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**An Bille um Chinnteoireacht Chuidithe (Cumas), 2013**  
**Assisted Decision-Making (Capacity) Bill 2013**

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*Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas*

*As amended in the Select Committee on Justice, Defence and Equality*

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**AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS), 2013**  
**ASSISTED DECISION-MAKING (CAPACITY) BILL 2013**

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*Mar a leasáíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas*  
*As amended in the Select Committee on Justice, Defence and Equality*

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AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS), 2013  
ASSISTED DECISION-MAKING (CAPACITY) BILL 2013

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# Bill

*entitled*

An Act to provide for the reform of the law relating to persons who require or may 5  
require assistance in exercising their decision-making capacity, whether immediately or  
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; to provide for the appointment by such 10  
persons of other persons to assist them in decision-making or to make decisions jointly  
with such persons; to provide for the making of applications to the Circuit Court or High  
Court in respect of such persons, including seeking the appointment by the Circuit Court  
of decision-making representatives for such persons; to enable, in specified  
circumstances, decision-making on personal welfare matters to be done in respect of 15  
such persons by other persons who are not co-decision-makers, decision-making  
representatives or attorneys for such persons; 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 20  
complied with; to provide for the appointment and functions of the Director of the  
Decision Support Service in respect of persons who require or may shortly require  
assistance in exercising their decision-making capacity; to provide for the amendment of  
the law relating to enduring powers of attorney; to provide for the ratification by the  
State of the Convention on the International Protection of Adults; and to provide for 25  
related matters.

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title and commencement**

30

1. (1) This Act may be cited as the Assisted Decision-Making (Capacity) Act 2015.

- (2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as 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.
- (3) *Part 9* 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. 5 10

### **Interpretation — general**

#### **2. (1) In this Act—**

- “act” includes a decision (howsoever described), an omission and a course of conduct;
- “Act of 1965” means the Succession Act 1965;
- “Act of 1995” means the Civil Legal Aid Act 1995; 15
- “Act of 1996” means the Powers of Attorney Act 1996;
- “Act of 1998” means the Courts Service Act 1998;
- “Act of 2001” means the Mental Health Act 2001;
- “Act of 2014” means the Companies Act 2014;
- “advance healthcare directive” shall be construed in accordance with *section 63*; 20
- “appointer” means—
- (a) a decision-making assistant appointer, or
- (b) a co-decision-maker appointer;
- “approved nursing home” has the meaning assigned to it by section 3 of the Nursing Homes Support Scheme Act 2009; 25
- “attorney”, in relation to a relevant person, means attorney within the meaning of *section 46* where the relevant person is the donor of the enduring power of attorney;
- “Board” means Board of the Courts Service;
- “capacity” means decision-making capacity and shall be construed in accordance with *section 3*; 30
- “care services” has the meaning assigned to it by section 3 of the Nursing Homes Support Scheme Act 2009;
- “co-decision-maker” has the meaning assigned to it by *section 13*;
- “co-decision-making agreement” has the meaning assigned to it by *section 13*;
- “co-decision-maker appointer” has the meaning assigned to it by *section 13*; 35
- “cohabitant” means cohabitant within the meaning of section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“court” means Circuit Court;	
“court friend”, in relation to a relevant person, means a person appointed by the Director pursuant to <i>section 81(1)</i> to be a court friend for the relevant person;	
“customary occasion” means—	
(a) the occasion or anniversary of a birth, marriage or civil partnership, or	5
(b) any other occasion on which gifts are customarily made within families or among friends or associates;	
“decision” includes a class of decisions;	
“decision-making assistant” has the meaning assigned to it by <i>section 9</i> ;	
“decision-making assistance agreement” has the meaning assigned to it by <i>section 9</i> ;	10
“decision-making assistant appointer” has the meaning assigned to it by <i>section 9</i> ;	
“decision-making order” means an order under <i>section 32(2)(a)</i> as the order is in force from time to time;	
“decision-making representative”, in relation to a relevant person, means a person appointed pursuant to a decision-making representative order to make one or more than one decision specified in the order on behalf of the relevant person;	15
“decision-making representation order” means an order under <i>section 32(2)(b)</i> as the order is in force from time to time;	
“designated healthcare representative” has the meaning assigned to it by <i>section 63</i> ;	
“Director” has the meaning given to it in <i>section 75</i> ;	20
“enduring power of attorney” means—	
(a) an enduring power of attorney created under <i>Part 7</i> , or	
(b) an enduring power of attorney created under Part II of the Act of 1996 to which <i>Part 7</i> applies by virtue of <i>section 47(1)</i> ;	
“general visitor” means a person appointed to be a general visitor by the Director pursuant to <i>section 80(1)</i> ;	25
“guiding principles” means the principles set out in <i>section 8(2) to (9)</i> ;	
“healthcare professional” means a member of any health or social care profession whether or not the profession is a designated profession within the meaning of section 3 of the Health and Social Care Professionals Act 2005;	30
“intervener”, in relation to an intervention in respect of a relevant person, means the person referred to in <i>paragraph (a), (b), (c), (d), (e) or (f)</i> of the definition of “intervention” making the intervention;	
“intervention”, in relation to a relevant person, means an action taken under this Act (including regulations made under this Act, orders made under this Act, directions given under this Act or rules of court made for the purposes of this Act) in respect of the relevant person by—	35
(a) the court or High Court,	

- (b) a decision-making assistant, co-decision-maker, decision-making representative, attorney, designated healthcare representative or person referred to in *section 61(1)*,
  - (c) the Director,
  - (d) a special visitor or general visitor, 5
  - (e) a healthcare professional, or
  - (f) a committee of the relevant person or a committee of the estate of the relevant person;
- “legal practitioner” means a person who is a practising barrister or practising solicitor; 10
- “matter concerned”, in relation to a relevant person, means—
- (a) in the case of a relevant person who falls within *paragraph (a)* of the definition of “relevant person”, the matter or matters in respect of which the person’s capacity is in question or may shortly be in question, and
  - (b) in the case of a relevant person who falls within *paragraph (b)* of the definition 15 of “relevant person”, the matter or matters in respect of which the person lacks capacity;
- “Minister” means the Minister for Justice and Equality;
- “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 20 (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;
- “person who lacks capacity” means a relevant person who falls within *paragraph (b)* of the definition of “relevant person” but only in relation to the matter or matters by virtue of which he or she falls within that paragraph; 25
- “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; 30
  - (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; 35
  - (f) other matters relating to the relevant person’s well-being;
- “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; 5
  - (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; 10
  - (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; 15
  - (j) the conduct of proceedings before any court or tribunal, whether in the name of the relevant person or on his or her behalf; 20
  - (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;
- “registered medical practitioner” has the meaning assigned to it by section 2 of the Medical Practitioners Act 2007; 25
- “registered provider” has the meaning assigned to it by section 2 of the Health Act 2007;
- “relevant decision”—
- (a) in relation to a decision made, or to be made, by a decision-making assistant appointer with the assistance of a decision-making assistant for that appointer, means a decision on a matter the subject of the decision-making assistance agreement which appointed that decision-making assistant and which falls within the scope of that agreement as a decision on which that decision-making assistant may assist the appointer, 30
  - (b) in relation to a decision made, or to be made, jointly by a co-decision-maker appointer and a co-decision-maker for that appointer, means a decision on a matter the subject of the co-decision-making agreement which appointed that co-decision-maker and which falls within the scope of that agreement as a decision to be made jointly by the appointer and the co-decision-maker, 35 40

- (c) in relation to a decision made, or to be made, by a decision-making representative on behalf of a relevant person, means a decision on a matter the subject of the decision-making representation order which appointed that decision-making representative and which falls within the scope of that order as a decision to be made by the decision-making representative on behalf of the relevant person, 5
- (d) in relation to a decision made, or to be made, by an attorney on behalf of a relevant person, means a decision on a matter the subject of the enduring power of attorney which appointed that attorney and which falls within the scope of that power as a decision to be made by the attorney on behalf of the relevant person, and 10
- (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;
- “relevant facility” has the meaning assigned to it by section 3 of the Nursing Homes Support Scheme Act 2009; 15
- “relevant person” means—
- (a) a person whose capacity is in question or may shortly be in question in respect of one or more than one matter, and includes such a person who is— 20
- (i) an appointer, or
- (ii) the donor of an enduring power of attorney,
- (b) a person who lacks capacity in respect of one or more than one matter in accordance with the provisions of this Act, or
- (c) a person who falls within *paragraphs (a) and (b)* at the same time but in respect of different matters, 25
- as the case requires;
- “relevant powers” has the meaning assigned to it by *section 63*;
- “safety or barring order” means a safety order or barring order under the Domestic Violence Act 1996;
- “special visitor” means a person appointed to be a special visitor by the Director pursuant to *section 80(1)*; 30
- “suitable”—
- (a) in relation to the appointment of a co-decision-maker for a relevant person, shall be construed in accordance with *section 14(2)*, and
- (b) in relation to the appointment of a decision-making representative for a relevant person, shall be construed in accordance with *section 32(3)*; 35
- “wardship court” has the meaning assigned to it by *section 41*.
- (2) For the purposes of this Act, persons (howsoever described in this Act) shall not be considered to have ceased cohabiting by reason only of—



- (a) either of them residing in or entering a relevant facility or approved nursing home for the purposes of being provided with care services,
- (b) both of them residing in or entering a relevant facility or approved nursing home for the purposes of being provided with care services,
- (c) either of them residing in or entering an institution (of whatever kind) for purposes relating to— 5
  - (i) a physical or mental condition of the person concerned, or
  - (ii) the imprisonment, or the taking into lawful custody, of the person concerned,
 or
- (d) both of them residing in or entering an institution (of whatever kind) for purposes relating to— 10
  - (i) a physical or mental condition of the person concerned, or
  - (ii) the imprisonment, or the taking into lawful custody, of the person concerned.

**Person’s capacity to be construed functionally**

3. (1) Subject to *subsections (2) to (6)*, for the purposes of this Act (including for the purposes of creating a co-decision-making agreement, enduring power of attorney or advance healthcare directive), a person’s capacity shall be assessed on the basis of his or her ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time. 15 20
- (2) A person lacks the capacity to make a decision if he or she is unable—
- (a) to understand the information relevant to the decision,
  - (b) to retain that information long enough to make a voluntary choice,
  - (c) to use or weigh that information as part of the process of making the decision, or
  - (d) to communicate his or her decision (whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party. 25
- (3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (whether using clear language, visual aids or any other means). 30
- (4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him or her from being regarded as having the capacity to make the decision. 35
- (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.

- (7) For the purposes of this section, information relevant to a decision shall be construed as including information about the reasonably foreseeable consequences of—
- (a) each of the available choices at the time the decision is made, or 5
  - (b) failing to make the decision.

**Circuit Court to have exclusive jurisdiction under this Act except for certain matters reserved for High Court, etc.**

4. (1) Subject to *subsection (3), sections 31, 66(6)(b), 70(2) and 110, Parts 6, 7, 11 and 12 and Schedules 1 and 2*, the Circuit Court shall have exclusive jurisdiction under this Act and the performance of the functions of that court conferred by this section shall be within the jurisdiction of the circuit of the Circuit Court and such jurisdiction shall be exercised by the circuit of the Circuit Court in which— 10
- (a) the relevant person the subject of an application under this Act is residing or carrying on business at the time the application is made, or 15
  - (b) the relevant person the subject of an application under this Act has resided at any time during the period of 3 years immediately prior to the making of the application.
- (2) An application to the Circuit Court under this Act may be made—
- (a) in such office of, or attached to, the Circuit Court within the circuit concerned, 20
  - (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. 25
- (3) Notwithstanding any other provision in this Act, the High Court, and not the court, shall have jurisdiction relating to every matter in connection with—
- (a) non-therapeutic sterilisation,
  - (b) withdrawal of artificial life-sustaining treatment, or
  - (c) the donation of an organ, 30
- where the matter concerns a relevant person who lacks capacity.

**Laying of regulations**

5. Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 35

## Expenses

6. The expenses incurred by the Minister or the Minister for Health in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

## Repeal of Marriage of Lunatics Act 1811

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7. The Marriage of Lunatics Act 1811 is repealed.

## PART 2

### PRINCIPLES THAT APPLY BEFORE AND DURING INTERVENTION IN RESPECT OF RELEVANT PERSONS

#### Guiding principles

8. (1) The principles set out in *subsections (2) to (9)* shall apply for the purposes of an intervention in respect of a relevant person, and the intervener shall give effect to those principles accordingly. 10
- (2) It shall be presumed that a relevant person who falls within *paragraph (a)* of the definition of “relevant person” in *section 2(1)* has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act. 15
- (3) A relevant person who falls within *paragraph (a)* of the definition of “relevant person” in *section 2(1)* shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so.
- (4) A relevant person who falls within *paragraph (a)* of the definition of “relevant person” in *section 2(1)* shall not be considered as unable to make a decision in respect of the matter concerned merely by reason of making, having made, or being likely to make, an unwise decision. 20
- (5) There shall be no intervention in respect of a relevant person unless it is necessary to do so having regard to the individual circumstances of the relevant person. 25
- (6) An intervention in respect of a relevant person shall—
- (a) be made in a manner that minimises—
    - (i) the restriction of the relevant person’s rights, and
    - (ii) the restriction of the relevant person’s freedom of action,
  - (b) have due regard to the need to respect the right of the relevant person to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property, 30
  - (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. 35

- (7) The intervener, in making an intervention in respect of a relevant person, shall—
- (a) permit, encourage and facilitate, in so far as is practicable, the relevant person to participate, or to improve his or her ability to participate, as fully as possible, in the intervention,
  - (b) give effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable, 5
  - (c) take into account—
    - (i) the beliefs and values of the relevant person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and 10
    - (ii) any other factors which the relevant person would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,
  - (d) unless the intervener reasonably considers that it is not appropriate or practicable to do so, consider the views of— 15
    - (i) any person named by the relevant person as a person to be consulted on the matter concerned or any similar matter, and
    - (ii) any decision-making assistant, co-decision-maker, decision-making representative or attorney for the relevant person, 20
  - (e) act at all times in good faith and for the benefit of the relevant person, and
  - (f) consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant.
- (8) The intervener, in making an intervention in respect of a relevant person, may consider the views of— 25
- (a) any person engaged in caring for the relevant person,
  - (b) any person who has a *bona fide* interest in the welfare of the relevant person, or
  - (c) healthcare professionals.
- (9) In the case of an intervention in respect of a relevant person who lacks capacity, regard shall be had to— 30
- (a) the likelihood of the recovery of the relevant person’s capacity in respect of the matter concerned, and
  - (b) the urgency of making the intervention prior to such recovery.

## PART 3

### ASSISTED DECISION-MAKING

#### Definitions — Part 3

9. In this Part—

- “appointer” means a decision-making assistant appointer; 5
- “decision-making assistant”, in relation to an appointer, means the person who the appointer has, under *section 10(1)*, appointed to assist the appointer in making decisions on the appointer’s personal welfare or property and affairs, or both, in compliance with regulations made under *section 10(4)*;
- “decision-making assistance agreement” means a decision-making assistance agreement referred to in *section 10(2)* as such agreement is in force from time to time; 10
- “decision-making assistant appointer” means a person who has, under *section 10(1)*, appointed another person to assist the first-mentioned person in making decisions on the first-mentioned person’s personal welfare or property and affairs, or both, in compliance with regulations made under *section 10(4)*. 15

#### Decision-making assistance agreement

10. (1) Subject to *section 12*, 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 another person to assist the first-mentioned person in making one or more than one decision on the first-mentioned person’s personal welfare or property and affairs, or both, in compliance with regulations made under *subsection (4)*. 20
- (2) An appointment as a decision-making assistant shall be made in a decision-making assistance agreement which is in compliance with regulations made under *subsection (4)*.
- (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. 25
- (4) The Minister shall make regulations as respects decision-making assistance agreements, including—
- (a) prescribing the form of a decision-making assistance agreement, 30
  - (b) prescribing procedures and requirements relating to the execution, variation and revocation of a decision-making assistance agreement,
  - (c) prescribing information to be included in or annexed to a decision-making assistance agreement for the purpose of ensuring that any document purporting to create a decision-making assistance agreement incorporates adequate information as to the effect of making or accepting the appointment, 35
  - (d) providing for the inclusion in a decision-making assistance agreement of the following statements:
    - (i) by the appointer, that he or she has read and understands the information as

- to the effect of making the appointment or that such information has been explained to the appointer, by a person other than the proposed decision-making assistant; and
- (ii) by the decision-making assistant, that he or she understands and undertakes to act in accordance with the functions of a decision-making assistant, including the duty to act in accordance with the guiding principles, 5
  - (e) specifying the personal welfare or property and affairs, or both, which may be specified in a decision-making assistance agreement,
  - (f) providing for the attestation of the signatures of the appointer and decision-making assistant by a person other than the appointer or the proposed decision-making assistant, and 10
  - (g) the giving by the appointer of notice of the execution, variation or revocation of a decision-making assistance agreement—
    - (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. 15
- (5) (a) The appointer may, in the decision-making assistance agreement, appoint more than one person as a decision-making assistant but may not appoint more than one decision-making assistant in respect of the same relevant decision. 20
- (b) The appointer of a decision-making assistant may, in the decision-making assistance agreement, appoint one or more than one person to act as a decision-making assistant if the decision-making assistant appointed in the agreement dies or becomes disqualified to be such decision-making assistant by virtue of the operation of *section 12*. 25
- (6) A decision-making assistance agreement shall be invalidated, to the extent that it relates to any relevant decision, where there is, in respect of that relevant decision and subsequent to the appointment of the decision-making assistant concerned, a co-decision-maker, decision-making representative, attorney (under an enduring power of attorney registered under *section 54*) or designated healthcare representative for the appointer, and whether or not the decision-making assistant is that co-decision-maker, decision-making representative, attorney or designated healthcare representative, as the case may be. 30
- (7) A decision-making assistance agreement shall be invalidated where there is, in respect of all relevant decisions and subsequent to the appointment of the decision-making assistant or decision-making assistants concerned, a co-decision-maker, decision-making representative, attorney (under an enduring power of attorney registered under *section 54*) or designated healthcare representative for the appointer, and whether or not any such decision-making assistant is that co-decision-maker, decision-making representative, attorney or designated healthcare representative, as the case may be. 35 40
- (8) 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, 5
- and
- (b) the relevant person lacks capacity in respect of the relevant decision.
- (9) A decision-making assistance agreement shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making assistant who is the spouse of the appointer and subsequently— 10
- (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, 15
  - (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, 20
  - (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.
- (10) A decision-making assistance agreement shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making assistant who is the civil partner of the appointer and subsequently— 25
- (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. 30
- (11) Subject to *section 2(2)*, a decision-making assistance agreement shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making assistant who is the cohabitant of the appointer and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (12) The invalidation of all or part of a decision-making assistance agreement under any of *subsections (6) to (11)* shall not affect a relevant decision made by the appointer with the assistance of the decision-making assistant concerned for the appointer prior to the occurrence of the event which caused such invalidation. 35

## Functions and scope of authority of decision-making assistants

11. (1) The functions of a decision-making assistant shall be—
- (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, 5
  - (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, 10
  - (d) to assist the appointer to make and express a relevant decision, and
  - (e) to endeavour to ensure that the appointer’s relevant decisions are implemented.
- (2) A decision-making assistant shall not, without the consent of the appointer—
- (a) attempt to obtain information that is not reasonably required for making a relevant decision, or 15
  - (b) use relevant information for a purpose other than in relation to a relevant decision.
- (3) A decision-making assistant shall take reasonable steps to ensure that relevant information—
- (a) is kept secure from unauthorised access, use or disclosure, and 20
  - (b) is safely disposed of when no longer required.
- (4) A decision-making assistant shall not make a decision on behalf of the appointer.

