



DÁIL ÉIREANN

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

ASSISTED DECISION-MAKING (CAPACITY) BILL 2013

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

DÁIL ÉIREANN

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

ASSISTED DECISION-MAKING (CAPACITY) BILL 2013 —REPORT

Leasuithe Amendments

1. In page 9, lines 13 to 16, to delete all words from and including “to” in line 13 down to and including “persons;” in line 16.

—An tAire Dlí agus Cirt agus Comhionannais.

2. In page 10, between lines 32 and 33, to insert the following:

“ “child” includes a step-child;”.

—An tAire Dlí agus Cirt agus Comhionannais.

3. In page 11, between lines 7 and 8, to insert the following:

“ “debt settlement arrangement” has the meaning assigned to it by section 2 of the Personal Insolvency Act 2012;”.

—An tAire Dlí agus Cirt agus Comhionannais.

4. In page 11, line 15, to delete “representative” and substitute “representation”.

—An tAire Dlí agus Cirt agus Comhionannais.

5. In page 12, to delete lines 2 and 3 and substitute “attorney or designated healthcare representative;”.

—An tAire Dlí agus Cirt agus Comhionannais.

6. In page 12, line 5, to delete “general visitor;” and substitute “general visitor, or”.

—An tAire Dlí agus Cirt agus Comhionannais.

7. In page 12, lines 6 to 8, to delete all words from and including “professional, or” in line 6 down to and including line 8 and substitute “professional;”.

—An tAire Dlí agus Cirt agus Comhionannais.

8. In page 12, between lines 26 and 27, to insert the following:

“ “personal insolvency arrangement” has the meaning assigned to it by section 2 of the Personal Insolvency Act 2012;”.

—An tAire Dlí agus Cirt agus Comhionannais.

9. In page 13, line 17, to delete “decision-making representative,” and substitute “decision-making representative”.
- An tAire Dlí agus Cirt agus Comhionannais.
10. In page 13, to delete line 24.
- An tAire Dlí agus Cirt agus Comhionannais.
11. In page 13, lines 34 and 35, to delete “as a decision on which that decision-making assistant may assist the appointer”.
- An tAire Dlí agus Cirt agus Comhionannais.
12. In page 13, lines 39 and 40, to delete “as a decision to be made jointly by the appointer and the co-decision-maker”.
- An tAire Dlí agus Cirt agus Comhionannais.
13. In page 13, after line 40, to insert the following:
- “(c) in relation to a decision made, or to be made, by a court on behalf of a relevant person, means a decision on a matter the subject of the decision-making order and which falls within the scope of that order,”.
- An tAire Dlí agus Cirt agus Comhionannais.
14. In page 14, lines 4 and 5, to delete “as a decision to be made by the decision-making representative on behalf of the relevant person”.
- An tAire Dlí agus Cirt agus Comhionannais.
15. In page 14, line 9, to delete “as a decision to be made by the attorney on behalf of the relevant person”.
- An tAire Dlí agus Cirt agus Comhionannais.
16. In page 14, to delete lines 11 to 14 and substitute the following:
- “(e) in relation to a decision made, or to be made, under an advance healthcare directive (and whether or not there is a designated healthcare representative under the directive), means a decision which falls within the scope of that directive;”.
- An tAire Dlí agus Cirt agus Comhionannais.
17. In page 14, lines 19 to 21, to delete all words from and including “and” in line 19 down to and including line 21.
- An tAire Dlí agus Cirt agus Comhionannais.
18. In page 14, line 36, to delete “*section 32(3)*” and substitute “*section 32(4)*”.
- An tAire Dlí agus Cirt agus Comhionannais.
19. In page 16, line 9, to delete “, 70(2) and 110” and substitute “and 70(2)”.
- An tAire Dlí agus Cirt agus Comhionannais.

20. In page 16, to delete lines 26 to 31 and substitute the following:

“(3) Notwithstanding any other provision of this Act—

- (a) any decision regarding the donation of an organ from a living donor shall, where the donor is a relevant person who lacks capacity, be determined by the High Court, and
 - (b) where an application in connection with the withdrawal of life-sustaining treatment from a relevant person who lacks capacity comes before the courts for adjudication, that application shall be heard by the High Court.
- (4) Nothing in this Act shall be construed as authorising any person to give consent for a non-therapeutic sterilisation procedure to be carried out on a person who lacks capacity.”.

—An tAire Dlí agus Cirt agus Comhionannais.

21. In page 23, between lines 16 and 17, to insert the following:

“ “authenticated”, in relation to a co-decision-making agreement which is registered, means bearing the signature of the Director, the date on which his or her signature was applied and the date of registration of the co-decision-making agreement;”.

—An tAire Dlí agus Cirt agus Comhionannais.

22. In page 23, between lines 20 and 21, to insert the following:

“ “co-decision-maker appointer” means a person who appoints a co-decision-maker under *section 14**;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 26.]

23. In page 23, line 22, to delete “as such agreement is in force from time to time”.

—An tAire Dlí agus Cirt agus Comhionannais.

24. In page 23, to delete lines 23 to 26.

—An tAire Dlí agus Cirt agus Comhionannais.

25. In page 23, to delete lines 27 and 28.

—An tAire Dlí agus Cirt agus Comhionannais.

26. In page 23, to delete lines 31 to 37, to delete page 24, and in page 25, to delete lines 1 to 9 and substitute the following:

“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 first-mentioned person one or more than one decision 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*.

