Director

61. The Director shall establish a panel of suitable persons willing and able to act as—

- (a) decision-making representatives for relevant persons to whom *section 23(3)* applies,
- (b) special visitors,
- (c) general visitors, and
- (d) court friends.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 61 of the Bill.]

SECTION 62

301.In page 71, line 46, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

302.In page 71, line 47, to delete “Public Guardian’s” and substitute “Director’s”.

—An tAire Dlí agus Cirt agus Comhionannais.

303.In page 72, line 8, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

304.In page 72, lines 9 and 10, to delete “the date of the establishment of the Office of the Public Guardian” and substitute “the date of commencement of *Part 8*”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 62]

305.In page 72, line 11, to delete “Office of the Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

306.In page 72, line 13, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

307.In page 72, lines 14 and 15, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

308.In page 72, lines 15 to 17, to delete “the effectiveness of the Office of the Public Guardian or the adequacy of the functions assigned to the Public Guardian” and substitute “his or her effectiveness or the adequacy of the functions assigned to the Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

309.In page 72, lines 24 to 26, to delete “with the date of the establishment of the Office of the Public Guardian, the Public Guardian” and substitute “on the date of commencement of *Part 8*, the Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

310.In page 72, line 28, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

311.In page 72, line 29, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 63

312.In page 72, line 48, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

313.In page 73, to delete lines 10 to 12 and substitute the following:

“(ii) the guidance of persons referred to in *section 53(1)* (including healthcare professionals who are likely to be such persons);”.

—An tAire Dlí agus Cirt agus Comhionannais.

314.In page 73, to delete lines 10 to 12 and substitute the following:

“(ii) the guidance of family members, informal carers, including healthcare professionals, in supporting relevant persons to exercise their legal capacity;”.

—Anne Ferris.

315.In page 73, between lines 23 and 24, to insert the following:

“(xi) the guidance of persons acting as advocates on behalf of relevant persons;

(xii) the guidance of other persons (including healthcare, social care, legal and financial professionals) acting on behalf of relevant persons;”.

[SECTION 63]

—An tAire Dlí agus Cirt agus Comhionannais.

316.In page 73, line 25, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

317.In page 73, between lines 25 and 26, to insert the following:

- “(xii) guidance on how treatment requests in Advance Healthcare Directives should be handled while not being legally binding;
- (xiii) guidance regarding the type of information that an individual should consider including in his or her Advance Healthcare Directive;
- (xiv) the guidance of Patient Designated Healthcare Representatives;
- (xv) guidance on the process for establishing a register of Advance Healthcare Directives.”.

—Niall Collins.

318.In page 73, line 26, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

319.In page 73, line 28, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

320.In page 73, to delete lines 35 to 37 and substitute the following:

- “(d) the National Disability Authority;
- (e) the Citizens Information Board;
- (f) representatives of professional bodies in the healthcare, social care, legal and financial sectors;
- (g) representatives of healthcare, social care, legal and financial professionals.”.

—An tAire Dlí agus Cirt agus Comhionannais.

321.In page 73, line 38, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

322.In page 74, line 1, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

323.In page 74, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

324.In page 74, line 9, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

325.In page 74, line 10, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 63]

326. In page 74, line 16, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

327. In page 74, line 23, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

328. In page 74, line 31, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

329. In page 74, line 36, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

330. In page 74, line 40, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

331. In page 74, line 46, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

332. In page 75, line 3, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

333. In page 75, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

334. In page 75, line 7, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

335. In page 75, line 8, after “*Oifigiúil*” to insert “and on the Internet website or by other electronic means referred to in *section 56(2)(p)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

336. In page 75, between lines 40 and 41, to insert the following:

“(16) A code of practice published or approved of under *subsection (2)* shall not relate to any of the provisions of *Part 8**.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This a reference to the Part proposed to be inserted by amendment 253.]

SECTION 64

337. In page 75, line 45, to delete “(ab) manage the Office of the Public Guardian;” and substitute “(ab) manage the functions assigned under this Act to the Director;”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 67

338. In page 76, lines 29 and 30, to delete “(within the meaning of the European Convention on Human Rights)”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 68]

SECTION 68

339.In page 76, lines 32 and 33, to delete “(within the meaning of the European Convention on Human Rights)”.

—An tAire Dlí agus Cirt agus Comhionannais.

340.In page 76, line 35, after “possible” to insert “but no later than 6 months from the commencement of this Act”.

—Pádraig Mac Lochlainn.