## Persons who shall not be appointed as decision-making assistants, etc.

12. (1) A person shall not be appointed as a decision-making assistant if—
- (a) the person has not attained the age of 18 years, 25
  - (b) the person has been convicted of an offence in relation to the person or property of the proposed appointer or the person or property of a child of the proposed appointer,
  - (c) a safety or barring order has been made against the person in relation to the proposed appointer or a child of the proposed appointer, or 30
  - (d) the person has been convicted of an offence under *section 127*.
- (2) A decision-making assistance agreement purporting to be made in contravention of *subsection (1)* shall be void to the extent that it purports to appoint a decision-making assistant who falls within *paragraph (a), (b), (c) or (d)* of that subsection.
- (3) Where, subsequent to the appointment of a decision-making assistant— 35
- (a) the decision-making assistant 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 decision-making assistant in relation to the appointer or a child of the appointer, or
  - (c) the decision-making assistant is convicted of an offence under *section 127*,
- the decision-making assistance agreement concerned shall be invalidated, to the extent that it relates to the appointment of that decision-making assistant, with effect from the day on which the decision-making assistant falls within *paragraph (a), (b) or (c)*. 5
- (4) The invalidation of all or part of a decision-making assistance agreement under *subsection (3)* shall not of itself affect a relevant decision made by the appointer with the assistance of a decision-making assistant prior to the occurrence of the event which caused such invalidation. 10

## PART 4

### CO-DECISION-MAKING AGREEMENTS

#### **Definitions**

**13.** In this Part— 15

“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*; 20

“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*; 25

“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)*.

#### **Co-decision-making agreement** 30

**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 personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27*. 35

(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. 5
- (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 10
  - (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: 15
  - (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; 20
  - (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— 25
  - (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— 30
  - (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 the co-decision-maker. 35
- (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. 5
- (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.

**Persons who shall not be appointed as co-decision-makers** 10

- 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, 15
  - (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, 20
  - (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, 25 30
  - (g) has been convicted of an offence under *section 127*, 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— 35
  - (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, 40

- (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, 5
- (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, 10
- (g) the co-decision-maker is convicted of an offence under *section 127*, 15
- (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 20
  - (iv) becomes the subject of an order under *Part 5*,

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. 25
- (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. 30

### **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. 35
- (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 40

- 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 5
  - (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. 10
- (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— 15
- (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. 20
- (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 25
  - (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 30
  - (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.

### **Restrictions on co-decision-makers**

17. (1) Where there is both a co-decision-maker and a decision-making representative for a relevant person— 35

- (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. 5
- (2) Where there is both a co-decision-maker and an attorney (under an enduring power of attorney registered under *section 54*) 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 10
  - (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— 15
  - (a) the co-decision-maker shall not exercise any relevant powers of the designated healthcare representative which are exercisable by the designated healthcare 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. 20
- (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— 25
  - (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. 30
- (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. 35
- (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. 40

### **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”). 5
- (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: 10
- (a) a spouse or civil partner of the appointer;
  - (b) the cohabitant of the appointer;
  - (c) any child of the appointer who has attained the age of 18 years;
  - (d) any decision-making assistant for the appointer; 15
  - (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: 20
- (a) the co-decision-making agreement; 20
  - (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, 25
    - (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— 30
    - (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, 35
    - (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; 5
- (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, 10
  - (ii) the appointer requires assistance in exercising his or her decision-making in 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; 15
- (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*. 20

**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), 25
  - (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 30
  - (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 35
  - (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 *subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or 5
  - (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. 10
- (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. 15
- (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. 20
- (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. 25
- (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. 30

### **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 27* and may be made on one of the following grounds: 35
- (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; 40

- (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)*; 5
  - (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— 10
- (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 15
  - (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, 20
  - (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.

### **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. 25
- (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 30
  - (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 35
  - (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.

### 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. 5
- (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— 10
- (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, 15
  - (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— 20
- (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 25
  - (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. 30
- (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. 35 40

### 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. 5
- (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-decision-making agreement and details of all expenses paid to and claimed by the co-decision-maker in the relevant period. 10
- (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. 15
- (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. 20
- (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.

### 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. 25
- (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)*. 30
- (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: 35
- (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 40

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 respect of the matters contained in the varied co-decision-making agreement, and 5
  - (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; 10
- (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”. 15
- (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. 20
- (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.

**Revocation of co-decision-making agreement and removal from Register** 25

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 *sections 14(6)* and *(7)* shall apply with the necessary modifications. 30
- (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. 35

**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; 5
  - (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; 10
  - (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. 15
- (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)*. 20
- (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 25
  - (b) make any other order that it thinks fit.

## Regulations

27. The Minister shall make regulations as respects co-decision-making agreements, including— 30
- (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, 35
  - (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, 5
- (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 10
  - (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)*.

### **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 appointer, the court shall have regard to all of the circumstances of the case, including in particular— 15
- (a) the capacity of the appointer,
  - (b) the appointer’s willingness to continue to participate in the co-decision-making agreement concerned, 20
  - (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.

## PART 5

### APPLICATIONS TO COURT IN RESPECT OF RELEVANT PERSONS AND RELATED MATTERS 25

#### CHAPTER 1

#### *Application of this Part*

### **Application of this Part**

- 29.** This Part shall not apply to relevant persons who have not attained the age of 18 years.

*Applications under this Part***Persons who may make applications to court under this Part, etc.**

30. (1) Subject to *subsections (2) and (3)*, 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. 5
- (2) An application to the court under this Part (other than an application by the relevant person) shall be made on notice to—
- (a) the relevant person the subject of the application,
  - (b) the persons referred to in *paragraphs (c) to (i) of subsection (4)* (other than any such person who is the applicant), 10
  - (c) if the application relates, whether in whole or in part, to the relevant person's capacity to make a decision to consent to being married or to being in a civil partnership, the person referred to in *paragraph (j) of subsection (4)* (other than any such person who is the applicant), and 15
  - (d) such other persons as may be specified in rules of court.
- (3) Subject to *subsection (4)*, an application to the 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. 20
- (4) Subject to *section 37(1)*, *subsection (3)* shall not apply to an application to the court under this Part made by—
- (a) the relevant person,
  - (b) the Director,
  - (c) the spouse or civil partner of the relevant person, 25
  - (d) a decision-making assistant for the relevant person,
  - (e) a co-decision-maker for the relevant person,
  - (f) a decision-making representative for the relevant person,
  - (g) an attorney for the relevant person,
  - (h) a designated healthcare representative for the relevant person, 30
  - (i) a person specified for that purpose in an existing order of the court under this Part where the application relates to that order,
  - (j) if the application relates, whether in whole or in part, to the relevant person's capacity to make a decision to consent to being married or to being in a civil partnership— 35
    - (i) a registrar within the meaning of section 17 of the Civil Registration Act 2004, or



- (ii) the other party to the proposed marriage or civil partnership (if any), as the case may be, of the relevant person.
- (5) An application to the court under this Part (including an *ex parte* application under *subsection (3)*) shall state—
  - (a) the applicant’s connection with the relevant person, 5
  - (b) the benefit to the relevant person 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 relevant person sought to be achieved has failed to be achieved in any other appropriate, practicable and less intrusive manner taken prior to the making of the application, and 10
    - (ii) the reason why, in the opinion of the applicant, no other appropriate, practicable and less intrusive manner to achieve that benefit remains to be taken prior to the making of the application.
- (6) In every application to the court under this Part, the applicant shall inform the court of the existence of— 15
  - (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 54*) or advance healthcare directive created by the relevant person, and
  - (b) any decision-making representation order or decision-making order made in respect of the relevant person, 20
 and which, to the applicant’s knowledge, still has any force or effect.
- (7) (a) Subject to *paragraph (c)*, a party to proceedings under this Part before the court who retains legal representation for the purposes of the proceedings shall be liable for the costs of the legal representation. 25
  - (b) Section 28 of the Act of 1995 shall apply to proceedings or proposed proceedings under this section which relate to *section 31(1)*.
  - (c) Where—
    - (i) an application to the 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, 30
 the 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 relevant person who is the subject of the application. 35
- (8) Rules of court shall make provision—
  - (a) as to the manner and form in which proceedings under this Part are to be commenced, 40

- (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.
- (9) The court, on the hearing of an application under this Part, may allow the relevant person the subject of the application, if he or she has not instructed a legal practitioner, to be assisted in court by a court friend for the relevant person unless—
- (a) there is a decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative for the relevant person and the decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative, as the case may be, is willing to assist the relevant person during the course of the hearing, or
  - (b) subject to *sections 81(8) and 84(15)*, there is another person, in respect of whom the court is satisfied that such person is suitable, willing and able to assist the relevant person during the course of the hearing.
- (10) Where, on the hearing of an application under this Part—
- (a) the relevant person the subject of the application has not instructed a legal practitioner,
  - (b) there is—
    - (i) no decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative for the relevant person or, if there is a decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative for the relevant person, he or she is not willing to assist the relevant person in the course of the hearing, and
    - (ii) no person who falls within *paragraph (b) of subsection (9)* in respect of the relevant person and the hearing,
  - and
  - (c) there is no court friend for the relevant person,
- the court may direct the Director to appoint a court friend for the relevant person.
- (11) 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.
- (12) Judges hearing and determining proceedings under this Part and legal practitioners appearing in such proceedings shall not wear wigs or gowns.

## CHAPTER 3

### *Declarations as to capacity, etc., and matters following declarations*

#### **Power of court to make declarations as to capacity, etc.**

31. (1) Subject to *subsection (3)*, the court, on application to it by a person entitled by virtue of *section 30* to make the application, may make one or both of the following declarations: 5
- (a) a declaration that the relevant person the subject of the application 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 specified in the application relating to his or her personal welfare or property or affairs, or both; 10
  - (b) a declaration that the relevant person the subject of the application lacks capacity, even if the assistance of a suitable person as a co-decision-maker were made available to him or her, to make one or more than one decision specified in the declaration relating to his or her personal welfare or property and affairs, or both.
- (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 5*) to register a co-decision-making agreement. 15
- (3) The court's jurisdiction under *subsection (1)* shall not extend to making a declaration (whether in whole or in part) as to whether the relevant person lacks capacity to create or revoke an enduring power of attorney. 20
- (4) Subject to *subsection (5)*, the court, on application to it by a person entitled by virtue of *section 30* to make the application, may make a declaration as to the lawfulness of an intervention proposed to be made in respect of the relevant person the subject of the application. 25
- (5) *Subsection (4)* shall not apply to an intervention where—
- (a) the intervener is the court or High Court, or
  - (b) the intervention is being taken pursuant to an order made, or a direction given, under this Act by the court or High Court. 30

## CHAPTER 4

### *Decisions by court or decision-making representative appointed by court*

#### **Power of court to make orders and appoint decision-making representative, etc.**

32. (1) This section applies where—
- (a) the court has made a declaration which falls within *paragraph (a)* of *section 31(1)*, but— 35
    - (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 5* within the period (which may be extended at the court's discretion) set down by the court,
- or 5
- (b) the court has made a declaration in respect of a relevant person which falls within *paragraph (b) of section 31(1)*.
- (2) Where this section applies, the court may make one or both of the following orders:
- (a) an order making the decision or decisions concerned on behalf of the relevant person where it is satisfied that the matter is urgent or that it is otherwise expedient for it to do so; 10
- (b) subject to *subsection (6)* and *section 33*, an order appointing a person to be a decision-making representative for the relevant person for the purposes of making one or more than one decision specified in the order on behalf of the relevant person in relation to his or her personal welfare or property and affairs, or both. 15
- (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 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: 20
- (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; 25
- (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. 30
- (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; 35
- (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.
- (6) Where the court proposes to appoint a decision-making representative for a relevant

- person but no suitable person is willing to act as such decision-making representative—
- (a) the court shall request the Director to nominate 2 or more persons from the panel established under *section 82(1)* for consideration by the court for such appointment, 5
  - (b) the Director shall comply with a request by the court under *paragraph (a)*, and
  - (c) the court may, under *subsection (2)(b)*, appoint, from amongst those nominees, a person to be a decision-making representative for the relevant person for the purposes referred to in that paragraph.
- (7) In making a decision-making order or decision-making representation order, the court shall make provision for such other matters as it considers appropriate, including— 10
- (a) subject to *subsection (8)*, the conferral of powers on a decision-making representative,
  - (b) the imposition of duties on a decision-making representative,
  - (c) the attachment of conditions relating to the making of any relevant decision by a decision-making representative or the exercise of any power by a decision-making representative in his or her capacity as a decision-making representative, and 15
  - (d) the period of time for which the order is to have effect.
- (8) In making a decision-making representation order, the court shall, in so far as the order relates to the conferral of powers referred to in *subsection (7)(a)*, ensure that the powers conferred are as limited in scope and duration as is necessary in the circumstances having regard to the interests of the relevant person the subject of the order. 20
- (9) The court may appoint one or more than one person as a decision-making representative for a relevant person and may so appoint different persons in respect of different relevant decisions. 25
- (10) 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— 30
- (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*.
- (11) A decision-making representation order appointing more than one person as a decision-making representative for a relevant person in relation to the same relevant decisions shall make provision as to whether such persons are to act— 35
- (a) jointly,
  - (b) jointly and severally, or
  - (c) jointly as respects some relevant decisions and jointly and severally as respects 40

other relevant decisions.

- (12) The court may make a decision-making order or decision-making representation order notwithstanding that an application has not been made to it under this Part for an order in that respect or in those terms.
- (13) The court may vary or discharge a decision-making order or decision-making representation order, whether of its own motion or pursuant to an application to it under this Part by a person entitled by virtue of *section 30* to make the application. 5
- (14) Where the court is satisfied that a decision-making representative for a relevant person has behaved, is behaving or is proposing to behave in a manner outside the scope of the authority conferred on him or her by the court, or in a manner that is not in accordance with the guiding principles, the court may— 10
- (a) revoke the appointment of the decision-making representative, or
  - (b) vary the terms of a decision-making representation order relating to—
    - (i) the appointment of the decision-making representative,
    - (ii) the nature or extent of the powers conferred on the decision-making representative, or 15
    - (iii) the duties imposed on the decision-making representative.