(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 under *section 16**.
- (3) An appointment as a co-decision-maker shall be made in writing in a co-decision-making agreement that is in compliance with this section and regulations made under *section 27*.
- (4) Notwithstanding the definition of “property and affairs” in *section 2* an appointer shall not include in a co-decision-making agreement 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 the co-decision-maker or 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,
 - (ii) of whom at least one is not an immediate family member of the appointer or the co-decision-maker, and
 - (iii) neither of whom is an employee of or agent of 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 appoint more than one person as a co-decision-maker but may

not—

- (a) appoint in the same co-decision-making agreement more than one person as a co-decision-maker, or
 - (b) appoint in a co-decision-making agreement a co-decision-maker in respect of a relevant decision which is the subject of another co-decision-making agreement.
- (9) The Director shall, on a request being made of him or her by a person who intends to appoint a co-decision-maker or a person who is proposed as a co-decision-maker, or both, provide information to the person requesting with regard to making and entering into the co-decision-making agreement.
- (10) In this section, “immediate family member” means—
- (a) a spouse, civil partner, or cohabitant,
 - (b) a child, step-child, son-in-law or daughter-in-law,
 - (c) a parent, step-parent, mother-in-law or father-in-law,
 - (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
 - (e) a grandparent or grandchild,
 - (f) an aunt or uncle, or
 - (g) a nephew or niece of the relevant person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 28.]

27. In page 25, to delete lines 10 to 41, and in page 26, to delete lines 1 to 31 and substitute the following:

“Persons who are not eligible to be co-decision-makers

15. (1) Subject to *subsection (2)*, a person shall not be eligible 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 person who intends to appoint a co-decision-maker, or the person or property of a child of that person,
 - (b) has been the subject of a safety or barring order in relation to the person who intends to appoint a co-decision-maker or a child of that 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 under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
 - (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 or any other provisions of that Act,

- (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 person who intends to appoint a co-decision-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 person is a spouse or civil partner, parent, child or sibling of the person who intends to appoint a co-decision-maker,
 - (g) has been convicted of an offence under *section 127*, or
 - (h) previously acted as co-decision-maker for the person who intends to appoint a co-decision-maker and there was a finding by the court that he or she should no longer act as co-decision-maker for that person.
- (2) *Paragraphs (1)(c), (d) and (e) shall not apply where the co-decision-making agreement contains only relevant decisions concerning personal welfare.*”.

—An tAire Dlí agus Cirt agus Comhionannais.

28. In page 26, to delete lines 33 to 40, and in page 27, to delete lines 1 to 33 and substitute the following:

- “**16.** (1) A co-decision-maker shall advise the appointer as regards matters the subject of, 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 of, or to be the subject of, a relevant decision and assist the appointer with communicating 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 are required to assist in the making of a relevant decision,
 - (d) assist the appointer to make a relevant decision and to express that decision,
 - (e) make a relevant decision jointly with the appointer, and
 - (f) make reasonable efforts to ensure that a relevant decision is implemented as far as practicable.
- (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 making 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 he or she believes it is 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 costs and expenses which are—
 - (a) reasonably incurred in performing his or her functions as co-decision-maker,
 - (b) vouched for in a manner acceptable to the Director, and
 - (c) included in a report submitted by the co-decision-maker under *section 23**.
 - (6) A co-decision-maker shall not be entitled to remuneration for performing his or her functions as co-decision-maker.
 - (7) A co-decision-maker and any person specified in *section 18(3)*** shall, whether or not the co-decision-making agreement has been registered, notify the Director if, to his or her knowledge, the appointer’s capacity—
 - (a) improves to the extent that he or she has capacity in relation to the relevant decisions 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 relevant decisions 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 20(3)****,
 unless it is reasonably foreseeable that the relevant decision will result in harm to the appointer or to another person.
 - (9) A co-decision-maker 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.
 - (10) Where an appointer has more than one co-decision-maker, each of the co-decision-makers shall exercise his or her functions in a manner which is not inconsistent with the functions exercisable by another co-decision-maker.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 39.]

**This is a reference to the subsection proposed to be inserted by amendment 30.]

***This is a reference to the subsection proposed to be inserted by amendment 32.]

29. In page 27, to delete lines 34 to 36, and in page 28, to delete lines 1 to 40 and substitute the following:

“Nullity

17. (1) Where an event specified in *paragraphs (a) to (c)* occurs, a co-decision-making agreement shall, with effect from the date on which the event occurs, be null and void to the extent that it relates to a relevant decision where there is, in respect of the relevant decision—
- (a) a decision-making order or a decision-making representation order in relation to the appointer,
 - (b) an advance healthcare directive made by the appointer and the appointer lacks capacity, or
 - (c) an enduring power of attorney made by the appointer that has entered into force.
- (2) A co-decision-making agreement shall, with effect from the date on which an event specified in *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, and unless it provides otherwise, be null and void where the co-decision-maker is the spouse of the appointer 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.
- (3) A co-decision-making agreement shall, with effect from the date on which an event specified in *paragraph (a) or (b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, and unless it provides otherwise, be null and void where the co-decision-maker is the civil partner of the appointer and subsequently—
- (a) the civil partnership is dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other),
 - (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.