SECTION 69

341.In page 77, lines 22 and 23, to delete “(within the meaning of the European Convention on Human Rights)”.

—An tAire Dlí agus Cirt agus Comhionannais.

342.In page 77, line 26, after “possible” to insert “but no later than 6 months from the commencement of this Act”.

—Pádraig Mac Lochlainn.

SECTION 70

343.In page 78, between lines 14 and 15, to insert the following:

“ “central authority in another Convention country” means the authority designated by that country pursuant to the Convention;

“central authority in the State” means the authority mentioned in *section 74**;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This a reference to the section proposed to be inserted by amendment 348.]

344.In page 78, line 21, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

345.In page 78, line 26, after “Court” to insert “, court and the Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 73

346.In page 79, line 1, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

347.In page 79, line 18, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 74

348.In page 79, between lines 21 and 22, to insert the following:

“**74.** The Director is designated to perform in the State the functions conferred on the central authority in the State under this Part or by virtue of the Convention.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 74]

[Acceptance of this amendment involves the deletion of section 74 of the Bill.]

SECTION 75

349. In page 79, line 28, after “Court” to insert “and the court”.

—An tAire Dlí agus Cirt agus Comhionannais.

350. In page 79, line 31, after “State,” to insert the following:

“insofar as the exercise of those functions is compatible with measures taken by the authorities of a Convention country having jurisdiction under Articles 5 to 8 of the Convention,”.

—An tAire Dlí agus Cirt agus Comhionannais.

351. In page 79, line 32, before “an adult” to insert “subject to Article 10 of the Convention,”.

—An tAire Dlí agus Cirt agus Comhionannais.

352. In page 79, to delete lines 34 to 36 and substitute the following:

“(d) subject to Article 11 of the Convention, an adult present in the State, insofar as the exercise of those functions is temporary and limited to the State.”.

—An tAire Dlí agus Cirt agus Comhionannais.

353. In page 79, line 38, after “section” to insert “and Articles 6 and 7 of the Convention”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 76

354. In page 80, line 4, after “Court” to insert “and the court”.

—An tAire Dlí agus Cirt agus Comhionannais.

355. In page 80, line 9, after “Article 7” to insert “of the Convention”.

—An tAire Dlí agus Cirt agus Comhionannais.

356. In page 80, line 12, after “Court” to insert “or the court, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

357. In page 80, line 13, to delete “agrees to” and substitute “agrees to or makes”.

—An tAire Dlí agus Cirt agus Comhionannais.

358. In page 80, line 13, after “Article 8” to insert “of the Convention”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 77

359. In page 80, between lines 13 and 14, to insert the following:

“Exercise of jurisdiction

77. Measures taken by the High Court or the court, as the case may be, under this Part remain in force so long as the competent authorities in a Convention country have not modified, replaced or terminated such measures.”.

[SECTION 77]

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 77 of the Bill.*]

SECTION 78

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 79

360.In page 80, line 26, after “Court” to insert “or the court, as the case may be,”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 80

361.In page 80, line 31, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

362.In page 80, line 31 to delete “one contracting state” and substitute “one Convention country”.

—An tAire Dlí agus Cirt agus Comhionannais.

363.In page 80, line 33, to delete “the law of the other state” and substitute “the law of the Convention country in which implementation occurs”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 82

364.In page 81, line 23, after “Court” to insert “or the court, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

365.In page 81, line 27, after “Court” to insert “or the court, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 83

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 85

366.In page 82, line 20 after “Court” to insert “or the court, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 87

367.In page 82, lines 29 to 32, to delete all words from and including “(1) A” in line 29 down to and including line 32.

—An tAire Dlí agus Cirt agus Comhionannais.

368.In page 82, line 33, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 87]

369. In page 82, lines 37 and 38, to delete “The High Court may disapply this section in relation to a measure if it thinks” and substitute the following:

“The High Court or the court, as the case may be, may refuse recognition of a measure if it is of the view”.

—An tAire Dlí agus Cirt agus Comhionannais.

370. In page 83, lines 1 and 2, to delete “The High Court may disapply this section in relation to a measure if it thinks” and substitute the following:

“The High Court or the court, as the case may be, may refuse to recognise a measure if it is of the view”.

—An tAire Dlí agus Cirt agus Comhionannais.

371. In page 83, lines 9 to 11, to delete all words from and including “The” in line 9 down to and including “thinks” in line 11 and substitute the following:

“The High Court or the court, as the case may be, may refuse recognition of a measure taken under the law of a Convention country in a matter to which Article 33 applies if it is of the view”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 88

372. In page 83, between lines 12 and 13, to insert the following:

“Application to High Court or court for declaration on measure

88. (1) Subject to *section 87*, an interested person may apply to the court for a declaration as to whether a measure taken under the law of a Convention country other than the State is to be recognised in the State.