### **Decision-making representatives — general**

- 33.** (1) The court shall not appoint a person to be a decision-making representative for a relevant person unless it considers that the person is suitable for appointment as a decision-making representative as respects the powers which it is proposed to give the decision-making representative for that relevant person. 20
- (2) Subject to *subsection (4)*, a person (in this section referred to as the “proposed appointee”) shall not be appointed as a decision-making representative for a relevant person if— 25
- (a) the proposed appointee has not attained the age of 18 years,
  - (b) the proposed appointee 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,
  - (c) a safety or barring order has been made against the proposed appointee in relation to the relevant person or a child of the relevant person, 30
  - (d) the proposed appointee 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,
  - (e) the proposed appointee is a person in respect of whom a declaration has been made under section 819 of the Act of 2014, 35
  - (f) the proposed appointee is a person who is or was the subject of a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,

- (g) the proposed appointee 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 proposed appointee is a spouse or civil partner, parent, child or sibling of the relevant person, or 5
- (h) the proposed appointee has been convicted of an offence under *section 127*.
- (3) Subject to *subsection (4)*, where, subsequent to the appointment of a decision-making representative for a relevant person— 10
- (a) the decision-making representative 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 decision-making representative in relation to the relevant person or a child of the relevant person, 15
- (c) the decision-making representative 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 decision-making representative becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014, 20
- (e) the decision-making representative becomes a person who is the subject of a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,
- (f) the decision-making representative 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, where the decision-making representative is not a spouse or civil partner, parent, child or sibling of the relevant person, 25 30
- (g) the decision-making representative is convicted of an offence under *section 127*, or
- (h) the decision-making representative—
- (i) enters into a decision-making assistance agreement,
- (ii) enters into a co-decision-making agreement, 35
- (iii) has an enduring power of attorney registered in respect of him or her, or
- (iv) becomes the subject of an order under *Part 5*,
- the decision-making representation order concerned shall be invalidated, to the extent that it relates to the appointment of that decision-making representative, with effect from the day on which the decision-making representative falls within any of *paragraphs (a) to (f)*. 40

- (4) *Subsections (2)(d), (e) and (f) and (3)(c), (d) and (e)* shall not apply as respects the appointment of a person as a decision-making representative for a relevant person relating only to relevant decisions on the personal welfare of the relevant person.
- (5) A decision-making representative for a relevant person acts as the agent of the relevant person in relation to a relevant decision made by the decision-making representative. 5
- (6) (a) Except where the court otherwise orders, a decision-making representative for a relevant person shall be entitled to be reimbursed out of the assets of the relevant person in respect of his or her fair and reasonable expenses which are reasonably incurred in performing his or her functions as such decision-making representative. 10
- (b) Where the court so directs in a decision-making representation order appointing a decision-making representative for a relevant person, the decision-making representative shall be entitled to be paid a reasonable amount in respect of remuneration in relation to the performance of his or her functions as such decision-making representative and which functions are carried out in connection with his or her trade or profession or in other exceptional circumstances specified in the order, and such remuneration shall be paid from the assets of the relevant person. 15
- (7) (a) A decision-making representative for a relevant person shall at least once every 12 months, or within such shorter period as the court may direct, prepare and submit to the Director a report as to the performance of his or her functions as such decision-making representative. 20
- (b) A decision-making representative for a relevant person who has restrained (as referred to in *section 35*) 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. 25
- (c) Every such report submitted to the Director shall be in such form as may be determined by rules of court and shall in particular include details of all expenses and remuneration paid or reimbursed to the decision-making representative concerned for the relevant person concerned. 30
- (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, 35
- (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, 40
- (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)*.
- (9) A decision-making representation order appointing a decision-making representative for a relevant person may provide for the giving of such security by the decision-making representative to the Director as the court considers appropriate in relation to the proper performance of the functions of such decision-making representative. 5
- (10) A decision-making representation order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the spouse of the relevant person and subsequently—
- (a) the marriage is annulled or dissolved either— 10
- (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, 15
- (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. 20
- (11) A decision-making representation order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the civil partner of the relevant person and subsequently—
- (a) the civil partnership is dissolved,
- (b) a written agreement to separate is entered into between the civil partners, or 25
- (c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.
- (12) Subject to *section 2(2)*, a decision-making representation order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the cohabitant of the relevant person and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months. 30
- (13) The invalidation of all or part of a decision-making representation order under *subsection (3), (10), (11) or (12)* shall not of itself affect a relevant decision made by the decision-making representative concerned for the relevant person prior to the occurrence of the event which caused such invalidation. 35

**Scope of decision-making order or decision-making representation order relating to property and affairs**

34. (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. 40

- (2) Subject to *section 35*, if a decision-making representative for a relevant person is empowered by the decision-making representation order appointing him or her as such decision-making representative to dispose of the relevant person's property by way of gift, then, without the specific approval of the court, the power to make such a gift shall be limited to— 5
- (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, 10
- provided that the value of the gift is reasonable having regard to all the circumstances and in particular the extent of the relevant person's assets and financial obligations.
- (3) (a) Subject to *paragraph (b)*, the court may, notwithstanding that there is a decision-making representative for a relevant person, confer on the Director the custody, control and management of some or all of the property of the relevant person if the court considers that the Director is the most appropriate person to exercise that power in respect of that property. 15
- (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 20
    - (ii) may require some or all of the property of the relevant person which is money to be lodged into court.
- (4) Where the court proposes to make an order under *subsection (3)(a)* in respect of the property of a relevant person, the Director shall consult with and have regard to the views of one or more than one of the members of the family of the relevant person and such other persons as the court may direct be consulted in relation to such matters as respects the management of the property to which the order may relate. 25
- (5) Where the court makes an order under *subsection (3)(a)* in respect of the property of a relevant person, it may make the order subject to such conditions as it considers appropriate. 30

### **Restrictions on decision-making representatives**

35. (1) Nothing in this Part shall permit a decision-making representative for a relevant person to be given the power to prohibit a particular person from having contact with the relevant person. 35
- (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.
- (3) A decision-making representative for a relevant person shall not, without the express approval of the court— 40
- (a) exercise any powers in relation to the settlement of any part of the property of the

- relevant person, whether for the relevant person’s benefit or for the benefit of others, or
- (b) exercise any power (including the power to consent) vested in the relevant person, whether beneficially or as trustee or otherwise.
- (4) Where there is both a decision-making representative and an attorney (under an enduring power of attorney registered under *section 54*) for a relevant person— 5
- (a) the decision-making representative shall not exercise any power granted to the attorney and which is exercisable by the attorney, 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 powers of the attorney which are exercisable by the attorney. 10
- (5) 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 15
- (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. 20
- (6) 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
- (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, 25
- 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. 30
- (7) A decision-making representative for a relevant person shall not refuse consent to the carrying out or continuation of life-sustaining treatment or consent to the withdrawal of life-sustaining treatment for the relevant person.
- (8) A decision-making representative for a relevant person shall not do an act that is intended to restrain the relevant person unless there are exceptional emergency circumstances and— 35
- (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 an imminent risk of serious harm to the relevant person 40

- or to another person, and
- (c) the act is a proportionate response to the likelihood of the harm referred to in *paragraph (b)* and to the seriousness of such harm.
- (9) For the purposes of this section, a decision-making representative for a relevant person restrains the relevant person if he or she— 5
- (a) uses, or indicates an intention to use, force to secure the doing of an act which the relevant person resists,
- (b) intentionally restricts the relevant person’s liberty of voluntary movement or behaviour, whether or not the relevant person resists, or
- (c) authorises another person to do any of the things referred to in *paragraph (a)* or *(b)*. 10
- (10) 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. 15
- (11) *Subsections (8) to (10)* shall not be construed to prejudice the generality of section 69 of the Mental Health Act 2001 or of rules made under that section.
- (12) The Director shall establish and maintain a register of decision-making representation orders.

CHAPTER 5

20

*Interim orders, reviews and expert reports*

**Interim orders**

36. (1) Where an application under this Part has been brought before the court but not determined, the court may make an interim order in relation to the relevant person the subject of the application if— 25
- (a) the matter to which the order relates is one in respect of which the court may make an order under this Part,
- (b) the court has reason to believe that the relevant person lacks capacity in relation to the matter, and
- (c) in the opinion of the court, it is in the interests of the relevant person to make the order without delay. 30
- (2) An order under this section shall—
- (a) limit the period of time for which the order shall have effect, and
- (b) limit the operation of the order to matters specified in the order,
- but the court may renew the order if it considers that it is in the interests of the relevant person to do so. 35
- (3) The court may vary or revoke an order made under this section, whether of its own motion or pursuant to an application to it by a person entitled by virtue of *section 30*

to make the application.

- (4) This section shall, with all necessary modifications, apply to a direction which the court may give under this Part as it applies to an order which it may make under this Part.

**Review of declaration as respects capacity**

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37. (1) Where the court makes a declaration under *section 31(1)*, an application for a review of the declaration may be made to the court at any time by the relevant person or, with the consent of the court, by any of the persons referred to in any of *paragraphs (b) to (i) of section 30(4)*.

- (2) Notwithstanding *subsection (1)*, the court shall in every case review a declaration under *section 31(1)* at intervals specified by the court when making the declaration but in every such case at intervals of—

(a) subject to *paragraph (b)*, not more than 12 months,

(b) not more than 3 years if the court is satisfied that the relevant person is unlikely to recover his or her capacity.

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- (3) The periods of 12 months and 3 years referred to in *subsection (2)* shall run from the date on which the court made or last reviewed, as appropriate, the declaration referred to in that subsection.

- (4) (a) Where, having reviewed the capacity of a relevant person, the court is satisfied that the relevant person no longer lacks capacity to make one or more than one relevant decision, the court shall—

20

(i) make an order revoking or amending, as appropriate, the declaration concerned under *section 31(1)*,

(ii) make an order varying or discharging, as appropriate—

(I) a co-decision-making order of which the co-decision-making agreement made by the relevant person is the subject, or

25

(II) a decision-making order or decision-making representation order of which the relevant person is the subject,

and

(iii) give such directions as it thinks appropriate for the order or orders to have full effect.

30

- (b) Where, having reviewed the capacity of a relevant person, the court is satisfied that the relevant person continues to lack capacity to make one or more than one relevant decision, the court shall make an order confirming the declaration concerned under *section 31(1)*.

35

- (5) This section shall not apply where the reason why the application to the court under this Part seeking a declaration under *section 31(1)* relating to capacity in respect of the relevant person the subject of the application was made is no longer of relevance.

## Expert reports

38. (1) In considering any application under this Part for a declaration, order or review, the court shall have all such powers as are necessary to assist it in making a decision.
- (2) For the purposes of an application referred to in *subsection (1)*, the court may direct that such reports as the court considers necessary be furnished to it, including— 5
- (a) medical reports relating to the relevant person the subject of the application (including reports relating to the cognitive ability of that person),
  - (b) reports relating to the circumstances of the relevant person (including financial reports and valuations of property in which the relevant person has an interest), and 10
  - (c) reports from healthcare professionals, or other relevant experts, relating to the relevant person.

## CHAPTER 6

### *Notification of Director of the Decision Support Service of declarations, etc., under this Part*

## Notification of Director of the Decision Support Service 15

39. Where the court makes a declaration or an order under this Part, or gives a direction under this Part, the registrar of the court making the declaration or order, or giving the direction, shall in each case furnish a copy of the declaration or order, or the direction, as the case may be, to the Director as soon as is practicable after the declaration or order is made or the direction is given. 20

## CHAPTER 7

### *Legal aid in respect of applications under this Part*

## Amendment of Act of 1995

40. The Act of 1995 is amended—
- (a) in section 26(3)— 25
    - (i) in paragraph (a), by substituting “has already been given,” for “has already been given, and”,
    - (ii) in paragraph (b), by substituting “section 28(9)(c), and” for “section 28(9)(c).”, and
    - (iii) by inserting, after paragraph (b), the following: 30
      - “(c) a party to an application under *Part 5* of the *Assisted Decision-Making (Capacity) Act 2015* shall qualify for legal advice.”,
  - and
  - (b) in section 28(3)—
    - (i) in paragraph (a), by substituting “a child,” for “a child, or”, 35
    - (ii) in paragraph (b), by substituting “the Sex Offenders Act 2001), and” for “the

Sex Offenders Act 2001),” and

(iii) by inserting, after paragraph (b), the following:

“(c) an application under *Part 5* of the *Assisted Decision-Making (Capacity) Act 2015* relating to the matter referred to in *section 31(1)* of that Act.”

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## PART 6

### WARDS

#### **Definitions — Part 6**

41. In this Part—

“ward” means a relevant person in the wardship of a wardship court; 10

“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.

#### **Review of capacity of wards who are adults**

42. (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— 15

(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. 20

(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. 25

#### **Declarations following review and discharge from wardship**

43. (1) The wardship court, after reviewing the capacity of the ward, shall—

(a) declare that the ward does not lack capacity, or 30

(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. 5
- (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. 10
- (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, 15
 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 43(1)(b)(ii)*, make such orders under *Part 5* as it considers appropriate as if the wardship court were the court under *Part 5*, and 20
  - (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 43(1)(c)*, it shall—
  - (a) make such orders as it considers appropriate under *Part 5* as if the wardship court were the court under *Part 5*, and 25
  - (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. 30
- (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.

**Director and wards who are adults**

- 44. The wardship court may, after consultation with the Director, in respect of— 35
  - (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 31(1)(b)* that the ward, or the wards who fall within that class, 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. 5 10

### **Director and wards who are minors**

**45.** 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 31(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. 15

## PART 7

20

### ENDURING POWERS OF ATTORNEY

#### CHAPTER 1

#### *Interpretation, application and characteristics of enduring power*

### **Interpretation — Part 7**

**46.** (1) In this Part—

25

“attorney” means the donee of an enduring power, and includes—

- (a) a person acting pursuant to *section 48(5)*, and
- (b) the donee of an enduring power created under Part II of the Act of 1996 which has not been registered under section 10 of that Act before the commencement of *section 47*;

30

“enduring power” shall be construed in accordance with *section 48(1)*;

“invalidated”, in relation to a registered enduring power of attorney, means ceasing to be in force;

“notice” means notice in writing;

“registered”, in relation to an enduring power of attorney, means registered under *section 54*, and “registered” shall be construed accordingly.

- (2) An application to the High Court under this Part shall be made in a summary manner.
- (3) Where any question arises under this Part as to what the donor of an enduring power might at any time be expected to do, it shall be assumed that the donor had the capacity to do so. 5

#### **Application of this Part, etc.**

- 47. (1) This Part shall not apply to an enduring power of attorney created under Part II of the Act of 1996 except where the instrument creating such power has not been registered under section 10 of that Act before the commencement of this section. 10
- (2) Part II of the Act of 1996 shall not apply to—
  - (a) an enduring power of attorney created under this Part, or
  - (b) an enduring power of attorney created under that Part II which has not been registered under section 10 of that Act before the commencement of this section.
- (3) This Part shall have effect only as respects— 15
  - (a) an instrument purporting to create an enduring power of attorney executed from the commencement of this section, and
  - (b) an instrument purporting to create an enduring power of attorney—
    - (i) under Part II of the Act of 1996,
    - (ii) executed before the commencement of this section, and 20
    - (iii) which has not been registered under section 10 of the Act of 1996 before that commencement.
- (4) No enduring power of attorney shall be created under the Act of 1996 from the commencement of this section and any instrument purporting to create such a power shall, to the extent that it so purports, be void. 25

#### **Characteristics of enduring power**

- 48. (1) A power of attorney is an enduring power of attorney within the meaning of this Part—
    - (a) if the instrument creating the power contains a statement by the donor to the effect that the donor intends the power to be effective at any subsequent time when the donor lacks or shortly may lack— 30
      - (i) capacity to look after his or her personal welfare,
      - (ii) capacity to manage his or her property and affairs, or
      - (iii) both capacity to look after his or her personal welfare and capacity to manage his or her property and affairs, 35
- and

- (b) the enduring power is in compliance with the provisions of this section and regulations made under this section.
- (2) An enduring power of attorney created under this Part may relate to the donor's personal welfare or property and affairs, or both, and the instrument creating the power may appoint one or more than one person to be an attorney as respects the donor's personal welfare or property and affairs or specified matters in relation to his or her personal welfare or property and affairs. 5
- (3) The Minister shall make regulations as respects enduring powers of attorney, including—
- (a) prescribing the form of an enduring power of attorney, 10
- (b) prescribing procedures and requirements relating to the execution of an enduring power of attorney,
- (c) prescribing information to be included in or annexed to an enduring power of attorney for the purpose of ensuring that an instrument purporting to create an enduring power of attorney incorporates adequate information as to the effect of creating or accepting the power, 15
- (d) the keeping of accounts by the attorney in relation to the management and disposal of the donor's property,
- (e) the remuneration (if any) to be paid to the attorney,
- (f) the giving by the donor of notice of the execution of the power to specified persons or classes of persons, 20
- (g) the attestation of the signatures of the donor and the attorney,
- (h) specific provision for cases where more than one attorney is appointed,
- (i) prescribing the form of an application under *section 53(1)* for the registration of an enduring power of attorney and the information to be included in the form, and 25
- (j) prescribing the forms of notices required to be given in compliance with the provisions of *Schedule 1* and the information to be included in such notices or a class of such notices.
- (4) Regulations made under *subsection (3)* may include a requirement that the enduring power of attorney contain a statement— 30
- (a) by the donor, that the donor has read the information as to the effect of creating the power of attorney or that such information has been read to the donor,
- (b) by a legal practitioner (or a member of some other specified class of persons) that, after interviewing the donor and making any necessary enquiries, the legal practitioner (or such member)— 35
- (i) is satisfied that the donor understood the effect of creating the power, and
- (ii) has no reason to believe that the document is being executed by the donor as a result of fraud or undue pressure,
- (c) by a registered medical practitioner, that in his or her opinion at the time the document was executed, the donor had the capacity, with the assistance of such 40

- explanations as may have been given to the donor, to understand the effect of creating the power, and
- (d) by the attorney, that he or she understands and undertakes to act in accordance with the functions of an attorney, including—
- (i) the duty to act in accordance with the guiding principles, 5
  - (ii) the duty to act in the interests of the donor,
  - (iii) the duty to account fully for any of the property of the donor that comes into the hands of the attorney or within the control of the attorney,
  - (iv) the requirements relating to the registration of the power, and
  - (v) the obligation to make reports to the Director in compliance with *section 56(4)*. 10
- (5) The donor of the enduring power may, in the instrument creating the power, appoint one or more specified persons, being persons who are not disqualified, to act as attorney if an attorney appointed by the power dies or is unable or declines to act, or is disqualified from acting as an attorney. 15
- (6) Subject to *subsection (8)*, a power of attorney is not an enduring power of attorney unless, when executing the instrument creating it, the attorney—
- (a) is either—
    - (i) an individual who has attained the age of 18 years who—
      - (I) is not a person who has been convicted of an offence in relation to the person or property of the donor or the person or property of a child of the donor, 20
      - (II) is not a person against whom a safety or barring order has been made in relation to the donor or a child of the donor,
      - (III) is not a person who is an undischarged bankrupt or currently in a debt settlement arrangement or personal insolvency arrangement or who has been convicted of an offence involving fraud or dishonesty, 25
      - (IV) is not a person in respect of whom a declaration has been made under section 819 of the Act of 2014, or
      - (V) is not a person who is or was the subject of a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter, 30
    - or
    - (ii) a trust corporation (within the meaning of section 30 of the Act of 1965), 35
  - and
  - (b) is not 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 donor resides, or a person residing with, or an employee of or an agent of, such owner or

registered provider, as the case may be, unless the attorney is a spouse or civil partner, parent, child or sibling of the donor.