- (4) Subject to *section 2(2)*, a co-decision-making agreement shall, at the expiry of the period referred to in this subsection, and unless it provides otherwise, be null and void where the co-decision-maker is the cohabitant of the appointer and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (5) To the extent that a co-decision-making agreement includes a matter referred to in *section 14(4)**, it shall be null and void.
- (6) Subject to *subsection (7)*, 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 appointer or the person or property of a child of the appointer,
 - (b) a safety or barring order is made against the co-decision-maker in relation to the appointer or a child of the appointer,
 - (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 appointer 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 appointer,
 - (g) the co-decision-maker is convicted of an offence under *section 127*,
 - (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 5*,
or
 - (i) the court finds that the co-decision-maker shall no longer act as co-decision-maker for the appointer,

the co-decision-making agreement concerned shall be null and void with effect from the date on which the co-decision-maker falls within any of *paragraphs (a) to (i)*.

- (7) A co-decision-making agreement shall not be null and void pursuant to *paragraphs (6)(c), (d) and (e)* to the extent that it contains relevant decisions on personal welfare.
- (8) Where a co-decision-making agreement which stands registered becomes null and void, the appointer or the co-decision-maker under that agreement shall notify the Director of same.
- (9) Where a co-decision-making agreement which stands registered becomes null and void, or a relevant decision which is the subject of a co-decision-making agreement becomes null and void, and a person, without knowledge of the nullity, 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.
- (10) A co-decision-maker or appointer who, without knowledge of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement, as the case may be, acts in accordance with or pursuant to that relevant decision, shall not incur liability as a result of so acting.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 26.]

30. In page 29, to delete lines 2 to 38, and in page 30, to delete lines 1 to 20 and substitute the following:

- “**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 not later than 5 weeks from the date the agreement was signed, in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27* and, subject to *section 14(6)***, shall be signed by both the appointer and the co-decision-maker (in this section referred to as “the applicants”).
- (3) The applicants shall, at the same time as making an application to register a co-decision-making agreement under this section, jointly give notice, in such form as shall be prescribed by regulations made under *section 27*, of the application and give a copy of the co-decision-making agreement to the following persons:
- (a) the spouse or civil partner (if any) of the appointer;
 - (b) the cohabitant (if any) of the appointer;
 - (c) any children of the appointer who have attained the age of 18 years;
 - (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;
 - (h) any co-decision-maker of the appointer under another co-decision-making agreement.

- (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 implications 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 implications 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 under *section 23****, and
 - (v) understands the provisions of this Part relating to variation, revocation and nullity 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 a statement by such other healthcare professional of a class as shall 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 respect of the relevant decisions contained in the co-decision-making agreement, and
 - (iii) the appointer has capacity to make the relevant decisions specified in the co-decision-making agreement with the assistance of the co-decision-maker;

- (g) references, in such form as shall be prescribed by regulations made under *section 27*, by 2 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 under *section 27*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 31.]

**This is a reference to the subsection proposed to be inserted by amendment 26.]

***This is a reference to the section proposed to be inserted by amendment 39.]

31. In page 30, to delete lines 22 to 39, and in page 31, to delete lines 1 to 30 and substitute the following:

“**19.** (1) On receipt of an application under *section 18**, the Director shall review the application and any objections received under *section 21*** and shall carry out such reasonable enquiries as he or she considers necessary in order to establish whether—

- (a) the co-decision-making agreement is in accordance with *section 14****,
- (b) the co-decision-maker is a suitable person within the meaning of *section 14(2)****,
- (c) the co-decision-maker is not a person who falls under *paragraphs (a) to (h) of section 15(1)*****,
- (d) 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),
- (e) the co-decision-making agreement is in accordance with the will and preferences of the appointer, and
- (f) the appointer understands the implications of having entered into the co-decision-making agreement.

(2) Following the review under *subsection (1)* and subject to *section 21***, the Director shall—

- (a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (f) 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 (f) of subsection (1)* are not satisfied, notify the applicants of that view, 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)* and subject to *section 21***, the Director shall—

- (a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (f) 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 remains of the view that one or more of the criteria set out in *paragraphs (a) to (f) of subsection (1)* are not satisfied, refuse to register the co-decision-making agreement concerned and notify the applicants of that fact.
- (4) One or both of the applicants whose application to register a co-decision-making agreement is refused may, not later than 21 days after the date of issue of the notification of refusal by the Director, appeal the refusal to the court.
- (5) Upon an appeal under *subsection (4)*, the court may—
 - (a) require the Director to register the co-decision-making agreement concerned,
 - (b) affirm the decision of the Director, or
 - (c) make such other order as it considers appropriate.
- (6) Following the registration of a co-decision-making agreement, the Director shall send an authenticated copy of the agreement to the applicants.
- (7) A document purporting to be a copy of a co-decision-making agreement that has been authenticated by the Director shall be evidence of the contents of the agreement and the date upon which it was registered.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 30.]

[**This is a reference to the section proposed to be inserted by amendment 33.]

[***These are references to the section proposed to be inserted by amendment 26.]

[****This is a reference to the subsection proposed to be inserted by amendment 27.]

[*****This is a reference to the section proposed to be inserted by amendment 40.]