(2) No permission is required for an application to the court under this section.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 88 of the Bill.]

SECTION 89

373. In page 83, between lines 17 and 18, to insert the following:

“Provisions supplementary to sections 87 and 88*

89. For the purposes of *sections 87 and 88**, any finding of fact by a competent authority in another Convention country is conclusive.”.

—An tAire Dlí agus Cirt agus Comhionannais.

*[*This a reference to the section proposed to be inserted by amendment 372.]*

[Acceptance of this amendment involves the deletion of section 89 of the Bill.]

[SECTION 90]

SECTION 90

374. In page 83, line 21, after “Court” to insert “or the court”.

—An tAire Dlí agus Cirt agus Comhionannais.

375. In page 83, line 22, to delete “protective measure” and substitute “measure”.

—An tAire Dlí agus Cirt agus Comhionannais.

376. In page 83, line 23, to delete “country” and substitute “Convention country”.

—An tAire Dlí agus Cirt agus Comhionannais.

377. In page 83, line 25, after “Court” to insert “or the court, as the case may be,”.

—An tAire Dlí agus Cirt agus Comhionannais.

378. In page 83, line 26, to delete “or (2)”.

—An tAire Dlí agus Cirt agus Comhionannais.

379. In page 83, to delete lines 27 and 28 and substitute the following:

“(b) it has not refused recognition of the measure pursuant to *section 87(2), (3) or (4).*”.

—An tAire Dlí agus Cirt agus Comhionannais.

380. In page 83, line 31, after “Court” to insert “or the court, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 91

381. In page 83, between lines 31 and 32, to insert the following:

“Measures taken in relation to those aged under 18

91. (1) This Part applies to persons who have attained the age of 18 years.

(2) Where a measure was taken in respect of a person who had not attained the age of 18 years at the time the measure was taken, this Part applies to those measures insofar as the person concerned has attained the age of 18 years.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 91 of the Bill.]

SECTION 92

382. In page 84, line 4, after “Court” to insert “and the court”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 94

383. In page 84, lines 14 and 15, to delete “The Central Authority in the State must consult the Central Authority or other competent authority in that other country” and substitute the following:

“The central authority in the State shall consult the central authority in another

[SECTION 94]

Convention country or other competent authority in the Convention country concerned”.

—An tAire Dlí agus Cirt agus Comhionannais.

384.In page 84, lines 19 and 20, to delete “If the Central Authority or other competent authority in the other country” and substitute the following:

“If the central authority in another Convention country or other competent authority in the Convention country concerned”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 95

385.In page 84, line 22, to delete “Central Authority in the State” and substitute “central authority in the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

386.In page 84, lines 23 and 24, to delete “Central Authority” and substitute “central authority in the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 96

387.In page 84, between lines 24 and 25, to insert the following:

“Requests to be communicated through Central Authority

96. (1) Where a measure is contemplated by the High Court or the court, the central authority in the State may request the central authority in another Convention country or other competent authority in that Convention country to communicate information relevant to the protection of the adult concerned.

(2) Requests for information by a central authority in another Convention country or other competent authority in that Convention country shall be communicated through the central authority in the State.”.

—An tAire Dlí agus Cirt agus Comhionannais.

388.In page 84, line 25, to delete “High Court” and substitute “central authority in the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

389.In page 84, line 28, after “Court” to insert “or the court, as the case may be,”.

—An tAire Dlí agus Cirt agus Comhionannais.

390.In page 84, line 29, to delete “protective measures” and substitute “measures”.

—An tAire Dlí agus Cirt agus Comhionannais.

391.In page 84, lines 32 to 34, to delete “The High Court shall arrange for the Central Authority in the State to tell the Central Authority or another competent authority in that other country about” and substitute the following:

“The central authority in the State shall inform the central authority in another

[SECTION 96]

Convention country or other competent authority in that Convention country regarding”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 97

392.In page 84, line 37, to delete “Central Authority may not” and substitute “central authority in the State shall not”.

—An tAire Dlí agus Cirt agus Comhionannais.

393.In page 84, line 40, to delete “if it thinks that” and substitute “if it is of the opinion that”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 98

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 99

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 100

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 101

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 102

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 104

394.In page 86, between lines 2 and 3, to insert the following:

“(3) Save as provided in *subsections (1) and (2)* or otherwise expressly provided by any other provision of this Act, this Act applies to patients receiving treatment in an approved centre.”.