- (7) Subject to *subsection (8)*, where subsequent to the appointment of an attorney for a person under an enduring power of attorney—
- (a) if the attorney is an individual— 5
    - (i) the attorney is convicted of an offence in relation to the person or property of the donor or the person or property of a child of the donor,
    - (ii) a safety or barring order is made against the attorney in relation to the donor or a child of the donor,
    - (iii) the attorney 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, 10
    - (iv) the attorney becomes a person in respect of whom a declaration has been made under section 150 of the Act of 1990, or
    - (v) the attorney becomes a person who is the subject of a disqualification order by virtue of Part VII of the Act of 1990, 15
  - (b) if the attorney is a corporation, the attorney ceases to be a trust corporation (within the meaning of section 30 of the Act of 1965), or
  - (c) the attorney 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 a residential facility for persons with disabilities, in which the donor resides, or a person residing with, or an employee of or an agent of, such owner or registered provider, as the case may be, where the attorney is not a spouse or civil partner, parent, child or sibling of the donor, 20
- the enduring power of attorney concerned is invalidated, to the extent that it relates to the appointment of that attorney, with effect from the day on which the attorney falls within any of *paragraphs (a) to (c)*. 25
- (8) *Subsections (6)(a)(i)(III), (IV) and (V) and (7)(a)(iii), (iv) and (v)* shall not apply to an enduring power of attorney which authorises, or to the extent that it authorises, an attorney for a relevant person to make relevant decisions on the personal welfare of the relevant person. 30
- (9) A power of attorney which gives the attorney a right to appoint a substitute or successor is not an enduring power of attorney. 20
- (10) An enduring power shall, unless it provides otherwise, be invalidated to the extent that it relates to an attorney who is the spouse of the donor and subsequently— 35
- (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, 40

- (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. 5
- (11) An enduring power shall, unless it provides otherwise, be invalidated to the extent that it relates to an attorney who is the civil partner of the donor and subsequently—
- (a) the civil partnership is dissolved,
  - (b) a written agreement to separate is entered into between the civil partners, or 10
  - (c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.
- (12) Subject to *section 2(2)*, an enduring power shall, unless it provides otherwise be invalidated to the extent that it relates to an attorney who is the cohabitant of the donor and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months. 15
- (13) (a) An enduring power which has been registered shall not cease to be in force on the exercise by the court of any of its powers under *Part 5* in respect of the donor concerned.
- (b) An enduring power which has not been registered shall be invalidated on the exercise by the court of any of its powers under *section 32(2)* in respect of the donor concerned. 20
- (14) No disclaimer, whether by deed or otherwise, of an enduring power which has not been registered shall be valid until the attorney gives notice of it to the donor.
- (15) The invalidation of all or part of an enduring power of attorney under *subsection (7), (10), (11) or (12)* shall not of itself affect a relevant decision made by the attorney concerned for the donor prior to the occurrence of the event which caused such invalidation. 25

## CHAPTER 2

*Scope of authority of enduring power and coming into operation of enduring power, etc.* 30

### **Scope of authority of attorneys under enduring power — personal welfare decisions**

- 49.** (1) An enduring power may confer authority on an attorney for a donor to make any decisions about the donor's personal welfare or specified matters concerning the donor's personal welfare.
- (2) A personal welfare decision— 35
- (a) shall not extend to making decisions on healthcare in respect of a donor in circumstances other than those where the donor lacks or shortly may lack capacity, and
  - (b) extends to giving or refusing treatment by a person providing healthcare for the

donor other than refusing life-sustaining treatment.

- (3) Subject to *subsection (4)*, the authority to make personal welfare decisions is subject to any conditions or restrictions contained in the instrument.
- (4) An enduring power of attorney does not authorise an attorney for a donor to do an act that is intended to restrain the donor unless there are exceptional emergency circumstances and—
- (a) the donor lacks capacity in relation to the matter in question or the attorney reasonably believes that the donor lacks such capacity,
  - (b) the attorney reasonably believes that it is necessary to do the act in order to prevent an imminent risk of serious harm to the donor or to another person, and
  - (c) the act is a proportionate response to the likelihood of the harm referred to in *paragraph (b)* and to the seriousness of such harm.
- (5) For the purposes of this section, an attorney for a donor restrains the donor if he or she—
- (a) uses, or indicates an intention to use, force to secure the doing of an act which the donor resists,
  - (b) intentionally restricts the donor’s liberty of voluntary movement or behaviour, whether or not the donor resists, or
  - (c) authorises another person to do any of the things referred to in *paragraph (a)* or *(b)*.
- (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.
- (7) *Subsections (4) to (6)* shall not be construed to prejudice the generality of section 69 of the Mental Health Act 2001 or of rules made under that section.

**Scope of authority of attorneys under enduring power — property and affairs of donor**

50. (1) An enduring power may confer general authority (as described in *subsection (2)*) on an attorney for a donor to act on the donor’s behalf in relation to all or a specified part of the property and affairs of the donor or may confer on the attorney general authority to do on the donor’s behalf specified things or make decisions on specified matters in relation to the donor’s property and affairs and the authority may, in either case, be conferred subject to conditions and restrictions.
- (2) Where an instrument is expressed to confer general authority on an attorney for a donor, it operates to confer, subject to the restriction imposed by *subsection (4)* and to any conditions or restrictions contained in the instrument, authority to do on behalf of the donor anything which the donor can lawfully do by attorney.
- (3) Subject to any conditions or restrictions contained in the instrument, an attorney for a donor under an enduring power, whether general or limited, may act under the power for the attorney’s benefit or that of other persons to the following extent but no further:

- (a) may act in relation to himself or herself or in relation to any other person if the donor might be expected to provide for his or her or that person's needs respectively; and
  - (b) may do whatever the donor might be expected to do to meet those needs.
- (4) Without prejudice to *subsection (3)* but subject to any conditions or restrictions contained in the instrument, an attorney for a donor under an enduring power, whether general or limited, may, if specific provision to that effect is made in the instrument, dispose of the property of the donor by way of gift to the following extent but no further: 5
- (a) gifts to other persons (including the attorney) who are related to or connected to the donor, and which gifts are— 10
    - (i) of a seasonal nature or made on customary occasions,
    - (ii) made to such other person on the occasion of the birth of a child to such other person,
    - (iii) made to such other person on the occasion of the marriage of such other person, 15
    - (iv) made to such other person on the occasion of the registration of a civil partnership in respect of which such other person is a civil partner, or
    - (v) made to such other person on the occasion of the anniversary of his or her birth, marriage or civil partnership; 20
  - and
  - (b) gifts to any charity to which the donor made or might reasonably be expected to make gifts,
- provided that the value of the gift is reasonable having regard to all the circumstances and in particular the extent of the donor's assets. 25

**Coming into operation and survival of enduring power**

51. (1) Subject to *subsection (2)* and *section 53*, where a person creates an enduring power of attorney, the power shall not come into operation until it has been registered.
- (2) Where an attorney for a donor has made an application for registration of the instrument, then, until the application has been determined, the attorney may take action under the power— 30
- (a) to maintain the donor or prevent loss to the donor's assets,
  - (b) to the extent permitted by the enduring power and *section 48*, make a relevant decision on the personal welfare of the donor which cannot reasonably be deferred until the application has been determined, or 35
  - (c) to maintain the attorney or other persons in so far as that is permitted by *section 50(3)*.
- (3) Where an attorney for a donor purports to act pursuant to *subsection (2)*, then, in favour of a person who deals with the attorney without knowledge that the attorney is



acting otherwise than in accordance with that subsection, the transaction between them shall be as valid as if the attorney were acting in accordance with the enduring power and *subsection (2)*.

## CHAPTER 3

### *Registration of enduring power and related matters*

5

#### **Functions of High Court prior to registration**

- 52.** Where the High Court has reason to believe that the donor of an enduring power may lack or shortly may lack capacity and the High Court is of the opinion that it is necessary, before the instrument creating the enduring power is registered, to exercise any power which would become exercisable under *section 57* on its registration, the High Court may, on application to it by any interested party, exercise that power under this section and may do so whether or not the attorney concerned for the donor has made an application to the Director for the registration of the instrument. 10

#### **Application for registration**

- 53.** (1) Where an attorney for a donor under an enduring power (including an enduring power created under Part II of the Act of 1996 but not registered under section 10 of that Act before the commencement of *section 47*) has reason to believe that the donor lacks or shortly may lack capacity, the attorney shall, as soon as is practicable, make an application, in compliance with regulations made under *section 48(3)*, to the Director for the registration of the instrument creating the enduring power. 15 20
- (2) Before making the application the attorney shall comply with the provisions as to notice set out in *Schedule 1*.
- (3) The attorney may, before making the application, apply to the High Court for its determination of any question as to the validity of the power.
- (4) A certificate to the effect that the donor lacks or shortly may lack— 25
- (a) capacity to look after his or her personal welfare,
  - (b) capacity to manage his or her property and affairs, or
  - (c) both capacity to look after his or her personal welfare and capacity to manage his or her property and affairs,
- and purporting to be signed by a registered medical practitioner (or other healthcare professional whom the High Court considers suitable to assess a person's capacity) may be accepted as evidence of the matters contained in that certificate. 30
- (5) A person who, in or in connection with an application for registration, makes a statement or gives a certificate which he or she knows to be false in a material particular commits an offence and shall be liable— 35
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, and
  - (b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 2 years, or both.

## Registration of enduring power

54. (1) On an application for registration being made in accordance with *section 53*, the Director shall, unless *subsection (2)* applies, register the instrument to which the application relates.
- (2) Where in the case of an application for registration of an enduring power— 5
- (a) a valid notice of objection to the registration pursuant to *subsection (3)* from a person to whom the attorney has given notice pursuant to *paragraph 2(1)* of *Schedule 1* is received by the Director before the expiry of the period of 5 weeks beginning on the day on which that notice was given,
  - (b) it appears from the application that there is no one to whom notice has been given under *paragraph 2* of *Schedule 1*, or 10
  - (c) there is reason to believe that appropriate enquiries might disclose evidence on which the Director could be satisfied that one of the grounds of objection set out in *subsection (3)* was established,
- the Director shall neither register the instrument nor refuse the application until he or she has made or caused to be made such enquiries (if any) as he or she thinks appropriate in the circumstances of the case. 15
- (3) For the purposes of this Part, a notice of objection to the registration of an instrument is valid if the objection is made on one or more than one of the following grounds:
- (a) that the power purported to have been created by the instrument was not valid; 20
  - (b) that the power created by the instrument is no longer a valid and subsisting power;
  - (c) that the donor does not lack or will not shortly lack capacity;
  - (d) that, having regard to all the circumstances, the attorney is unsuitable to be the donor's attorney; 25
  - (e) that fraud or undue pressure was used to induce the donor to create the power.
- (4) Subject to *section 59*, where the Director receives a valid objection under this section or is satisfied following the making of enquiries under *subsection (2)* that there are valid grounds for the making of an objection to the registration of the power, the Director shall apply to the High Court for a determination as to whether the instrument should be registered. 30
- (5) The High Court, in determining an application under *subsection (4)*, may direct that an instrument purporting to create an enduring power of attorney be registered as an enduring power of attorney notwithstanding that it is not in compliance with *section 48* or regulations made under that section where the High Court is satisfied that— 35
- (a) the donor intended the power to be effective during any period when the donor lacks capacity,
  - (b) that the power was not executed as a result of fraud or undue pressure,
  - (c) that the attorney is suitable to be the attorney of the donor, and
  - (d) that it is desirable in the interests of justice that the instrument be registered. 40

### **Effect and proof of registration**

55. (1) The effect of the registration of an instrument is that—
- (a) no revocation of the power by the donor shall be valid unless the High Court confirms the revocation under *section 57(6)*,
  - (b) no disclaimer of the power shall be valid except on notice to the donor and with the consent of the High Court, and 5
  - (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no consent or instruction given by the donor after registration shall, in the case of a consent, confer any right and in the case of an instruction, impose or confer any obligation or right on or create any liability of the attorney or other persons having notice of the consent or instruction. 10
- (2) *Subsection (1)* shall apply for so long as the instrument is registered whether or not the donor lacks capacity for the time being.
- (3) On the registration of an enduring power, the Director shall supply an attested copy of the enduring power to the donor and any persons who were given notice under *paragraph 2 of Schedule 1* of the application for registration. 15
- (4) A document purporting to be a copy, attested by the Director, of an instrument that has been registered shall be evidence of the contents of the instrument and of the fact that it has been registered.
- (5) *Subsection (4)* is without prejudice to any other method of proof authorised by law. 20

### **Register of enduring powers of attorney and reports following registration**

56. (1) The Director shall establish and maintain a register of enduring powers of attorney that have been registered.
- (2) Members of the public may inspect the register free of charge during normal office hours. 25
- (3) The Director may issue an attested copy of a registered enduring power of attorney to a person who on application satisfies the Director that the applicant has a good and sufficient reason to be issued with such copy.
- (4) (a) An attorney under an enduring power of attorney that has been registered shall at least once every 12 months prepare and submit to the Director a report as to the performance of his or her functions as such attorney. 30
- (b) Every such report submitted to the Director shall be in such form as may be determined by rules of court and shall in particular include details of all expenses and remuneration paid or reimbursed to the attorney concerned for the donor concerned. 35

*Functions of High Court as respects enduring power of attorney and revocation of that power***Functions of court as respects registered enduring power of attorney**

57. (1) Where an instrument has been registered, the High Court shall, on application to it by the donor, the attorney, the Public Guardian or any other interested party, have the functions specified in *subsections (2) to (6)*. 5
- (2) The High Court may—
- (a) determine any question as to the meaning or effect of the instrument,
  - (b) give directions with respect to—
    - (i) a relevant decision relating to the personal welfare of the donor made or about to be made by the attorney, 10
    - (ii) the management or disposal by the attorney of the property and affairs of the donor,
    - (iii) the rendering of accounts by the attorney and the production of the records kept by the attorney for that purpose, or 15
    - (iv) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive, or the payment of additional, remuneration,
  - (c) require the attorney to furnish information or produce documents or things in his or her possession as attorney, 20
  - (d) give any consent or authorisation to act which the attorney would have to obtain from a donor with capacity,
  - (e) authorise the attorney to act for the attorney's own benefit or that of other persons than the donor otherwise than in accordance with *section 50(4)* (but subject to any conditions or restrictions contained in the instrument), or 25
  - (f) where appropriate, relieve the attorney wholly or partly from any liability incurred or which may have been incurred on account of a breach of duty as an attorney.
- (3) Where the High Court gives directions under *subsection (2)(b)*, imposes a requirement under *subsection (2)(c)*, gives consent or an authorisation under *subsection (2)(d)* or an authorisation under *subsection (2)(e)*, it shall cause the Director to be notified of such directions, the imposition of such requirement, or the giving of such consent or authorisation, as the case may be, and the Director shall monitor the giving of effect by the attorney to such direction, requirement, or the terms of such consent or authorisation, as the case requires. 30 35
- (4) (a) The High Court shall, on application for that purpose made to it, confirm the revocation of the power if satisfied that the donor has done whatever is necessary in law to effect an express revocation of the power and was capable of revoking the power of attorney at the time of the purported revocation. 40

- (b) An application to which *paragraph (a)* refers shall be made on notice to the attorney.
- (5) The High Court may direct the Director to cancel the registration of an instrument in any of the following circumstances:
  - (a) where the High Court confirms the revocation of the power under *subsection (6)* or consents to a disclaimer under *section 55(1)(b)*; 5
  - (b) on being satisfied that the donor has, and is likely to continue to have, capacity;
  - (c) on being satisfied that the power has ceased to be in force by reason of the death or adjudication in bankruptcy of the donor or by virtue of—
    - (i) the death or lack of capacity of the attorney, or 10
    - (ii) *section 48(7), (10), (11) or (12)*;
  - (d) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected;
  - (e) on being satisfied that, having regard to all the circumstances, the attorney is unsuitable to be the attorney for the donor; 15
  - (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power;
  - (g) on being satisfied that there is any other good and sufficient reason to do so.
- (6) Where the High Court directs the cancellation of the registration of an instrument pursuant to *subsection (5)(e) or (f)*, it shall by order revoke the power created by the instrument. 20
- (7) Where the High Court directs the cancellation of the registration of an instrument under *subsection (5)* (other than *paragraph (b)*), the instrument shall be delivered up to the Director to be cancelled unless the High Court otherwise directs.