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

“Effect and proof of registration

- 20. (1) A relevant decision which is made within the scope of a registered co-decision-making agreement shall not be challenged on the grounds that the appointer did not have the capacity to make the decision.
- (2) Where a co-decision-making agreement stands registered, a relevant decision made otherwise than jointly by the appointer and the co-decision-maker is null and void.
- (3) (a) Subject to *paragraph (b)*, where a relevant decision requires the signing of any document, the relevant decision is null and 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 and who is not the co-decision-maker if the appointer is present and directs that the document be signed on his or her behalf by that person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

33. In page 31, to delete lines 32 to 41, and in page 32, to delete lines 1 to 23 and substitute the following:

“21. (1) Any of the persons referred to in *section 18(3)** may, not later than 5 weeks from 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 shall be in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section 27* and may be made on one or more of the following grounds:

(a) that the co-decision-making agreement was not signed or witnessed in accordance with *section 14***;

(b) that the appointer lacks capacity to make a decision to enter into the co-decision-making agreement;

(c) that the appointer has capacity in respect of the relevant decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;

(d) that the appointer lacks capacity in respect of the relevant decisions which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker;

(e) that entry into the co-decision-making agreement is not in accordance with the will and preferences of the appointer;

(f) that the co-decision-maker is not a suitable person within the meaning of *section 14(2)*** or falls under *paragraphs (a) to (h) of section 15(1)****;

(g) that fraud, coercion 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—

(a) review the objection,

(b) consult with the appointer and co-decision-maker and give them a reasonable opportunity to respond to the objection, and

(c) consult with such other persons as he or she considers relevant,

and shall—

(i) where he or she is of the view that the objection is not well founded, notify the person who made the objection of his or her view, provide reasons for that view and proceed, subject to *section 19(1)*****, to register the co-decision-making agreement concerned, or

(ii) where he or she is of the view that the objection is well founded, notify the person who made the objection of his or her view and make an application to the court for a determination as to whether or not the co-decision-making agreement concerned should be registered.

- (4) The court, pursuant to an application made to it under *subsection (3)(ii)*, may—
 - (a) require the Director to register the co-decision-making agreement,
 - (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.
- (5) A person who makes an objection under *subsection (1)* may, not later than 21 days after the date of issue of the notification by the Director under *subsection (3)(i)*, appeal a decision to register the co-decision-making agreement concerned to the court.
- (6) Upon appeal under *subsection (5)*, the court may—
 - (a) require the Director to remove the co-decision-making agreement concerned from the Register,
 - (b) affirm the decision of the Director, 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 30.]

[**These are references to the section proposed to be inserted by amendment 26.]

[***This is a reference to the subsection proposed to be inserted by amendment 27.]

[****This is a reference to the subsection proposed to be inserted by amendment 31.]

- 34.** In page 32, lines 25 and 26, to delete all words from and including “(1) The” in line 25 down to and including line 26 and substitute the following:

“(1) The Director shall establish and maintain a Register (in this Part referred to as “the Register”) of co-decision-making agreements.”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 35.** In page 32, line 27, to delete “deems” and substitute “considers”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 36.** In page 32, line 31, to delete “a person” and substitute “any person”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 37.** In page 33, to delete lines 1 and 2 and substitute the following:

“(5) The Director shall keep a record of any body or person that has inspected the Register or received an authenticated copy of a co-decision-making agreement, or part thereof, from him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 38.** In page 33, to delete lines 4 to 40 and substitute the following:

“**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 3 years.

- (2) In conducting a review under this section, the Director shall carry out such reasonable 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 he or she considers necessary to determine whether—
 - (a) *paragraphs (e) and (f) of section 19(1)** continue to apply,
 - (b) the co-decision-making agreement falls within *section 17***,
 - (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 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 reasonably available, another registered medical practitioner, and
 - (b) the same healthcare professional who provided the original statement under *section 18(4)(f)**** or, where that professional is not reasonably 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 matters in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, he or she shall notify the co-decision-maker and the appointer of that view, provide reasons for same 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 for response 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 matters in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, 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 on the matter.
- (6) Where, pursuant to an application to it under *subsection (5)*, the court determines that one or more of the criteria in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, it may determine that the co-decision-maker shall no longer act as co-decision-maker for the appointer concerned.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 31.]

**This is a reference to the section proposed to be inserted by amendment 29.]

***This is a reference to the paragraph proposed to be inserted by amendment 30.]

39. In page 34, to delete lines 2 to 24 and substitute the following:

- “23.** (1) A co-decision-maker shall, within 12 months after registration of the co-decision-making agreement appointing him or her, 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 report submitted to the Director pursuant to this section shall be approved by the appointer and 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-decision-making agreement and details of all costs and expenses paid to and claimed by the co-decision-maker in the relevant period together with such other matters as are prescribed.
- (3) 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 appointer and the co-decision-maker concerned of that failure or incompleteness and give the co-decision-maker such period of time as is specified in the notice to comply or submit a complete report.
- (4) Where a co-decision-maker fails to comply with a notification under *subsection (3)*, the Director may 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.
- (5) Pursuant to an application to it under *subsection (4)*, the court may determine that a co-decision-maker who has not complied with this section shall no longer act as co-decision-maker for the appointer concerned.
- (6) In this section “relevant period” means the period of time to which the report relates which shall be the period of time 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.