—Pádraig Mac Lochlainn.

SECTION 106

395.In page 86, to delete line 26.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 107

396.In page 86, line 29, to delete “or 6” and substitute “, 6 or 8*”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 107]

[*This is a reference to the Part proposed to be inserted by amendment 253.]

397.In page 87, line 5, to delete “or 6” and substitute “, 6 or 8*”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the Part proposed to be inserted by amendment 253.]

SECTION 108

398.In page 87, to delete lines 10 to 17.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 109

399.In page 87, between lines 17 and 18, to insert the following:

“Appeals

109. An appeal lies—

- (a) to the High Court from a decision of the Circuit Court exercising any jurisdiction under this Act, and
- (b) to the—
 - (i) Court of Appeal from a decision of the High Court, or
 - (ii) to the Supreme Court from the High Court in the circumstances laid down in Article 34.5.4 of the Constitution,

on a point of law only.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 109 of the Bill.]

SECTION 110

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 113

400.In page 90, lines 10 and 11, to delete “, attorney or informal decision-maker for a relevant person” and substitute the following:

“, attorney for the relevant person, designated healthcare representative or person referred to in *section 53(1)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

401.In page 90, line 10, to delete “, attorney or informal decision-maker” and substitute “or attorney”.

—Anne Ferris.

SECTION 114

402.In page 90, line 19, after “Act” to insert “(other than *Part 8**)”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 114]

[*This is a reference to the Part proposed to be inserted by amendment 253.]

403. In page 90, line 19, to delete “5th anniversary” and substitute “2nd anniversary”.

—Pádraig Mac Lochlainn.

SCHEDULE 1

404. In page 91, line 28, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

405. In page 91, lines 33 and 34, to delete “decision-making representative” and substitute “, decision-making representative or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

406. In page 92, line 32, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

407. In page 92, lines 33 and 34, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

408. In page 93, line 2, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

409. In page 93, line 14, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

TITLE

410. In page 9, line 10, to delete “IN THE FUTURE;” and substitute the following:

“IN THE FUTURE, HAVING REGARD, *inter alia*, TO THE PROTECTIONS AFFORDED BY THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS DONE AT ROME ON THE 4TH DAY OF NOVEMBER 1950 AS IT APPLIES IN THE STATE;”.

—An tAire Dlí agus Cirt agus Comhionannais.

411. In page 9, lines 13 and 14, to delete “(SUBJECT TO THE APPROVAL OF THE CIRCUIT COURT)”.

—An tAire Dlí agus Cirt agus Comhionannais.

412. In page 9, lines 18 and 19, to delete “THE APPROVAL BY THE CIRCUIT COURT OF CO-DECISION-MAKING AGREEMENTS OR”.

—An tAire Dlí agus Cirt agus Comhionannais.

413. In page 9, lines 21 to 27, to delete all words from and including “TO” in line 21 down to and including “PERSONS;” in line 27.

—Anne Ferris.

[TITLE]

414.In page 9, lines 22 and 23, to delete “INFORMAL DECISION-MAKING” and substitute “DECISION-MAKING ON PERSONAL WELFARE MATTERS”.

—An tAire Dlí agus Cirt agus Comhionannais.

415.In page 9, line 25, to delete “DECISION-MAKING ASSISTANTS,”.

—An tAire Dlí agus Cirt agus Comhionannais.

416.In page 9, line 27, after “PERSONS;” to insert the following:

“TO PROVIDE FOR THE MAKING OF ADVANCE HEALTHCARE DIRECTIVES BY PERSONS OF THEIR WILL AND PREFERENCES CONCERNING MEDICAL TREATMENT DECISIONS SHOULD SUCH A PERSON SUBSEQUENTLY LACK CAPACITY; TO PROVIDE FOR THE APPOINTMENT IN ADVANCE HEALTHCARE DIRECTIVES OF DESIGNATED HEALTHCARE REPRESENTATIVES WITH THE POWER TO, *inter alia*, ENSURE THAT THE ADVANCE HEALTHCARE DIRECTIVES CONCERNED ARE COMPLIED WITH;”.

—An tAire Dlí agus Cirt agus Comhionannais.

417.In page 9, lines 28 and 29, to delete “PUBLIC GUARDIAN” and substitute “DIRECTOR OF THE DECISION SUPPORT SERVICE”.

—An tAire Dlí agus Cirt agus Comhionannais.