**Revocation of enduring power of attorney** 25

- 58.** (1) A revocation of a registered enduring power may be made by the donor at any time if the donor has capacity to do so.
- (2) The Minister may by regulations make provision concerning the revocation of enduring powers of attorney, including—
- (a) prescribing the form of the revocation of an enduring power, 30
  - (b) prescribing procedures and requirements relating to the execution of the revocation of an enduring power,
  - (c) prescribing information to be included in or annexed to the document purporting to effect the revocation in order to enable the person revoking the enduring power to have adequate information as to the effect of revoking the enduring power, 35
  - (d) the inclusion in the document of the following statements:
    - (i) a statement by the donor, that he or she has read the information referred to in *paragraph (c)* as to the effect of revoking the power or that such

- information has been read to him or her;
- (ii) a statement by a legal practitioner (or a member of another specified class of persons) that, after interviewing the donor and making any necessary enquiries, the legal practitioner (or such member)—
- (I) is satisfied that the donor understood the effect of revoking the power, and
- (II) has no reason to believe that the document is being executed by the donor as a result of fraud or undue pressure;
- (iii) a statement by a registered medical practitioner (or other healthcare professional whom the High Court considers suitable to assess a person's capacity) that, in his or her opinion at the time the revocation was executed by the donor, the donor had the capacity, with the assistance of such explanations as may have been given to the donor, to understand the effect of revoking the power,
- (e) the attestation of the signature of the donor, and
- (f) the giving by the donor to specified persons of notice of the execution of the revocation.

## CHAPTER 5

### *Miscellaneous*

- Protection of attorney and third person where registered power invalid** 20
- 59.** (1) *Subsections (2) and (3)* shall apply where an instrument which did not create a valid enduring power has been registered, whether or not the registration has been cancelled at the time of the act or transaction in question.
- (2) An attorney who acts pursuant to an enduring power which is not or no longer a valid power shall not thereby incur any liability (either to the donor or to any other person) unless at the time of acting the attorney knows—
- (a) that the instrument did not create a valid enduring power,
- (b) that an event has occurred which, if the instrument has created a valid enduring power, would have invalidated the power or caused it to cease to be in force, or
- (c) that the registration of the instrument has been cancelled.
- (3) Any transaction between the attorney and another person shall, in favour of that person, be as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters referred to in *subsection (2)*.
- (4) Where the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of *subsection (3)*, it shall be presumed in favour of the purchaser, unless the contrary is shown, that the transaction was valid if—
- (a) the transaction between that person and the attorney was completed within 12

- months of the date on which the instrument was registered, or
- (b) that person makes a statutory declaration before or within 3 months after the completion of the purchase or transaction, that he or she had no reason at the time of the transaction to doubt that the attorney had authority to dispose of or deal in the property which was the subject of the transaction. 5
- (5) For the purposes of section 18 of the Act of 1996 in its application to an enduring power, the revocation of which by the donor is, by virtue of *section 55(1)(a)*, invalid unless and until confirmed by the High Court under *section 57(6)*, the following applies:
- (a) knowledge of the confirmation of the revocation by the High Court constitutes knowledge of the revocation of the power, and 10
- (b) knowledge of the unconfirmed revocation does not constitute knowledge of the revocation of the power.
- (6) In this section “purchaser” has the meaning assigned to it by section 18 of the Act of 1996. 15

### **Joint and several attorneys**

60. (1) An instrument which appoints more than one person to be an attorney under an enduring power of attorney may specify—
- (a) that the attorneys are appointed to act jointly, or
- (b) that the attorneys are appointed to act jointly and severally, 20
- and, in default of the power so specifying, the attorneys shall be deemed to have been appointed to act jointly.
- (2) This Act, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to *subsection (3)* and *Schedule 2*.
- (3) Where 2 or more persons are appointed (or are deemed to have been appointed) to act jointly as attorneys, then, in the case of the death, lack of capacity or disqualification of any one or more of them, the remaining attorney or attorneys may continue to act, whether solely or jointly, as the case may be, unless the instrument creating the enduring power expressly provides to the contrary. 25
- (4) This Act, in its application to joint and several attorneys, applies with the modifications specified in *subsections (5) to (8)*. 30
- (5) A failure, as respects any other attorney, to act in accordance with the provisions of *section 48* and regulations made thereunder shall prevent the instrument applying in that attorney’s case without affecting its efficacy as respects the other attorney or attorneys. 35
- (6) Where one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument—
- (a) an attorney who is not an applicant as well as one who is may act in accordance with *section 51(2)* pending the determination of the application,
- (b) notice of the application shall also be given under *Schedule 1* to the other 40

attorney or attorneys, and

- (c) objection may validly be taken to the registration on a ground relating to the attorney who is not an applicant as well as to one who is an applicant.
- (7) The Director shall not refuse to register an instrument because a ground of objection referred to in *section 54(3)* to an attorney or a power referred to in the instrument is established if the objection referred to in that section is not made or established as respects another attorney appointed under the instrument, but shall register the instrument and make an application to the High Court under *section 54(4)* in respect of the objection as if the words “the registration of the instrument should be cancelled under *section 57(5)*” were substituted for the words “the instrument should be registered” appearing in *section 54(4)*. 5 10
- (8) The High Court shall not direct the cancellation of the registration of an instrument pursuant to *section 57(5)(c), (e) or (f)* where those provisions do not apply to another attorney or attorneys and, in such case, the Director shall alter the registration in accordance with the order of the High Court. 15

## PART 8

### DECISION-MAKING ON PERSONAL WELFARE MATTERS

#### **Decision-making on personal welfare of relevant person**

- 61.** (1) Subject to *section 62*, notwithstanding that a person is not a co-decision-maker, decision-making representative, attorney or designated healthcare representative for a relevant person, he or she may take or authorise the taking of an action in good faith for the benefit of the relevant person in respect of the personal welfare (including healthcare and treatment) of the relevant person where the provisions of this section are complied with and the action is neither a matter referred to in *section 4(3)* nor a matter closely connected with a matter referred to in *section 4(3)*. 20 25
- (2) A person referred to in *subsection (1)* who, in taking or authorising the taking of an action in respect of a relevant person, acts in compliance with the provisions of this Act shall not incur any legal liability which he or she would not have incurred if the relevant person—
- (a) had the capacity to consent in relation to the action, and 30
- (b) had given consent to the person referred to in *subsection (1)* to take or authorise the taking of the action.
- (3) 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. 35

#### **Limitations to decision-making on personal welfare of relevant person**

- 62.** (1) Nothing in *section 61* shall be construed as authorising a person to take an action or



- authorise the taking of an action in respect of a relevant person which can only be taken pursuant to an order of the court or High Court under this Act.
- (2) Subject to *subsection (3)*, nothing in *section 61* shall be construed as authorising a person to take an action or authorise the taking of an action in respect of a relevant person which conflicts with— 5
- (a) if the relevant person is an appointer, a relevant decision made by the relevant person with the assistance of a decision-making assistant for the relevant person,
  - (b) a relevant decision made by the relevant person jointly with a co-decision-maker for the relevant person,
  - (c) a relevant decision made by a decision-making representative, attorney or designated healthcare representative for the relevant person, or 10
  - (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 15
    - (ii) the relevant person lacks capacity,
- where the person has knowledge of, or ought reasonably to have knowledge of, that relevant decision or advance healthcare directive, as the case may be.
- (3) Nothing in this section shall be construed to prevent a person, pending a decision concerning any relevant issue by a court or High Court exercising its powers under this Act, from— 20
- (a) providing life-sustaining treatment for a relevant person, or
  - (b) doing any act which he or she reasonably believes to be necessary to prevent a serious deterioration in the health of a relevant person. 25

## PART 9

### ADVANCE HEALTHCARE DIRECTIVES

#### **Definitions — Part 9**

**63.** In this Part—

- “advance healthcare directive”— 30
- (a) in relation to a person who has capacity, means an advance expression made by the person, in accordance with *sections 65* and *66*, 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, 35

which has not been revoked pursuant to *section 65(7)*;

“applicable”, in relation to an advance healthcare directive, shall be construed in accordance with *section 66*;

“designated healthcare representative”, in relation to a directive-maker, means the named individual designated, pursuant to *section 68*, by the directive-maker, in his or her advance healthcare directive, to exercise the relevant powers; 5

“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; 10

“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 69(1)(a)*, and 15

(b) the powers (if any) conferred on the representative under the advance healthcare directive as read with *section 69(1)(b)*;

“treatment”, in relation to a person, means an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose related to the physical or mental health of the person, and includes life-sustaining treatment; 20

“valid”, in relation to an advance healthcare directive, shall be construed in accordance with *section 66*;

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

### **Purpose of this Part**

**64.** (1) The purpose of this Part is to— 25

(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 63* for any reason (including a reason based on his or her religious beliefs) notwithstanding that the refusal— 30

(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.

### **Making of advance healthcare directives, etc.** 35

**65.** (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: 5
- (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. 10
- (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. 15
- (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 20
  - (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. 25
- (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; 30
  - (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; 35
  - (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, 40

- (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)*.
- (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,

and

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

**Validity and applicability of advance healthcare directive** 5

66. (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— 10

- (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. 15

(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. 20

(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. 25

(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— 30

- (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 35

- (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. 5
- (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. 10
- (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; 15
- (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. 20 25
- (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.

#### **Effect of advance healthcare directive**

30

**67.** (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 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. 35
- (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. 40

- (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.

**Designated healthcare representative**

68. (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 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— 5
  - (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 10
    - (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 15
        - (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. 25
- (5) 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 spouse of the directive-maker and subsequently—
  - (a) the marriage is annulled or dissolved either— 30
    - (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, 35
  - (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. 40



- (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 5
  - (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. 10
- (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.

**Functions and scope of authority of designated healthcare representatives** 15

69. (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; 20
  - (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. 25
- (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. 30
- (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 35
  - (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 40

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.
- (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 68* 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.

### **Role of courts**

70. (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— 5
- (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. 10

### Offences

71. (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— 15
- (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— 20
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or 25
  - (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. 30

### Codes of practice

72. (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; 35
  - “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)*. 5
- (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 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. 10
- (4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (3)*— 15
- (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, 20
- (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. 25
- (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— 30
- (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 76(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. 35
- (8) The Director shall arrange for that part of the website on the internet or other electronic means referred to in *section 76(2)(p)*, of the Act which contains a code of practice pursuant to *subsection (7)* to ordinarily be accessible by members of the 40

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 *subsections (4) and (5)* apply to a code of practice that the Director proposes to publish under *subsection (3)*. 5
- (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— 10
- (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. 15
- (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. 20
- (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— 25
- (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.

**Persons who may make applications to relevant court under this Part, etc.** 30

73. (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 35
- (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.

- (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, 5
  - (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, 10
  - (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— 15
- (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 20
    - (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. 25
- (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 54*) or advance healthcare directive created by the directive-maker, and 30
  - (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. 35
- (b) Section 28 of the Act of 1995 shall apply to proceedings or proposed proceedings

under this section which relate to *section 70(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.

### **Review of this Part**

74. 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.

## PART 10

### DIRECTOR OF THE DECISION SUPPORT SERVICE

#### CHAPTER 1

#### *Appointment, functions and terms and conditions of Director* 30

### **Appointment of Director**

75. (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.
- (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. 5
- (3) A person is not eligible for appointment as the Director if he or she—
- (a) is a member of either House of the Oireachtas,
  - (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament, or 10
  - (c) is a member of a local authority within the meaning of the Local Government Act 2001.

### **Functions of Director**

- 76.** (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: 15
- (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; 20
  - (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; 25
  - (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; 30
  - (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; 35
  - (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 his or her capacity under this Act;
  - (i) to establish a website on the internet or provide, or arrange for the provision of, 40



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. 5
- (2) The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of his or her functions.
- (3) In carrying out his or her functions under this section, the Director may consult with any person who has any functions in relation to the care or treatment of a relevant person. 10

### **Investigations by Director**

77. (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. 15
- (2) The Director may, to enable him or her to perform his or her functions under subsection (1)— 20
- (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, 25
  - (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. 30
- (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. 35
- (6) An investigation by the Director under this Act shall be conducted otherwise than in public.
- (7) A person who— 40
- (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
  - (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. 5

**Terms and conditions of Director**

- 78. (1) Subject to *subsection (2)*, the Director shall hold office for a term of 6 years and may be re-appointed to the office for a second or subsequent term.
- (2) The Director shall hold office on such terms and conditions as may be determined by the Courts Service, with the consent of the Minister given after consultation with the Minister for Public Expenditure and Reform, at the time of appointment or reappointment. 10
- (3) A person appointed to be Director shall be a civil servant in the Civil Service of the State and shall be a member of the staff of the Courts Service. 15

CHAPTER 2

*Staff of Director of the Decision Support Service*

**Staff of Director of the Decision Support Service**

- 79. (1) A person who is a member of the staff of the Director shall be a member of the staff of the Courts Service and the provisions of Part V of the Act of 1998 shall apply to such staff. 20
- (2) The Director may delegate a function under this Act of the Director to a member of the staff of the Courts Service assigned for the time being to the Director (other than the power to delegate under this subsection and the functions specified in *section 84*), and, accordingly, references in this Act to the Director shall be construed, where appropriate having regard to any delegation made under this subsection, as including, as respects the matters so delegated, references to any person to whom such functions stand delegated. 25
- (3) The Director may revoke a delegation made pursuant to *subsection (2)*.
- (4) The Courts Service shall appoint such number of persons to be members of the staff of the Director as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform. 30
- (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. 35
- (6) The Courts Service shall be the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005) in relation to members of the staff of the

Director.

- (7) The Courts Service may, from time to time, engage such specialist advisers as the Director may consider necessary to assist him or her in the discharge of his or her functions under this Act.
- (8) Any fees due to an adviser engaged under *subsection (7)* shall be subject to the prior agreement of the Minister, given with the consent of the Minister for Public Expenditure and Reform, and shall form part of the expenses of the Courts Service. 5

### CHAPTER 3

#### *Special visitors, general visitors, court friends and panels*

#### **Special visitors and general visitors** 10

- 80.** (1) The Director may, in accordance with this section, appoint a person to be a special visitor or general visitor.
- (2) A special visitor—
- (a) is a registered medical practitioner who has particular knowledge, expertise and experience as respects the capacity of persons, or 15
  - (b) is a person who, although not a registered medical practitioner, is, in the opinion of the Director, a person who has particular knowledge, expertise and experience as respects the capacity of persons.
- (3) A general visitor is a person who, in the opinion of the Director, is a person who possesses relevant qualifications, or has other relevant expertise or experience, to assist the Director in performing his or her supervisory function referred to in *section 76(2)(a)*. 20
- (4) An appointment of a person as a special visitor or general visitor shall be made subject to such terms and conditions (including those relating to remuneration and allowances) as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. 25
- (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 36*, 30
- 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— 35
- (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, 5
- 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 take copies of any health record of a relevant person unless the general visitor is a registered medical practitioner. 10

**Court friends**

81. (1) The Director may or, where *section 30(10)* applies, shall, in accordance with this section, appoint a person to be a court friend for a relevant person.
- (2) (a) A court friend for a relevant person is a person who assists the relevant person in relation to an application under *Part 5* in respect of which the relevant person is the subject. 15
  - (b) The court, on the hearing of such application, may hear submissions from the court friend on behalf of the relevant person.
- (3) Subject to *subsection (4)*, a court friend for a relevant person may, for the purpose of assisting the relevant person in relation to an application under *Part 5* in respect of which the relevant person is the subject— 20
- (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 25
    - (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, 30

in so far as the record concerned relates to the relevant person, and
  - (b) interview the relevant person in private or otherwise than in public.
- (4) *Subsection (3)* shall not entitle a court friend to examine and take copies of any health record of a relevant person unless the court friend is a registered medical practitioner.
- (5) A court friend for a relevant person shall assist and attend with the relevant person in court or, if the relevant person is not attending the hearing concerned, promote the interests and the will and preferences of the relevant person in court. 35
- (6) A court friend for a relevant person may attend and represent the relevant person at any meeting, consultation or discussion, in connection with an application under *Part*

5 in respect of which the relevant person is the subject, at which the interests or the will and preferences of the relevant person are being considered, whether or not the relevant person is attending the meeting, consultation or discussion, as the case may be.

- (7) A court friend for a relevant person may be appointed for such term and subject to such conditions, and may be paid such remuneration and allowances, as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. 5
- (8) *Subsections (2) to (6)* shall, with all necessary modifications, apply to a person who falls within *paragraph (b)* of *section 30(9)* in respect of a relevant person and to the application under *Part 5* which relates to the relevant person as those subsections apply to a court friend for a relevant person and to the application under *Part 5* which relates to the second-mentioned relevant person. 10

### **Panels to be established by the Director**

82. 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 32(3)* applies, 15
  - (b) special visitors,
  - (c) general visitors, and
  - (d) court friends.

## CHAPTER 4 20

### *Reports by Director and codes of practice*

### **Reports by Director**

83. (1) The Director shall, not later than 31 March in each year, submit to the Board a report on the Director's activities in the immediately preceding calendar year or, if this Part commenced during that calendar year on a date other than 1 January, the period on and from that commencement to and including the immediately preceding 31 December. 25
- (2) The Board shall cause a copy of a report submitted to it pursuant to *subsection (1)* to be forwarded to the Minister not later than 28 days after the date on which the Board received the report. 30
- (3) The Director shall, within 2 years but not earlier than one year from the date of commencement of *Part 10*, submit to the Board a report—
- (a) on the effectiveness of the Director,
  - (b) on the adequacy of the functions assigned under this Act to the Director, and
  - (c) containing such recommendations (if any) that the Director thinks would improve his or her effectiveness or the adequacy of the functions assigned to the Director under this Act, or both. 35
- (4) The Board shall cause a copy of a report submitted to it pursuant to *subsection (3)* to

be sent to the Minister, not later than 28 days after it was so submitted or such longer period as the Minister may permit in any particular case, together with any recommendations the Board may wish to make in relation to it.