40. In page 34, to delete lines 26 to 41, and in page 35, to delete lines 1 to 24 and substitute the following:

- “24.** (1) The terms of a registered co-decision-making agreement 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 (in this section referred to as “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* and shall be signed by both the appointer and the co-decision-maker.
- (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 by the applicants outlining the variation and why it is considered necessary;
 - (c) a statement by a registered medical practitioner and a statement by 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,
 - (ii) the appointer requires assistance in exercising his or her decision-making in respect of the relevant decisions 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 pursuant to this subsection;
 - (e) any change to the information provided pursuant to *section 18(4)(e)**** in 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***** and sections 25***** to 30****** shall apply to a varied co-decision-making agreement as they apply to a co-decision-making agreement with the modification that 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” and any other necessary modifications.
- (6) An application to register a varied co-decision-making agreement may not be made less than 6 months from the date of registration of the co-decision-making agreement which it varies, and thereafter at intervals of not less than 12 months, 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 the varied co-decision-making agreement replaces.
- (8) A varied co-decision-making agreement shall not enter into force until it has been registered.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*These are references to the subsections proposed to be inserted by amendment 26.]

[**This is a reference to the subsection proposed to be inserted by amendment 30.]

[***This is a reference to the paragraph proposed to be inserted by amendment 30.]

[****This is a reference to the section proposed to be inserted by amendment 31.]

[*****This is a reference to the section proposed to be inserted by amendment 39.]

[*****This is a reference to the section proposed to be inserted by amendment 41.]

[*****This is a reference to the section proposed to be inserted by amendment 53.]

41. In page 35, to delete lines 26 to 36 and substitute the following:

“25. (1) A co-decision-making agreement, whether registered or not, may be revoked in whole or in part at any time by the appointer or the co-decision-maker, or both.

(2) A revocation or revocation in part 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)**, a revocation or a revocation in part 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 *section 14(7)** shall apply with the necessary modifications.

(4) Where a revocation or revocation in part is made after the co-decision-making agreement concerned has been registered, the person making the revocation shall notify the Director of the revocation or revocation in part, as the case may be.

(5) Upon receipt of a notification under *subsection (4)* the Director shall—

(a) where the revocation concerns the whole of the co-decision-making agreement concerned, remove the co-decision-making agreement to which the revocation relates from the Register, and

(b) where the revocation is a revocation in part, identify on the Register the extent of the revocation,

and in either case notify the persons specified in *section 18(3)*** of the fact of the revocation or revocation in part, as the case may be.

(6) In this section a “revocation in part” means a revocation (whether by the co-decision-maker or the appointer or both), whereby the co-decision-maker continues to act as co-decision-maker for the appointer in respect of one or more relevant decisions which are the subject of the co-decision-making agreement.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*These are references to the subsections proposed to be inserted by amendment 26.]

[**This is a reference to the subsection proposed to be inserted by amendment 30.]

42. In page 35, to delete lines 38 and 39, and in page 36, to delete lines 1 to 27 and substitute the following:

“26. (1) A person may make a complaint in writing 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, coercion 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 under *subsection (1)*, the Director shall carry out an investigation and—

- (a) 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, or
- (b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for same.

(3) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an application to court for a determination in relation to any matter specified in *subsection (1)*.

(4) The court may—

- (a) pursuant to an application to it under *subsection (2)* or *(3)*, or
- (b) pursuant to an application by an interested party whose complaint under this section has been rejected by the Director,

make a determination in relation to a matter specified in *subsection (1)* which was the subject of a complaint to the Director and may, if it considers it appropriate, determine that a co-decision-maker shall no longer act as such in relation to the appointer concerned.”.

—An tAire Dlí agus Cirt agus Comhionannais.

43. In page 36, lines 29 and 30, to delete all words from and including “The” in line 29 down to and including line 30 and substitute the following:

“The Minister, having regard to the requirements of this Part, shall make regulations regarding co-decision-making agreements, including—”.

—An tAire Dlí agus Cirt agus Comhionannais.

44. In page 36, line 32, after “application” to insert “under *sections 18(2)* and 24(3)***”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 30.]

[**This is a reference to the subsection proposed to be inserted by amendment 40.]

45. In page 36, line 34, after “notice” to insert “under *sections 18(3)* and 24(4)***”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 30.]

[**This is a reference to the subsection proposed to be inserted by amendment 40.]

46. In page 36, line 36, after “objection” to insert “under *section 21**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 33.]

47. In page 36, line 38, after “report” to insert “under *section 23**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 39.]

48. In page 37, line 1, after “revocation” to insert “under *section 25**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 41.]

49. In page 37, line 2, after “references” to insert “under *section 18(4)(g)**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the paragraph proposed to be inserted by amendment 30.]

50. In page 37, line 4, after “persons” to insert “under *section 21(3)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

51. In page 37, to delete lines 15 to 23 and substitute the following:

“28. Where the court is determining whether a co-decision-maker should continue to act as co-decision-maker for an appointer, it 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.

52. In page 37, between lines 23 and 24, to insert the following:

“Role of Director where nullity occurs

29. On receipt of notice of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement, the Director shall—
- (a) remove the co-decision-making agreement from the Register, or note on the Register the extent of the nullity, as the case may be, and
 - (b) notify the persons referred to in *section 18(3)** of the nullity and any removal of the agreement from the Register.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment 30.]

53. In page 37, between lines 23 and 24, to insert the following:

“Offences

30. (1) A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke a co-decision-making agreement 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, in an application for registration of a co-decision-making agreement, or in connection with such an application, makes a statement which he or she knows to be false in a material particular commits an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 2 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, or being led to believe that he or she has to, make, vary or revoke a co-decision-making agreement.”.

—An tAire Dlí agus Cirt agus Comhionannais.

54. In page 38, between lines 20 and 21, to insert the following:

“(4) The relevant person who is the subject of the application is entitled to legal representation in accordance with the changes made under *section 40* of this Act.”.

—Pádraig Mac Lochlainn.

55. In page 39, to delete lines 23 to 37.

—Pádraig Mac Lochlainn.

56. In page 41, line 10, to delete “property or affairs” and substitute “property and affairs”.

—An tAire Dlí agus Cirt agus Comhionannais.

57. In page 41, line 18, to delete “*Part 5*” and substitute “*Part 4*”.

—An tAire Dlí agus Cirt agus Comhionannais.

58. In page 41, between lines 30 and 31, to insert the following:

“(6) 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.

59. In page 42, line 3, to delete “*Part 5*” and substitute “*Part 4*”.

—An tAire Dlí agus Cirt agus Comhionannais.

60. In page 42, line 12, after “a” where it firstly occurs to insert “suitable”.

—An tAire Dlí agus Cirt agus Comhionannais.

61. In page 43, line 4, to delete “*section 82(1)*” and substitute “*section 82*”.

—An tAire Dlí agus Cirt agus Comhionannais.

62. In page 44, lines 19 to 22, to delete all words from and including “(1) The” in line 19 down to and including line 22.

—An tAire Dlí agus Cirt agus Comhionannais.

63. In page 45, between lines 7 and 8, to insert the following:

“(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.

64. In page 45, line 41, to delete “*paragraphs (a) to (f)*” and substitute “*paragraphs (a) to (h)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

65. In page 48, lines 9 and 10, to delete “might be reasonably be expected” and substitute “might reasonably be expected”.

—An tAire Dlí agus Cirt agus Comhionannais.

66. In page 49, to delete lines 34 to 41, and in page 50, to delete lines 1 to 3 and substitute the following:

“(8) 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 *paragraphs (b) and (c)* and to the seriousness of such harm.”.

—Pádraig Mac Lochlainn.

67. In page 50, line 9, to delete “or” where it secondly occurs.

—An tAire Dlí agus Cirt agus Comhionannais.

68. In page 50, to delete lines 10 and 11 and substitute the following:

- “(c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the relevant person’s behaviour or ensuring that he or she is compliant or not capable of resistance, or
- (d) authorises another person to do any of the things referred to in *paragraphs (a) to (c)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

69. In page 50, between lines 11 and 12, 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 movement of the relevant person.”.

—Pádraig Mac Lochlainn.

70. In page 51, to delete lines 24 to 28 and substitute the following:

“(ii) make an order varying or discharging, as appropriate, a decision-making order or decision-making representation order of which the relevant person is the subject,”.

—An tAire Dlí agus Cirt agus Comhionannais.

71. In page 52, to delete lines 25 to 32 and substitute the following:

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

“(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 (4), 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 section 26(3):

“(4) A party to an application under *Part 5* 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.

72. In page 53, line 21, to delete “3 years” and substitute “6 months”.

—Pádraig Mac Lochlainn.

73. In page 54, line 17, to delete “pursuant to *paragraph (b)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

74. In page 54, line 18, to delete “*section 43(1)(b)(ii)*” and substitute “*subsection (1)(b)(ii)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

75. In page 54, line 24, to delete “*section 43(1)(c)*” and substitute “*subsection (1)(b)(ii)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

76. In page 54, to delete lines 29 to 33.

—An tAire Dlí agus Cirt agus Comhionannais.

77. In page 54, between lines 33 and 34, to insert the following:

“Repeal of Lunacy Regulation (Ireland) Act 1871

44. (1) Subject to *subsection (2)* and this Part, the Lunacy Regulation (Ireland) Act 1871 is repealed.

(2) Subject to this Part, *subsection (1)* shall not 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.

78. In page 61, line 18, to delete “or” where it secondly occurs.

—An tAire Dlí agus Cirt agus Comhionannais.

79. In page 61, to delete lines 19 and 20 and substitute the following:

“(c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the relevant person’s behaviour or ensuring that he or she is compliant or not capable of resistance, or

(d) authorises another person to do any of the things referred to in *paragraphs (a) to (c)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

80. In page 66, line 5, to delete “Public Guardian” and substitute “Director”.

—An tAire Dlí agus Cirt agus Comhionannais.

81. In page 70, to delete lines 18 to 37.

—An tAire Dlí agus Cirt agus Comhionannais.

82. In page 70, between lines 32 and 33, 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* of this Act.”.

—Pádraig Mac Lochlainn.

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

“(4) (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 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 62(3)* of this Act.”.

—Pádraig Mac Lochlainn.

- 84.** In page 70, to delete lines 38 and 39, and in page 71, to delete lines 1 to 25.

—An tAire Dlí agus Cirt agus Comhionannais.

- 85.** In page 71, line 3, to delete “*subsection (3)*” and substitute “*subsection (4)**”.

—Pádraig Mac Lochlainn.

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

- 86.** In page 71, between lines 19 and 20, to insert the following:

“(3) Subject to *subsection (4)**, nothing in *section 61* 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 87.*]

- 87.** In page 71, between lines 25 and 26, to insert the following:

“(4) Subject to *subsection (3)**, nothing in *section 61* 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 35(9)*.”.