- (5) At the end of each 5 year period commencing on the date of commencement of *Part 10*, the Director shall submit to the Board and the Minister a report reviewing the general performance of the objectives and functions of the Director in the previous 5 years. 5
- (6) The Director may make any other reports that he or she considers appropriate for drawing to the Board's and the Minister's attention matters that have come to his or her notice and that, in his or her opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Board and the Minister. 10
- (7) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of it to be laid before each House of the Oireachtas.

**Codes of practice** 15

**84.** (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 or approved of under *subsection (2)*, means such code as in force from time to time under this section; 20

“person concerned”, in relation to a code of practice, means a person for whom the code is providing guidance.

(2) The Director may— 25

- (a) prepare and publish a code of practice,
- (b) request another body to prepare a code of practice, or
- (c) approve of a code of practice prepared by another body, whether or not pursuant to a request referred to in *paragraph (b)*,

for the purposes of one or more of the following: 30

- (i) the guidance of persons, including healthcare professionals, assessing whether a person lacks capacity in relation to any matter;
- (ii) the guidance of persons referred to in *section 61(1)* (including healthcare professionals who are likely to be such persons);
- (iii) the guidance of decision-making assistants; 35
- (iv) the guidance of co-decision-makers;
- (v) the guidance of decision-making representatives;
- (vi) the guidance of attorneys;

- (vii) the guidance of special visitors;
  - (viii) the guidance of general visitors;
  - (ix) the guidance of court friends;
  - (x) the guidance of healthcare professionals as respects the circumstances in which urgent treatment may be carried out without the consent of a relevant person and what type of treatment may be provided; 5
  - (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;
  - (xiii) with respect to such other matters concerned with this Act as the Director thinks appropriate. 10
- (3) Where the Director is minded to exercise his or her power under *subsection (2)(a)* or *(b)*, he or she shall consult with such persons as the Director considers appropriate having regard to the matters to which it is intended that the code, when it is prepared, will relate and such persons may include any of the following: 15
- (a) the Health Service Executive;
  - (b) the Mental Health Commission;
  - (c) the Health Information and Quality Authority;
  - (d) the National Disability Authority;
  - (e) the Citizens Information Board; 20
  - (f) representatives of professional bodies in the healthcare, social care, legal and financial sectors;
  - (g) representatives of healthcare, social care, legal and financial professionals.
- (4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (2)(a)* or approving of a code of practice pursuant to his or her power under *subsection (2)(c)*— 25
- (a) make available, to the persons whom the Director considers appropriate having regard to the matters to which the code relates (which may be any of the persons who fall within *paragraphs (a) to (e)* of *subsection (3)*), in such manner as the Director considers appropriate, a draft of the code, 30
  - (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 the representations (if any) received, and 35
  - (d) make any modifications that he or she considers appropriate to the draft.
- (5) The Director shall not publish or approve of a code of practice under *subsection (2)* except with the consent of—

- (a) if the code does not relate to healthcare matters, the Minister after consultation with the Board, and
  - (b) if the code relates (whether in whole or in part) to healthcare matters, the Minister after consultation with the Minister for Health and the Board.
- (6) Where the Director publishes or approves of a code of practice under *subsection (2)*, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* and such notice shall specify— 5
- (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. 10
- (7) The Director shall keep posted, on the Internet website or by the other electronic means referred to in *section 76(2)(p)* a copy of each code of practice published or approved of under *subsection (2)*, as the code is in force from time to time, on and from the date on which the code has effect.
- (8) The Director shall arrange for that part of the Internet website or other electronic means referred to in *section 76(2)(p)* which contains a code of practice pursuant to *subsection (7)* to ordinarily be accessible by members of the public. 15
- (9) Subject to *subsection (10)*, the Director may—
- (a) amend or revoke a code of practice published under *subsection (2)*, or
  - (b) withdraw approval of any code of practice approved of under *subsection (2)*. 20
- (10) *Subsections (3) to (5)* shall, with all necessary modifications, apply to a code of practice that the Director proposes to amend or revoke, or withdraw his or her approval of, under *subsection (9)* as *subsections (3) to (5)* apply to a code of practice that the Director proposes to publish or approve of under *subsection (2)*.
- (11) Where the Director amends or revokes, or withdraws his or her approval of, a code of practice published or approved of under *subsection (2)*, the Director shall cause a notice to that effect to be published in *Iris Oifigiúil* and on the Internet website or by other electronic means referred to in *section 76(2)(p)* specifying— 25
- (a) the code to which the amendment, revocation or withdrawal of approval, as the case may be, relates and, if applicable, particulars of the amendment, 30
  - (b) the persons or classes of persons in respect of whom the code is so amended, revoked or approval is withdrawn, as the case may be, and
  - (c) the date from which the amendment, revocation or withdrawal of approval, 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 or approved of under *subsection (2)* or, where such a code has been amended under this section, the code as so amended, shall be admissible in any legal proceedings. 35
- (13) A person concerned shall have regard to a code of practice published or approved of under *subsection (2)* when performing any function under this Act in respect of which 40



- 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 or approved of under *subsection (2)*,  
or
  - (b) a failure to comply with a code of practice published or approved of under *subsection (2)*,
- 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.
- (15) To the extent that a code of practice published or approved of under *subsection (2)* is for the purposes of court friends, the provisions of the code shall, with all necessary modifications, apply to a person who falls within *paragraph (b)* of *section 30(9)* in respect of a relevant person as those provisions apply to a court friend for a relevant person.
- (16) A code of practice published or approved of under *subsection (2)* shall not relate to any of the provisions of *Part 9*.

## CHAPTER 5

### *Courts Service to manage the Director of the Decision Support Service*

#### **Amendment of section 5 of Act of 1998**

85. Section 5 of the Act of 1998 is amended by inserting, after paragraph (a), the following new paragraph:
- “(ab) manage the functions assigned under this Act to the Director;”.

## PART 11

### DETENTION MATTERS

#### **Definitions — *Part 11***

86. In this Part—
- “approved centre” has the meaning assigned to it by section 2 of the Act of 2001;
  - “clinical director” has the meaning assigned to it by section 2 of the Act of 2001;
  - “consultant psychiatrist” has the meaning assigned to it by section 2 of the Act of 2001;
  - “detention order”—
- (a) in *section 89*, means an order referred to in *subsection (1)* of that section, and
  - (b) in *section 90*, means an order referred to in *subsection (1)* of that section;
- “independent consultant psychiatrist” means a consultant psychiatrist who is a member of the panel established under *section 87*;

“mental disorder” has the meaning assigned to it by section 3 of the Act of 2001;

“person concerned” means the person the subject of a detention order.

### **Panel of independent consultant psychiatrists to be established by Courts Service**

- 87.** The Courts Service shall establish a panel of suitable consultant psychiatrists willing and able to carry out independent medical examinations for the purposes of this Part. 5

### **Detention-related safeguards**

- 88.** Where an issue arises in the course of an application to the court or the High Court under this Act, or otherwise in connection with the operation of this Act, as to whether a person who lacks capacity is suffering from a mental disorder, the procedures provided for under the Act of 2001 shall be followed as respects any proposal to detain that person. 10

### **Review of detention orders in certain circumstances (approved centres)**

- 89.** (1) Where, immediately before the commencement of this section, a person is detained in an approved centre on the order of a wardship court and, from that commencement, continues to be so detained, that order shall, as soon as possible, be reviewed by the wardship court in accordance with *subsection (2)*. 15
- (2) Where, on a review of a detention order, the wardship court is satisfied that the person concerned is suffering from a mental disorder, it may direct that the detention of the person concerned in the approved centre, or such other approved centre as may be determined by the wardship court having obtained the views of the clinical director of that other centre, shall continue for such further period, not exceeding 3 months, and not exceeding 6 months in the case of any subsequent review carried out by the wardship court under *subsection (3)*, as the wardship court may determine. 20
- (3) Before the period referred to in *subsection (2)*, or such other period as may be determined by the wardship court, expires, the wardship court shall review the continued detention of the person concerned in the approved centre and, if satisfied that the person concerned is suffering from a mental disorder, may direct that the person concerned shall continue to be detained in that centre or such other approved centre as may be determined by the wardship court having obtained the views of the clinical director of that other centre. 25
- (4) Where the wardship court determines that the person concerned is no longer suffering from a mental disorder, it shall order the discharge of the person concerned from detention. 30
- (5) The wardship court, when reviewing a detention order, shall hear evidence from the consultant psychiatrist responsible for the care or treatment of the person concerned and from an independent consultant psychiatrist selected by the wardship court. 35
- (6) The function of the independent consultant psychiatrist referred to in *subsection (5)* is to examine the person concerned and report to the wardship court on the results of the examination, in particular whether, in the opinion of the psychiatrist, the person concerned is suffering from a mental disorder.

## Review of detention orders in certain circumstances (non-approved centres)

90. (1) Where, immediately before the commencement of this section, a person is detained in an institution other than an approved centre on the order of a wardship court and, from that commencement, continues to be so detained, that order shall, as soon as possible, be reviewed by the wardship court in accordance with *subsection (2)*. 5
- (2) Where, on a review of a detention order, the wardship court is satisfied that the person concerned is suffering from a mental disorder, it may direct that the detention of the person concerned in the institution, or in such other place, being an approved centre, as may be determined by the wardship court having obtained the views of the clinical director for that other place, shall continue for such further period, not exceeding 3 months, and not exceeding 6 months in the case of any subsequent review carried out by the wardship court under *subsection (3)*, as the wardship court may determine. 10
- (3) Before the period referred to in *subsection (2)*, or such other period as may be determined by the wardship court, expires, the wardship court shall review the continued detention of the person concerned in the institution or approved centre concerned and, if satisfied that the person concerned is suffering from a mental disorder, may direct that the person concerned shall continue to be detained, whether in the institution where the person concerned was first detained or in an approved centre determined in accordance with *subsection (2)* on a first or subsequent review. 15
- (4) Where the wardship court determines that the person concerned is no longer suffering from a mental disorder, it shall order the discharge of the person concerned from detention. 20
- (5) The wardship court, when reviewing a detention order, shall hear evidence from the consultant psychiatrist responsible for the care or treatment of the person concerned and from an independent consultant psychiatrist selected by the wardship court. 25
- (6) The function of the independent consultant psychiatrist referred to in *subsection (5)* is to examine the person concerned and report to the wardship court on the results of the examination, in particular whether, in the opinion of the psychiatrist, the person concerned is suffering from a mental disorder.

## PART 12 30

### CONVENTION ON INTERNATIONAL PROTECTION OF ADULTS

#### CHAPTER 1

#### *Preliminary*

### **Interpretation — Part 12**

91. (1) In this Part— 35
- “adult” means a person who—
- (a) as a result of an impairment or insufficiency of his or her personal faculties, cannot protect his or her interests, and
- (b) has reached 18 years of age;

“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 95*.

“Convention” means the Convention on the International Protection of Adults agreed at The Hague on 13 January 2000 (the text of which, in the English language, is for convenience of reference set out in *Schedule 3*); 5

“Convention country” means a country in which the Convention is in force;

“measure” has the meaning assigned to it by *section 94(1)*;

- (2) A reference in this Part to an Article is a reference to an Article of the Convention.
- (3) An expression which appears in this Part and in the Convention is to be construed in accordance with the Constitution. 10
- (4) The High Court, court and the Director, in interpreting this Part and the Convention, may have regard to the Explanatory Report on the Convention by Mr. Paul Lagarde of 5 January 2000, edited by the Permanent Bureau of the Hague Conference on private international law. 15

### **Convention given effect**

**92.** This Part—

- (a) gives effect in the State to the Convention in so far as this Act does not otherwise do so, and
- (b) makes related provision as to the private international law of the State. 20

### **Countries, territories and nationals**

**93.** (1) In this section “country” includes a territory which has its own system of law.

- (2) Where a country has more than one territory with its own system of law, a reference to the country, in relation to one of its nationals, is to the territory with which the national has the closer, or the closest, connection. 25

### **Protective measures**

**94.** (1) In this section “measure” means a measure directed to the protection of the person or property of an adult, including any of the following:

- (a) the determination of incapacity and the institution of a protective regime;
- (b) placing the adult under the protection of a judicial or administrative authority; 30
- (c) guardianship, curatorship or any corresponding system;
- (d) the designation and functions of a person having charge of the adult’s person or property, or representing or otherwise helping him or her;
- (e) placing the adult in a place where protection can be provided;
- (f) administering, conserving or disposing of the adult’s property; 35

- (g) authorising a specific intervention for the protection of the person or property of the adult.
- (2) Where a measure of like effect to a measure has been taken in relation to a person before he or she reached 18 years of age, this Part applies to the measure in so far as it has effect in relation to him or her once he or she has reached that age. 5

**Central authority**

- 95. 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.

CHAPTER 2

*Jurisdiction of competent authority* 10

**Scope of jurisdiction**

- 96. (1) The High Court and the court may exercise its functions under this Part (in so far as it cannot otherwise do so) in relation to—
  - (a) an adult habitually resident in the State,
  - (b) an adult’s property in the State, 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, 15
  - (c) subject to Article 10 of the Convention, an adult present in the State or who has property there, if the matter is urgent, or
  - (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. 20
- (2) An adult present in the State shall be treated for the purposes of this section and Articles 6 and 7 of the Convention as habitually resident there if—
  - (a) his or her habitual residence cannot be ascertained,
  - (b) he or she is a refugee, or 25
  - (c) he or she has been displaced as a result of disturbance in the country of his or her habitual residence.

**Provisions supplementary to section 96**

- 97. (1) The High Court and the court may also exercise its functions under this Part (in so far as it cannot otherwise do so) in relation to an adult if *subsection (2) or (3)* applies in relation to him or her. 30
- (2) This subsection applies in relation to an adult if—
  - (a) he or she is an Irish citizen, and
  - (b) Article 7 of the Convention has, in relation to the matter concerned, been complied with. 35

- (3) This subsection applies in relation to an adult if the High Court or the court, as the case may be, having consulted such person as it considers appropriate, agrees to or makes a request under Article 8 of the Convention in relation to the adult.

### **Exercise of jurisdiction**

- 98.** 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. 5

## CHAPTER 3

### *Applicable law*

### **Applicable law** 10

- 99.** In exercising jurisdiction under *Chapter 2*, the High Court or the court, as the case may be, shall apply the law of the State but may, in so far as the protection of the person or the property of the adult requires, if it thinks that the matter has a substantial connection with a country other than the State, apply or take into consideration the law of that other country. 15

### **Provisions supplementary to section 99**

- 100.** Where a measure is taken in one Convention country but implemented in another, the conditions of implementation are governed by the law of the Convention country in which implementation occurs.

### **Enduring powers of attorney, etc.** 20

- 101.** (1) If the donor of an enduring power is habitually resident in the State at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—
- (a) the law of the State, or
  - (b) if he or she specifies in writing the law of a connected country for the purpose, that law. 25
- (2) If he or she is habitually resident in another country at that time, but the State is a connected country, the law applicable in that respect is—
- (a) the law of the other country, or
  - (b) if he or she specifies in writing the law of the State for the purpose, that law. 30
- (3) A country is connected, in relation to the donor, if it is a country—
- (a) of which he or she is a national,
  - (b) in which he or she was habitually resident, or
  - (c) in which he or she has property.
- (4) Where this section applies as a result of *subsection (3)(c)*, it applies only in relation to 35

the property which the donor has in the connected country.

- (5) The law applicable to the manner of the exercise of an enduring power is the law of the country where it is exercised.
- (6) In this Chapter “enduring power” means—
  - (a) an enduring power of attorney as provided for in *section 46*, or 5
  - (b) any other power of like effect.

**Disapplication or modification of enduring power of attorney, etc.**

- 102.** (1) Where an enduring power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the High Court or the court, as the case may be, in exercising jurisdiction under this Part, may disapply or modify the power. 10
- (2) Where, in accordance with this Chapter, the law applicable to the power is, in one or more respects, that of a country other than the State, the High Court or the court, as the case may be shall, so far as possible, take into consideration the law of the other country in that respect (or those respects). 15

**Protection of third parties**

- 103.** (1) This section applies where a person (in this section referred to as a “representative”) in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.
- (2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because— 20
  - (a) where the representative and third party are in the State when entering into the transaction, *subsection (3)* applies, or
  - (b) where they are in another country at that time, *subsection (4)* applies.
- (3) This subsection applies if— 25
  - (a) the law applicable to the authority in one or more respects is, as a result of this Part, the law of a country other than the State, and
  - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.
- (4) This subsection applies if— 30
  - (a) the law applicable to the authority in one or more respects is, as a result of this Chapter, the law of the State, and
  - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.
- (5) This section shall not apply if the third party knew or ought to have known that the applicable law was— 35
  - (a) in a case within *subsection (3)*, the law of the other country,

- (b) in a case within *subsection (4)*, the law of the State.

### **Mandatory rules**

- 104.** Where the High Court or the court, as the case may be is entitled to exercise jurisdiction under this Part, the mandatory provisions of the law of the State apply, regardless of any system of law which would otherwise apply in relation to the matter. 5

### **Public policy**

- 105.** Nothing in this Part requires or enables the application in the State of a provision of the law of another country if its application would be manifestly contrary to public policy.