—Pádraig Mac Lochlainn.

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

- 88.** In page 72, to delete lines 16 and 17 and substitute the following:

“(b) the powers (if any) conferred on the representative in accordance with *section 69(1)(b)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 89.** In page 72, line 27, to delete “important”.

—An tAire Dlí agus Cirt agus Comhionannais.

90. In page 72, line 30, to delete “within the meaning of *section 63*”.

—An tAire Dlí agus Cirt agus Comhionannais.

91. In page 73, lines 1 to 3, to delete all words from and including “which” in line 1 down to and including “*subsection (12)*” in line 3.

—An tAire Dlí agus Cirt agus Comhionannais.

92. In page 73, to delete lines 33 to 35 and substitute the following:

“(iv) the signature of the designated healthcare representative (if any) and the date that the representative signed the directive;”.

—An tAire Dlí agus Cirt agus Comhionannais.

93. In page 75, between lines 4 and 5, to insert the following:

“(13) In this section, “immediate family member” means—

- (a) a spouse, civil partner, or cohabitant,
- (b) a child, step-child, son-in-law or daughter-in-law,
- (c) a parent, step-parent, mother-in-law or father-in-law,
- (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
- (e) a grandparent or grandchild,
- (f) an aunt or uncle, or
- (g) a nephew or niece of the relevant person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

94. In page 75, lines 8 and 9, to delete “inconsistent with the directive remaining as his or her fixed decision” and substitute “inconsistent with the relevant decisions outlined in the directive”.

—An tAire Dlí agus Cirt agus Comhionannais.

95. In page 75, line 13, to delete “broadly recognisable” and substitute “materially the same”.

—An tAire Dlí agus Cirt agus Comhionannais.

96. In page 75, to delete lines 15 to 18 and substitute the following:

“(c) at the time in question the circumstances set out in the directive as to when the specific treatment is to be requested or refused, as the case may be, are absent or not materially the same.”.

—An tAire Dlí agus Cirt agus Comhionannais.

97. In page 75, lines 29 and 30, to delete “address the ambiguity” and substitute “resolve the ambiguity”.

—An tAire Dlí agus Cirt agus Comhionannais.

98. In page 75, line 37, to delete “addressed” and substitute “resolved”.
—An tAire Dlí agus Cirt agus Comhionannais.
99. In page 75, lines 37 and 38, to delete “address the ambiguity” and substitute “resolve the ambiguity”.
—An tAire Dlí agus Cirt agus Comhionannais.
100. In page 78, line 25, to delete “for a directive-maker”.
—An tAire Dlí agus Cirt agus Comhionannais.
101. In page 79, line 19, to delete “following 2 powers” and substitute “following powers”.
—An tAire Dlí agus Cirt agus Comhionannais.
102. In page 81, line 32, after “to” to insert “, or being led to believe that he or she has to,”.
—An tAire Dlí agus Cirt agus Comhionannais.
103. In page 82, line 36, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.
—An tAire Dlí agus Cirt agus Comhionannais.
104. In page 82, line 40, to delete “*section 76(2)(p)*, of the Act” and substitute “*section 76(1)(i)*”.
—An tAire Dlí agus Cirt agus Comhionannais.
105. In page 85, line 32, to delete “Courts Service” and substitute “Minister for Justice and Equality”.
—Fergus O'Dowd.
106. In page 86, line 1, to delete “Courts Service” and substitute “Minister for Justice and Equality”.
—Fergus O'Dowd.
107. In page 86, line 24, to delete “and guidance”.
—An tAire Dlí agus Cirt agus Comhionannais.
108. In page 86, line 26, to delete “and guidance”.
—An tAire Dlí agus Cirt agus Comhionannais.
109. In page 86, line 32, to delete “and guidance”.
—An tAire Dlí agus Cirt agus Comhionannais.
110. In page 87, line 9, to delete “under this section”.
—An tAire Dlí agus Cirt agus Comhionannais.
111. In page 88, line 9, to delete “to the office”.
—An tAire Dlí agus Cirt agus Comhionannais.

112. In page 88, lines 19 to 21, to delete all words from and including “(1) A” in line 19 down to and including line 21.

—Fergus O'Dowd.

113. In page 88, line 22, to delete “a function under this Act of the Director to a” and substitute “any of his or her functions to a specified”.

—An tAire Dlí agus Cirt agus Comhionannais.

114. In page 89, lines 21 and 22, to delete “*section 76(2)(a)*” and substitute “*section 76(1)(e)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

115. In page 89, line 32, to delete “attorney” and substitute “attorney,”.

—An tAire Dlí agus Cirt agus Comhionannais.

116. In page 91, line 15, to delete “to whom *section 32(3)*” and substitute “in the circumstances to which *section 32(6)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

117. In page 91, line 23, to delete “submit to the Board a report” and substitute the following:

“submit to the Minister for Justice and Equality a report on all parts of the Act, with the exception of *Part 9* to which the Director will submit a report to the Minister for Health,”.

—Fergus O'Dowd.

118. In page 91, to delete lines 28 to 30 and substitute the following:

“The Minister shall cause a copy of a report submitted to him/her pursuant to *subsection (1)* to be forwarded to the Minister for Health not later than 28 days after the date on which the Minister received the report.”.

—Fergus O'Dowd.

119. In page 91, line 32, to delete “Board” and substitute “Minister for Justice and Equality”.

—Fergus O'Dowd.

120. In page 92, line 21, to delete “as in force” and substitute “as may be in force”.

—An tAire Dlí agus Cirt agus Comhionannais.

121. In page 92, to delete lines 33 and 34.

—An tAire Dlí agus Cirt agus Comhionannais.

122. In page 94, line 11, after “website” to insert “of the Director established under *section 76(1)(i)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

123. In page 94, line 12, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

124. In page 94, line 16, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

125. In page 94, line 28, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

126. In page 96, line 14, after “possible” to insert “but no later than 6 months from the commencement of this Act”.

—Pádraig Mac Lochlainn.

127. In page 97, line 5, after “possible” to insert “but no later than 6 months from the commencement of this Act”.

—Pádraig Mac Lochlainn.

128. In page 97, between lines 29 and 30, to insert the following:

“91. (1) Deprivation of liberty occurs when a relevant person is under continuous supervision and control in any care or residential facility and is not free to leave that facility.

(2) A relevant person or any person having an interest in the wellbeing of a relevant person or any person who is concerned that the relevant person may be deprived of his or her liberty or where there is an interference with private and family life which is not in accordance with the European Convention on Human Rights, may make a complaint to the Director of the Decision Support Service. The Director on receiving such a complaint shall investigate the matter immediately and if necessary refer the matter to the court for a decision in relation to these matters.”.

—Fergus O'Dowd.

129. In page 98, to delete line 9.

—An tAire Dlí agus Cirt agus Comhionannais.

130. In page 99, line 12, to delete “its” and substitute “their”.

—An tAire Dlí agus Cirt agus Comhionannais.

131. In page 99, line 12, to delete “it” and substitute “they”.

—An tAire Dlí agus Cirt agus Comhionannais.

132. In page 99, line 29, to delete “its” and substitute “their”.

—An tAire Dlí agus Cirt agus Comhionannais.

133. In page 99, line 30, to delete “it” and substitute “they”.

—An tAire Dlí agus Cirt agus Comhionannais.

134. In page 100, line 27, to delete “he or she” and substitute “the donor of an enduring power”.

—An tAire Dlí agus Cirt agus Comhionannais.

135. In page 102, line 28, after “country” to insert “other than the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

136. In page 102, line 28, after “Article 33” to insert “of the Convention”.

—An tAire Dlí agus Cirt agus Comhionannais.

137. In page 103, line 3, to delete “another Convention country” and substitute “a Convention country other than the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

138. In page 103, lines 21 and 22, to delete “outside the State” and substitute “in a Convention country other than the State”.

—An tAire Dlí agus Cirt agus Comhionannais.

139. In page 104, line 6, after “Article 33” to insert “of the Convention”.

—An tAire Dlí agus Cirt agus Comhionannais.

140. In page 104, lines 29 and 30, to delete “a Central Authority or other competent authority in a Convention country” and substitute “a central authority in another Convention country or other competent authority in that Convention country”.

—An tAire Dlí agus Cirt agus Comhionannais.

141. In page 105, to delete lines 3 to 5.

—An tAire Dlí agus Cirt agus Comhionannais.

142. In page 105, between lines 5 and 6, to insert the following:

“119. (1) Nothing in this Act shall be construed as authorising any person to administer to a relevant person any medication for the purpose of controlling or modifying the relevant person’s behaviour or to ensure that a relevant person is compliant and not capable of resistance when no medically identified condition is being treated; where the treatment is not necessary for the condition; or the intended effect of the medication is to sedate the relevant person for convenience or for disciplinary purposes.

(2) Notwithstanding the provisions of *subsection (1)*, the appropriate use of drugs to reduce symptoms in the treatment of a medical condition does not constitute chemical restraint but the administration of such medication should be clearly documented on the relevant person’s file and the reasons for the administration of such medication specified.”.

—Fergus O’Dowd.

143. In page 105, between lines 13 and 14, 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.

144. In page 106, line 20, to delete “Subject to *subsection (2)*, nothing” and substitute “Nothing”.

—An tAire Dlí agus Cirt agus Comhionannais.

145. In page 106, between lines 21 and 22, to insert the following:

“(2) Where a person who has made a valid will loses testamentary capacity, the High Court may, acting on its own initiative or an application to it by the Director of the Decision Support Service, alter the will where it is satisfied that exceptional circumstances have arisen since the loss of testamentary capacity and the interests of justice so demand, and a will so altered shall have the same force and effect as if the alterations had been made by that testator in the manner requested by the Act of 1965.”.

—Fergus O'Dowd.

146. In page 106, between lines 21 and 22, to insert the following:

“(3) In a voluntary transfer of property (whether to a transferee or jointly to the transferor and transferee) a resulting trust in favour of the transferor shall be presumed unless there is express evidence that the property is intended as a gift to the transferee.”.

—Fergus O'Dowd.

147. In page 107, to delete lines 4 and 5 and substitute the following:

“(b) in subsection (5), by deleting “subsections (2) and (3)” and substituting “subsections (2), (2A) and (3)”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

148. In page 108, lines 41 and 42, to delete “designated healthcare representative or person referred to in *section 61(1)*” and substitute “or designated healthcare representative”.

—An tAire Dlí agus Cirt agus Comhionannais.

149. In page 109, line 8, to delete “5th anniversary” and substitute “2nd anniversary”.

—Pádraig Mac Lochlainn.