## CHAPTER 4

### *Recognition and enforcement* 10

#### **Recognition**

- 106.** (1) A measure taken in relation to an adult under the law of a Convention country other than the State is to be recognised in the State if it was taken on a ground mentioned in Chapter 2 (Jurisdiction) of the Convention.
- (2) The High Court or the court, as the case may be, may refuse recognition of a measure 15 if it is of the view that—
- (a) the case in which the measure was taken was not urgent,
  - (b) the adult was not given an opportunity to be heard, and
  - (c) that omission amounted to a breach of natural justice.
- (3) The High Court or the court, as the case may be, may refuse to recognise a measure if 20 it is of the view that—
- (a) recognition of the measure would be manifestly contrary to public policy,
  - (b) the measure would be inconsistent with a mandatory provision of the law of the State, or
  - (c) the measure is inconsistent with one subsequently taken, or recognised, in the 25 State in relation to the adult.
- (4) 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 that that Article has not been complied with in connection with that matter. 30

#### **Application to High Court or court for declaration on measure**

- 107.** (1) Subject to *section 106*, 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. 35



### **Provisions supplementary to sections 106 and 107**

**108.** For the purposes of *sections 106 and 107*, any finding of fact by a competent authority in another Convention country is conclusive.

### **Enforcement**

- 109.** (1) An interested person may apply to the High Court or the court for a declaration as to whether a measure taken under the law of, and enforceable in, a Convention country other than the State is enforceable in the State. 5
- (2) The High Court or the court, as the case may be, shall make the declaration if—
- (a) the measure falls within *section 106(1)*, and
  - (b) it has not refused recognition of the measure pursuant to *section 106(2), (3) or (4)*. 10
- (3) A measure to which a declaration under this section relates is enforceable in the State as if it were a measure of like effect taken by the High Court or the court, as the case may be.

### **Measures taken in relation to those aged under 18** 15

- 110.** (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.

### **Review of measures taken outside State** 20

**111.** The High Court and the court may not review the merits of a measure taken outside the State except to establish whether the measure complies with this Part in so far as it is, as a result of this Part, required to do so.

### **Rules of court**

**112.** Rules of court may make provision about an application under *section 107 or 109*. 25

## CHAPTER 5

### *Co-operation*

### **Proposal for cross-border placement**

- 113.** (1) This section applies where it is proposed to place an adult in an establishment in a Convention country other than the State. 30
- (2) The central authority in the State shall consult the central authority in another Convention country or other competent authority in the Convention country concerned about the proposed placement and, for that purpose, shall send it—
- (a) a report on the adult, and

- (b) a statement of the reasons for the proposed placement.
- (3) If the central authority in another Convention country or other competent authority in the Convention country concerned opposes the proposed placement within a reasonable time, the proposed placement may not be proceeded with.

**Proposal received by central authority under Article 33** 5

**114.** A proposal received by the central authority in the State under Article 33 in relation to an adult is to proceed unless the central authority in the State opposes it within a reasonable time.

**Requests to be communicated through central authority**

**115.** (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. 10

(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. 15

**Adults in danger, etc.**

**116.** (1) This section applies if the central authority in the State is informed that an adult—

- (a) who is in serious danger, and
- (b) in relation to whom the High Court or the court, as the case may be, has taken, or is considering taking, measures, 20

is, or has become, resident in a Convention country other than the State.

(2) The central authority in the State shall inform the central authority in another Convention country or other competent authority in that Convention country regarding— 25

- (a) the danger, and
- (b) the measures taken or under consideration.

**Circumstances in which co-operation is prohibited**

**117.** The central authority in the State shall not request from, or send to, a Central Authority or other competent authority in a Convention country information in accordance with *Chapter 4* (Co-operation) of the Convention in relation to an adult if it is of the opinion that doing so— 30

- (a) would be likely to endanger the adult or his or her property, or
- (b) would amount to a serious threat to the liberty or life of a member of the adult's family. 35

## PART 13

### MISCELLANEOUS

#### **Clinical trials**

- 118.** Nothing in this Act shall be construed as authorising any person to give consent on behalf of a person who lacks capacity to be a participant in a clinical trial. 5

#### **Patients whose treatment is regulated by Part 4 of Act of 2001**

- 119.** (1) Nothing in this Act authorises a person—
- (a) to give a patient treatment for mental disorder, or
  - (b) to consent to a patient’s being given treatment for mental disorder,
- if, at the time when it is proposed to treat the patient, his or her treatment is regulated by Part 4 of the Act of 2001. 10
- (2) In this section “mental disorder”, “patient” and “treatment” have the same meaning as in the Act of 2001.

#### **Payment for necessary goods and services**

- 120.** (1) A person who lacks capacity to enter into a contract for the sale of goods or services shall pay the supplier a reasonable sum for goods or services supplied at his or her request only if the goods or services are suitable to the person’s— 15
- (a) condition in life, and
  - (b) actual requirements,
- at the time when the goods or services, as the case may be, are so supplied. 20
- (2) Section 2 of the Sale of Goods Act 1893 is amended by deleting “mental incapacity or”.

#### **Consent and capacity in specific matters**

- 121.** Unless otherwise expressly provided, nothing in this Act shall be construed as altering or amending the law in force on the coming into operation of this section relating to the capacity or consent required as respects a person in relation to any of the following: 25
- (a) marriage;
  - (b) civil partnership;
  - (c) judicial separation, divorce or a non-judicial separation agreement;
  - (d) the dissolution of a civil partnership; 30
  - (e) the placing of a child for adoption;
  - (f) the making of an adoption order;
  - (g) guardianship;

- (h) sexual relations;
- (i) serving as a member of a jury.

**Application under *Part 5, 7 or 11* to be heard in presence of relevant person or person concerned**

- 122.** (1) An application to the court or the High Court under *Part 5* (including an application under *section 36*), *7 or 9* shall be heard in the presence of the relevant person the subject of the application unless, in the opinion of the court or the High Court, as the case may be— 5
- (a) the fact that the relevant person is not or would not be present in court would not cause an injustice to the relevant person, 10
  - (b) such attendance may have an adverse effect on the health of the relevant person,
  - (c) the relevant person is unable, whether by reason of old age, infirmity or any other good and substantial reason, to attend the hearing, or
  - (d) the relevant person is unwilling to attend.
- (2) *Subsection (1)* shall, with all necessary modifications, apply to a review under *Part 11* by the wardship court of a detention order in respect of the person concerned (within the meaning of *section 86*) as it applies to an application under *Part 5, 7 or 9* to the court or High Court in respect of the relevant person the subject of the application. 15

**Wills**

- 123.** Subject to *subsection (2)*, nothing in this Act shall be construed as altering or amending the law relating to the capacity of a person to make a will. 20

**Appeals**

- 124.** An appeal lies—
- (a) to the High Court from a decision of the Circuit Court exercising any jurisdiction under this Act, and 25
  - (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. 30

**Amendment of section 26A of Courts (Supplemental Provisions) Act 1961**

- 125.** Section 26A (inserted by section 189 of the Personal Insolvency Act 2012) of the Courts (Supplemental Provisions) Act 1961 is amended—
- (a) by inserting the following after subsection (2):
    - “(2A) The functions, power and jurisdiction conferred on the Circuit Court 35

by the *Assisted Decision-Making (Capacity) Act 2015* may, subject to this section, be performed and exercised by a specialist judge.”,

and

- (b) in subsection (5), by inserting “, or subsections (2A) and (3),” after “subsections (2) and (3)”.

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#### **Amendment of Civil Registration Act 2004**

**126.** The Civil Registration Act 2004 is amended—

- (a) in section 2(2), by substituting the following for paragraph (d):

“(d) one of the parties to the proposed marriage lacks, or both of the parties to the proposed marriage lack, the capacity (within the meaning of the *Assisted Decision-Making (Capacity) Act 2015*) to consent to the marriage,”

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- (b) in section 2(2A), by substituting the following for paragraph (d):

“(d) one of the parties to the proposed civil partnership lacks, or both of the parties to the proposed civil partnership lack, the capacity (within the meaning of the *Assisted Decision-Making (Capacity) Act 2015*) to consent to the civil partnership,”

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- (c) in section 58—

- (i) in subsection (9)(a), by substituting “Subject to subsection (12), a party” for “A party”, and

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- (ii) by substituting the following for subsection (11):

“(11) An objection on the ground that one of the parties to the proposed marriage lacks, or both of the parties to the proposed marriage lack, the capacity to consent to the marriage shall be accompanied by—

- (a) a copy of a declaration by the Circuit Court under *section 31(1)* of the *Assisted Decision-Making (Capacity) Act 2015* that one of the parties to the proposed marriage lacks, or both of the parties to the proposed marriage lack, the capacity to make a decision to consent to being married,

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- (b) a copy of a declaration by the Circuit Court under *section 31(1)* of the *Assisted Decision-Making (Capacity) Act 2015* that one of the parties to the proposed marriage lacks, or both of the parties to the proposed marriage lack, the capacity to make the class of decisions specified in the declaration where the decision to consent to being married is a decision which falls within that class of decisions, or

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- (c) a copy of an application made under *Part 5* of the *Assisted Decision-Making (Capacity) Act 2015* (accompanied by a copy of a related interim order of the Circuit Court under that Part) to the Circuit Court by the person making the objection where the application relates (whether in whole or in part) to the capacity of one of the parties, or both of the parties, to the proposed marriage

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to make a decision to consent to being married.

- (12) Without prejudice to *section 124* of the *Assisted Decision-Making (Capacity) Act 2015*, subsection (9) shall not apply to a decision referred to in that subsection to the extent that the decision relates to an objection referred to in subsection (11).”

5

and

(d) in section 59F—

- (i) in subsection (11), by substituting “Subject to subsection (15), a party” for “A party”, and

(ii) by substituting the following for subsection (14):

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“(14) An objection on the ground that one of the parties to the proposed civil partnership lacks, or both of the parties to the proposed civil partnership lack, the capacity to consent to being in a civil partnership shall be accompanied by—

- (a) a copy of a declaration by the Circuit Court under *section 31(1)* of the *Assisted Decision-Making (Capacity) Act 2015* that one of the parties to the proposed civil partnership lacks, or both of the parties to the proposed civil partnership lack, the capacity to make a decision to consent to being in a civil partnership,

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- (b) a copy of a declaration by the Circuit Court under *section 31(1)* of the *Assisted Decision-Making (Capacity) Act 2015* that one of the parties to the proposed civil partnership lacks, or both of the parties to the proposed civil partnership lack, the capacity to make the class of decisions specified in the declaration where the decision to consent to being in a civil partnership is a decision which falls within that class of decisions, or

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- (c) a copy of an application made under *Part 5* of the *Assisted Decision-Making (Capacity) Act 2015* (accompanied by a copy of a related interim order of the Circuit Court under that Part) to the Circuit Court by the person making the objection where the application relates (whether in whole or in part) to the capacity of one of the parties, or both of the parties, to the proposed civil partnership to make a decision to consent to being in a civil partnership.

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- (15) Without prejudice to *section 124* of the *Assisted Decision-Making (Capacity) Act 2015*, subsection (11) shall not apply to a decision referred to in that subsection to the extent that the decision relates to an objection referred to in subsection (14).”

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## Offences

127. A decision-making assistant, co-decision-maker, decision-making representative, attorney for the relevant person, designated healthcare representative or person referred to in *section 61(1)* who ill-treats or wilfully neglects the relevant person shall be guilty of an

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offence and shall be liable—

- (a) on summary conviction, to a class A fine and 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.

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#### **Review of this Act**

- 128.** The Minister shall cause a review of the functioning of this Act (other than *Part 9*) to be carried out before the 5th anniversary of the date of enactment of this Act.

SCHEDULE 1

Section 53

PART 1

DUTY TO GIVE NOTICE TO DONOR AND OTHER PERSONS

*Duty to give notice to donor* 5

1. (1) Subject to *subparagraph (2)*, before making an application for registration, the attorney shall give notice of intention to do so to the donor.
- (2) *Paragraph 4(2)* shall apply in relation to the donor as it applies in relation to a person who is entitled to receive notice under this Schedule.

*Duty to give notice to other persons* 10

2. (1) Subject to *paragraph 4*—
  - (a) if regulations made under *section 48(3)* have required notice of the execution of an enduring power of attorney to be brought to the attention of specified persons, the attorney shall, before making an application for registration, give notice of intention to do so to those persons, 15
  - (b) if any of those persons is dead or lacks capacity or his or her whereabouts cannot be reasonably ascertained, the attorney shall give notice of intention to make such an application to the other person or persons, and
  - (c) if all those persons are dead or lack capacity or their whereabouts cannot be reasonably ascertained, the attorney shall, before making such an application, give notice of intention to do so to the persons (if any) who are entitled to receive notice by virtue of *paragraph 3*. 20
- (2) When giving notice pursuant to *subparagraph (1)*, the attorney shall also give notice to the Director of intention to apply to him or her for registration of the enduring power. 25
3. (1) Subject to the limitations contained in *subparagraphs (2) to (4)*, persons of the following classes are entitled to receive notice under *paragraph 2(1)(c)*:
  - (a) a decision-making assistant, co-decision-maker or, decision-making representative or designated healthcare representative for the donor;
  - (b) the donor's spouse or civil partner; 30
  - (c) the donor's children;
  - (d) a person with whom the donor is cohabiting;
  - (e) the donor's parents;
  - (f) the donor's brothers and sisters, whether of the whole or half blood;
  - (g) the widow or widower of a child of the donor; 35
  - (h) the donor's grandchildren;
  - (i) the children of the donor's brothers and sisters of the whole blood; and
  - (j) the children of the donor's brothers and sisters of the half blood.



- (2) A person is not entitled to receive notice under this paragraph if the name or address of that person is not known to and cannot be reasonably ascertained by the attorney.
- (3) Except where *subparagraph (4)* applies, no more than 3 persons are entitled to receive notice by virtue of this paragraph and, in determining the persons who are so entitled, persons falling within *clause (a)* of *subparagraph (1)* are to be preferred to persons falling within *clause (b)* of that subparagraph, persons falling within *clause (b)* are to be preferred to persons falling within *clause (c)* of that subparagraph, and so on. 5
- (4) Notwithstanding the limit of 3 specified in *subparagraph (3)*, where— 10
- (a) there is more than one person falling within any of *clauses (a) to (h)* of *subparagraph (1)*, and
- (b) at least one of those persons would be entitled to receive notice by virtue of this paragraph,
- then, subject to *subparagraph (2)*, all the persons falling within that clause are entitled to receive notice by virtue of this paragraph. 15
4. (1) An attorney shall not be required to give notice under *paragraph 2* to himself or herself or to any other attorney under the power who is joining in making the application, notwithstanding that he or she or, as the case may be, the other attorney is entitled to receive notice by virtue of *paragraph 3*. 20
- (2) In the case of any person who is entitled to receive notice under this Schedule, the attorney, before applying for registration, may make an application to the Director to be dispensed from the requirement to give that person notice; and the Director may grant the application if he or she is satisfied—
- (a) that it would be undesirable or impracticable for the attorney to give such notice, or 25
- (b) that no useful purpose is likely to be served by giving it.

## PART 2

### CONTENTS OF NOTICES

5. A notice to the donor under this Schedule— 30
- (a) shall be in the form prescribed by regulations made under *section 48(3)*,
- (b) shall state that the attorney proposes to make an application to the Director for the registration of the instrument creating the enduring power in question, and
- (c) shall inform the donor that, whilst the instrument remains registered, any revocation of the power by the donor will be ineffective unless and until the revocation is confirmed by the High Court. 35
6. A notice to any other person under this Schedule—
- (a) shall be in the form prescribed by regulations made under *section 48(3)*,
- (b) shall contain the statement mentioned in *paragraph 5(b)*, 40

(c) shall inform the person to whom it is given that that person may object to the proposed registration by notice in writing to the Director before the expiry of the period of 5 weeks beginning with the day on which the notice under this Schedule was so given, and

(d) shall specify, as the grounds on which an objection to registration may be made, the grounds set out in *section 54(3)*. 5

### PART 3

#### DUTY TO GIVE NOTICE TO OTHER ATTORNEYS

7. (1) Subject to *subparagraph (2)*, before making an application for registration, an attorney under a joint and several power shall give notice of intention to do so to any other attorney under the power who is not joining in making the application; and *paragraphs 4(2) and 6* shall apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice under this Schedule. 10

(2) An attorney is not entitled to receive notice by virtue of this paragraph if his or her address is not known to and cannot be reasonably ascertained by the applying attorney. 15

### PART 4

#### SUPPLEMENTARY

8. For the purposes of this Schedule, a notice given by post may be sent by prepaid registered post to the usual or last known place of residence of the person to whom it is to be given and shall be regarded as given on the day on which it was posted. 20

SCHEDULE 2

*Section 60*

JOINT ATTORNEYS

1. In *section 48(6)*, the reference to the execution of the instrument shall be read as a reference to the execution of the instrument by the second or last attorney. 5
2. In *sections 48(8), 52, 54(3) and 57(2) and (5)*, references to the attorney shall be read as including references to any attorney under the power and, in the case of *section 57(5)(c)*, subject to *section 60(3)*.

### SCHEDULE 3

*Section 91*

#### CONVENTION ON THE INTERNATIONAL PROTECTION OF ADULTS

*(Concluded 13 January 2000)*

The States signatory to the present Convention,	5
Considering the need to provide for the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests,	
Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of adults,	10
Recalling the importance of international co-operation for the protection of adults,	
Affirming that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations,	
Have agreed on the following provisions—	
CHAPTER I — SCOPE OF THE CONVENTION	15
Article 1	
(1) This Convention applies to the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.	
(2) Its objects are—	20
a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult;	
b) to determine which law is to be applied by such authorities in exercising their jurisdiction;	
c) to determine the law applicable to representation of the adult;	25
d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;	
e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.	30
Article 2	
(1) For the purposes of this Convention, an adult is a person who has reached the age of 18 years.	
(2) The Convention applies also to measures in respect of an adult who had not reached the age of 18 years at the time the measures were taken.	35
Article 3	
The measures referred to in Article 1 may deal in particular with—	
a) the determination of incapacity and the institution of a protective regime;	
b) the placing of the adult under the protection of a judicial or administrative authority;	40

- c) guardianship, curatorship and analogous institutions;
- d) the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult;
- e) the placement of the adult in an establishment or other place where protection can be provided; 5
- f) the administration, conservation or disposal of the adult's property;
- g) the authorisation of a specific intervention for the protection of the person or property of the adult.

#### Article 4

- (1) The Convention does not apply to— 10
  - a) maintenance obligations;
  - b) the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation;
  - c) property regimes in respect of marriage or any similar relationship;
  - d) trusts or succession; 15
  - e) social security;
  - f) public measures of a general nature in matters of health;
  - g) measures taken in respect of a person as a result of penal offences committed by that person;
  - h) decisions on the right of asylum and on immigration; 20
  - i) measures directed solely to public safety.
- (2) Paragraph 1 does not affect, in respect of the matters referred to therein, the entitlement of a person to act as the representative of the adult.

### CHAPTER II — JURISDICTION

#### Article 5 25

- (1) The judicial or administrative authorities of the Contracting State of the habitual residence of the adult have jurisdiction to take measures directed to the protection of the adult's person or property.
- (2) In case of a change of the adult's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction. 30

#### Article 6

- (1) For adults who are refugees and those who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these adults are present as a result of their displacement have the jurisdiction provided for in Article 5, paragraph 1. 35
- (2) The provisions of the preceding paragraph also apply to adults whose habitual residence cannot be established.

#### Article 7

- (1) Except for adults who are refugees or who, due to disturbances occurring in their State of nationality, are internationally displaced, the authorities of a Contracting State of which the adult is a national have jurisdiction to take measures for the protection of the person or property of the adult if they consider that they are in a better position to assess the interests of the adult, and after advising the authorities having jurisdiction under Article 5 or Article 6, paragraph 2. 5
- (2) This jurisdiction shall not be exercised if the authorities having jurisdiction under Article 5, Article 6, paragraph 2, or Article 8 have informed the authorities of the State of which the adult is a national that they have taken the measures required by the situation or have decided that no measures should be taken or that proceedings are pending before them. 10
- (3) The measures taken under paragraph 1 shall lapse as soon as the authorities having jurisdiction under Article 5, Article 6, paragraph 2, or Article 8 have taken measures required by the situation or have decided that no measures are to be taken. These authorities shall inform accordingly the authorities which have taken measures in accordance with paragraph 1. 15

#### Article 8

- (1) The authorities of a Contracting State having jurisdiction under Article 5 or Article 6, if they consider that such is in the interests of the adult, may, on their own motion or on an application by the authority of another Contracting State, request the authorities of one of the States mentioned in paragraph 2 to take measures for the protection of the person or property of the adult. The request may relate to all or some aspects of such protection. 20
- (2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are— 25
  - a)* a State of which the adult is a national;
  - b)* the State of the preceding habitual residence of the adult;
  - c)* a State in which property of the adult is located;
  - d)* the State whose authorities have been chosen in writing by the adult to take measures directed to his or her protection; 30
  - e)* the State of the habitual residence of a person close to the adult prepared to undertake his or her protection;
  - f)* the State in whose territory the adult is present, with regard to the protection of the person of the adult.
- (3) In case the authority designated pursuant to the preceding paragraphs does not accept its jurisdiction, the authorities of the Contracting State having jurisdiction under Article 5 or Article 6 retain jurisdiction. 35

#### Article 9

The authorities of a Contracting State where property of the adult is situated have jurisdiction to take measures of protection concerning that property, to the extent that such measures are compatible with those taken by the authorities having jurisdiction under Articles 5 to 8. 40

#### Article 10

- (1) In all cases of urgency, the authorities of any Contracting State in whose territory the adult or property belonging to the adult is present have jurisdiction to take any necessary measures of protection.
- (2) The measures taken under the preceding paragraph with regard to an adult habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 9 have taken the measures required by the situation. 5
- (3) The measures taken under paragraph 1 with regard to an adult who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question. 10
- (4) The authorities which have taken measures under paragraph 1 shall, if possible, inform the authorities of the Contracting State of the habitual residence of the adult of the measures taken. 15

#### Article 11

- (1) By way of exception, the authorities of a Contracting State in whose territory the adult is present have jurisdiction to take measures of a temporary character for the protection of the person of the adult which have a territorial effect limited to the State in question, in so far as such measures are compatible with those already taken by the authorities which have jurisdiction under Articles 5 to 8, and after advising the authorities having jurisdiction under Article 5. 20
- (2) The measures taken under the preceding paragraph with regard to an adult habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 8 have taken a decision in respect of the measures of protection which may be required by the situation. 25

#### Article 12

Subject to Article 7, paragraph 3, the measures taken in application of Articles 5 to 9 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures. 30

### CHAPTER III — APPLICABLE LAW

#### Article 13

- (1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law. 35
- (2) However, in so far as the protection of the person or the property of the adult requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

#### Article 14

Where a measure taken in one Contracting State is implemented in another Contracting State, the conditions of its implementation are governed by the law of that other State. 40

#### Article 15

- (1) The existence, extent, modification and extinction of powers of representation granted by an adult, either under an agreement or by a unilateral act, to be exercised when such adult is not in a position to protect his or her interests, are governed by the law of the State of the adult's habitual residence at the time of the agreement or act, unless one of the laws mentioned in paragraph 2 has been designated expressly in writing. 5
- (2) The States whose laws may be designated are—
- a) a State of which the adult is a national;
  - b) the State of a former habitual residence of the adult; 10
  - c) a State in which property of the adult is located, with respect to that property.
- (3) The manner of exercise of such powers of representation is governed by the law of the State in which they are exercised.

#### Article 16

Where powers of representation referred to in Article 15 are not exercised in a manner sufficient to guarantee the protection of the person or property of the adult, they may be withdrawn or modified by measures taken by an authority having jurisdiction under the Convention. Where such powers of representation are withdrawn or modified, the law referred to in Article 15 should be taken into consideration to the extent possible. 15 20

#### Article 17

- (1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the adult's representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the adult's representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that such capacity was governed by the latter law. 25
- (2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State. 30

#### Article 18

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

#### Article 19

In this Chapter the term 'law' means the law in force in a State other than its choice of law rules. 35

#### Article 20

This Chapter does not prevent the application of those provisions of the law of the State in which the adult is to be protected where the application of such provisions is mandatory whatever law would otherwise be applicable. 40

#### Article 21



The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy.

#### CHAPTER IV — RECOGNITION AND ENFORCEMENT

##### Article 22

- (1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States. 5
- (2) Recognition may however be refused—
- a)* if the measure was taken by an authority whose jurisdiction was not based on, or was not in accordance with, one of the grounds provided for by the provisions of Chapter II; 10
  - b)* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the adult having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
  - c)* if such recognition is manifestly contrary to public policy of the requested State, or conflicts with a provision of the law of that State which is mandatory whatever law would otherwise be applicable; 15
  - d)* if the measure is incompatible with a later measure taken in a non-Contracting State which would have had jurisdiction under Articles 5 to 9, where this later measure fulfils the requirements for recognition in the requested State; 20
  - e)* if the procedure provided in Article 33 has not been complied with.

##### Article 23

Without prejudice to Article 22, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State. 25

##### Article 24

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction. 30

##### Article 25

- (1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State. 35
- (2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.
- (3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 22, paragraph 2. 40

##### Article 26

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

#### Article 27

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law. 5

### CHAPTER V — CO-OPERATION

#### Article 28 10

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. 15  
Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

#### Article 29

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention. 20
- (2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of adults. 25

#### Article 30

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

- a)* facilitate communications, by every means, between the competent authorities in situations to which the Convention applies; 30
- b)* provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of an adult where it appears that the adult may be present and in need of protection within the territory of the requested State.

#### Article 31 35

The competent authorities of a Contracting State may encourage, either directly or through other bodies, the use of mediation, conciliation or similar means to achieve agreed solutions for the protection of the person or property of the adult in situations to which the Convention applies.

#### Article 32 40

- (1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the adult so requires, may request any authority

of another Contracting State which has information relevant to the protection of the adult to communicate such information.

- (2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.
- (3) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention. 5

#### Article 33

- (1) If an authority having jurisdiction under Articles 5 to 8 contemplates the placement of the adult in an establishment or other place where protection can be provided, and if such placement is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the adult together with the reasons for the proposed placement. 10
- (2) The decision on the placement may not be made in the requesting State if the Central Authority or other competent authority of the requested State indicates its opposition within a reasonable time. 15

#### Article 34

In any case where the adult is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the adult have been taken or are under consideration, if they are informed that the adult's residence has changed to, or that the adult is present in, another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration. 20

#### Article 35

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the adult's person or property in danger, or constitute a serious threat to the liberty or life of a member of the adult's family. 25

#### Article 36

- (1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter. 30
- (2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges. 35

#### Article 37

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention. 40

### CHAPTER VI — GENERAL PROVISIONS

#### Article 38

- (1) The authorities of the Contracting State where a measure of protection has been taken or a power of representation confirmed may deliver to the person entrusted with protection of the adult's person or property, on request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred. 5
- (2) The capacity and powers indicated in the certificate are presumed to be vested in that person as of the date of the certificate, in the absence of proof to the contrary.
- (3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 39 10

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 40

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State. 15

Article 41

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 42

Each Contracting State may designate the authorities to which requests under Article 8 and Article 33 are to be addressed. 20

Article 43

- (1) The designations referred to in Article 28 and Article 42 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law not later than the date of the deposit of the instrument of ratification, acceptance or approval of the Convention or of accession thereto. Any modifications thereof shall also be communicated to the Permanent Bureau. 25
- (2) The declaration referred to in Article 32, paragraph 2, shall be made to the depositary of the Convention.

Article 44 30

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the person or property of the adult shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 45 35

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

- a)* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- b)* any reference to the presence of the adult in that State shall be construed as referring to presence in a territorial unit; 40

- c) any reference to the location of property of the adult in that State shall be construed as referring to location of property of the adult in a territorial unit;
- d) any reference to the State of which the adult is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the adult has the closest connection; 5
- e) any reference to the State whose authorities have been chosen by the adult shall be construed
  - as referring to the territorial unit if the adult has chosen the authorities of this territorial unit; 10
  - as referring to the territorial unit with which the adult has the closest connection if the adult has chosen the authorities of the State without specifying a particular territorial unit within the State;
- f) any reference to the law of a State with which the situation has a substantial connection shall be construed as referring to the law of a territorial unit with which the situation has a substantial connection; 15
- g) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure in force in such territorial unit or authority of the territorial unit in which such measure was taken; 20
- h) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure in force in such territorial unit or authority of the territorial unit in which recognition or enforcement is sought;
- i) any reference to the State where a measure of protection is to be implemented shall be construed as referring to the territorial unit where the measure is to be implemented; 25
- j) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit. 30

#### Article 46

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply— 35

- a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 45 applies.

#### Article 47

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to 40

different categories of persons in respect of matters covered by this Convention, the following rules apply—

- a) if there are rules in force in such a State identifying which among such laws applies, that law applies;
- b) in the absence of such rules, the law of the system or the set of rules of law with which the adult has the closest connection applies. 5

#### Article 48

In relations between the Contracting States this Convention replaces the *Convention concernant l'interdiction et les mesures de protection analogues*, signed at The Hague 17 July 1905. 10

#### Article 49

- (1) The Convention does not affect any other international instrument to which Contracting States are Parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States Parties to such instrument. 15
- (2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of adults habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.
- (3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention. 20
- (4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

#### Article 50 25

- (1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.
- (2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State. 30
- (3) The Convention shall apply from the time of its entry into force in a Contracting State to powers of representation previously granted under conditions corresponding to those set out in Article 15.

#### Article 51

- (1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English. 35
- (2) However, a Contracting State may, by making a reservation in accordance with Article 56, object to the use of either French or English, but not both. 40

#### Article 52

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

#### CHAPTER VII — FINAL CLAUSES

##### Article 53 5

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law on 2 October 1999.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention. 10

##### Article 54

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 57, paragraph 1.
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b*) of Article 59. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary. 15 20

##### Article 55

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time. 25
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State. 30

##### Article 56

- (1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 55, make the reservation provided for in Article 51, paragraph 2. No other reservation shall be permitted. 35
- (2) Any State may at any time withdraw the reservation it has made. The withdrawal shall be notified to the depositary.
- (3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

##### Article 57 40

- (1) The Convention shall enter into force on the first day of the month following the

expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 53.

- (2) Thereafter the Convention shall enter into force—
- a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession; 5
  - b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 54, paragraph 3;
  - c) for a territorial unit to which the Convention has been extended in conformity with Article 55, on the first day of the month following the expiration of three months after the notification referred to in that Article. 10

#### Article 58

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies. 15
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period. 20

#### Article 59

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 54 of the following— 25

- a) the signatures, ratifications, acceptances and approvals referred to in Article 53;
- b) the accessions and objections raised to accessions referred to in Article 54;
- c) the date on which the Convention enters into force in accordance with Article 57; 30
- d) the declarations referred to in Article 32, paragraph 2, and Article 55;
- e) the agreements referred to in Article 37;
- f) the reservation referred to in Article 51, paragraph 2, and the withdrawal referred to in Article 56, paragraph 2;
- g) the denunciations referred to in Article 58. 35

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on 13 January, 2000, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy 40



shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law.

## BILLE

(mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas)

dá n-áirítear

Acht do dhéanamh socrú maidir le hathchóiriú an dlí a bhaineann le daoine a dteastaíonn, nó a bhféadfadh go dteastódh, cuidiú uathu i bhfeidhmiú a gcumais cinnteoireachta, cibé acu láithreach nó sa todhchaí, ag féachaint, *inter alia*, do na cosaintí a chuirtear ar fáil leis an gCoinbhinsiún chun Cearta an Duine agus Saoirsí Bunúsacha a Chosaint a rinneadh sa Róimh an 4ú lá de Shamhain, 1950 mar atá feidhm aige sa Stát; do dhéanamh socrú maidir le daoine den sórt sin do cheapadh daoine eile chun cuidiú leo le linn cinnteoireachta nó chun cinntí a dhéanamh i gcomhpháirt le daoine den sórt sin; do dhéanamh socrú maidir le hiarratais a dhéanamh chun na Cúirte Cuarda nó chun na hArd-Chúirte i leith daoine den sórt sin, lena n-áirítear iarratais lena n-iarrrtar go gceapfaidh an Chúirt Chuarda ionadaithe cinnteoireachta le haghaidh daoine den sórt sin; dá chumasú, in imthosca sonraithe, do dhaoine eile nach comhchinnteoirí, ionadaithe cinnteoireachta ná aturnaetha thar ceann daoine den sórt sin cinnteoireacht maidir le nithe pearsanta leasa a dhéanamh i leith daoine den sórt sin; do dhéanamh socrú maidir le daoine do dhéanamh réamhthreoracha cúraim sláinte i ndáil lena dtoil agus lena roghanna maidir le cinntí cóireála liachta i gcás go mbeadh duine den sórt sin ar easpa cumais dá éis sin; do dhéanamh socrú maidir le hionadaithe cúraim sláinte ainmnithe a cheapadh, i réamhthreoracha cúraim sláinte, ag a mbeidh an chumhacht, *inter alia*, chun a chinntiú go gcomhlíontar na réamhthreoracha cúraim sláinte lena mbaineann; do dhéanamh socrú maidir le Stiúrthóir na Seirbhíse Tacaíochta Cinntí a cheapadh agus maidir lena fheidhmeanna nó lena feidhmeanna i leith daoine a dteastaíonn cuidiú uathu i bhfeidhmiú a gcumais cinnteoireachta nó a bhféadfadh go dteastódh cuidiú den sórt sin uathu go luath; do dhéanamh socrú maidir le leasú a dhéanamh ar an dlí a bhaineann le cumhachtaí marthanacha aturnae; do dhéanamh socrú maidir leis an Stát do dhaingniú an Choinbhinsiúin maidir le Cosaint Idirnáisiúnta Aosach; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ordaíodh ag an Roghchoiste a chlóbhualadh,

17 Meitheamh, 2015

## BILL

(as amended in the Select Committee on Justice, Defence and Equality)

entitled

An Act to provide for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or 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; to provide for the appointment by such persons of other persons to assist them in decision-making or to make decisions jointly with such persons; to provide for the making of applications to the Circuit Court or High Court in respect of such persons, including seeking the appointment by the Circuit Court of decision-making representatives for such persons; to enable, in specified circumstances, decision-making on personal welfare matters to be done in respect of such persons by other persons who are not co-decision-makers, decision-making representatives or attorneys for such persons; 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; to provide for the appointment and functions of the Director of the Decision Support Service in respect of persons who require or may shortly require assistance in exercising their decision-making capacity; to provide for the amendment of the law relating to enduring powers of attorney; to provide for the ratification by the State of the Convention on the International Protection of Adults; and to provide for related matters.

Ordered by the Select Committee to be printed,

17th June, 2015

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,

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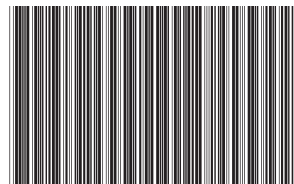
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