



**SEANAD ÉIREANN**

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

**ASSISTED DECISION-MAKING (CAPACITY) BILL 2013**

**LEASUITHE COISTE  
COMMITTEE AMENDMENTS**

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# SEANAD ÉIREANN

## AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS), 2013 —AN COISTE

### ASSISTED DECISION-MAKING (CAPACITY) BILL 2013 —COMMITTEE STAGE

#### *Leasuithe Amendments*

*\*Government amendments are denoted by an asterisk*

#### SECTION 2

\*1. In page 10, to delete lines 18 to 20.

\*2. In page 10, to delete lines 23 and 24 and substitute the following:

“ “attorney” has the meaning assigned to it by *section 51(1)#*;

“attorney under the Act of 1996” means a person appointed under an enduring power under the Act of 1996;”.

[# *This is a reference to the section proposed to be inserted by amendment 171.*]

3. In page 10, between lines 24 and 25, to insert the following:

“ “best interpretation” means the interpretation of the relevant person’s past and present communication (using all forms of communication, including, where relevant, total communication, augmented or alternative communication, and non-verbal communication, such as gestures and actions) that seems most reasonably justified in the circumstances;”.

—*Senators Jillian van Turnhout, Katherine Zappone.*

\*4. In page 10, to delete lines 28 and 29.

5. In page 10, between lines 29 and 30, to insert the following:

“ “chemical restraint” is the intentional use of medication to control or modify a person’s behaviour or to ensure a patient is compliant or not capable of resistance, when no medically identified condition is being treated, where the treatment is not necessary for the condition, or the intended effect of the drug is to sedate the person for convenience or for disciplinary purposes;”.

—*Senators Denis O’Donovan, David Norris, Fidelma Healy Eames, Jillian van Turnhout, Katherine Zappone.*

\*6. In page 11, between lines 19 and 20, to insert the following:

“ “designated centre” has the meaning it has in section 2 of the Health Act 2007;”.

\*7. In page 11, to delete lines 22 to 25 and substitute the following:

“ “enduring power of attorney” has the meaning assigned to it by *section 51#*;

[SECTION 2]

“enduring power under the Act of 1996” means an enduring power referred to in section 4 of the Act of 1996 which was created in accordance with the provisions of that Act;”.

[# This is a reference to the section proposed to be inserted by amendment 171.]

\*8. In page 11, line 33, to delete “*paragraph (a), (b), (c), (d), (e) or (f)*” and substitute “*paragraph (a), (b), (c), (d), or (e)*”.

\*9. In page 11, to delete lines 35 to 38 and substitute the following:

“ “intervention”, in relation to a relevant person, means an action taken under this Act, orders made under this Act or directions given under this Act in respect of the relevant person by—”.

\*10. In page 12, to delete lines 17 to 21 and substitute the following:

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

\*11. In page 12, line 30, to delete “nursing home or residential facility” and substitute “designated centre”.

\*12. In page 13, to delete lines 12 and 13 and substitute the following:

“(g) the discharge of the relevant person’s debts, tax and duty liabilities and obligations or other obligations;”.

\*13. In page 14, to delete lines 12 and 13.

\*14. In page 14, between lines 13 and 14, to insert the following:

“ “relevant information”, in relation to a relevant person, means personal records relating to the relevant person or other information that the relevant person is entitled to and that is or are required in relation to a relevant decision;”.

\*15. In page 14, lines 17 and 18, to delete “in accordance with the provisions of this Act”.

\*16. In page 14, to delete lines 35 to 39, and in page 15, to delete lines 1 to 8 and substitute the following:

- “(a) one or both residing in or entering a designated centre or mental health facility, or
- (b) one or both residing in or entering an institution (of whatever kind) for purposes relating to—
  - (i) a physical or mental condition of the person concerned, or
  - (ii) the imprisonment, or the taking into lawful custody, of the person concerned.”.

[SECTION 3]

SECTION 3

17. In page 15, lines 10 to 36, to delete all words from and including “(1) Subject to” in line 10 down to and including line 36 and substitute the following:

“(1) Legal capacity may be exercised:

- (a) by the relevant person with decision-making supports as needed (including a decision-making assistant) and/or reasonable accommodation;
  - (b) by the relevant person and their co-decision maker, acting jointly; or
  - (c) in a situation of last resort, where all efforts to ascertain the relevant person’s will and preferences have been made and the relevant person’s will and preferences remain not known, legal capacity may be exercised by the person(s) selected to represent the relevant person in exercising the relevant person’s legal capacity (i.e. decision-making representative, attorney, or patient-designated healthcare representative in advance healthcare directive).
- (2) Where legal capacity is exercised with the support of a decision-making assistant, co decision-maker, or is being made by a person selected to represent the relevant person (decision-making representative, attorney, or patient-designated healthcare representative), and where the relevant person’s will and preferences are not known, the decision shall be guided by the individual’s best interpretation of the relevant person’s will or preferences and how these are to be applied to a specific decision(s).
- (3) In applying *subsection (2)*, decision-making assistants, co decision-makers and persons selected to represent the relevant person must be able to provide a reasonable account of how this interpretation was arrived at.”.

—*Senators Jillian van Turnhout, Katherine Zappone.*

- \*18. In page 15, lines 10 to 12, to delete all words from and including “(including” in line 10 down to and including “directive)” in line 12.

SECTION 4

- \*19. In page 16, line 4, to delete “*Parts 6, 7,*” and substitute “*Parts 6,*”.

- \*20. In page 16, lines 4 and 5, to delete “and *Schedules 1 and 2*”.

21. In page 16, to delete lines 21 to 27.

—*Senator Denis O'Donovan.*

- \*22. In page 16, line 23, to delete “relevant”.

23. In page 16, lines 23 and 24, to delete “be determined by the High Court,” and substitute the following:

“be determined by the High Court or their registration as an organ donor with the Irish Kidney Association or recognised donor registration body when the donor had the capacity,”.

—*Senator Feargal Quinn.*

[SECTION 4]

\*24. In page 16, line 26, to delete “relevant”.

SECTION 7

\*25. In page 17, between lines 2 and 3, to insert the following:

**“Repeals**

7. (1) The Marriage of Lunatics Act 1811 is repealed.

(2) Subject to the provisions of *Part 6*, the Lunacy Regulation (Ireland) Act 1871 is repealed.”.

[*Acceptance of this amendment involves the deletion of section 7 of the Bill.*]

SECTION 8

26. In page 17, to delete line 30 and substitute the following:

“and to reside in the place of his or her choice in so far as that is practicable,”.

—*Senator Marie-Louise O'Donnell.*

27. In page 17, between lines 34 and 35, to insert the following:

“(7) In respect of financial affairs managed by the court, particular consideration of management and oversight in accord with the principles herein are stated in *section 121#*.”.

—*Senator David Norris.*

[*# This is a reference to the section proposed to be inserted by amendment 244.*]

\*28. In page 18, line 27, to delete “relevant”.

\*29. In page 18, between lines 31 and 32, to insert the following:

“(10) The intervener, in making an intervention in respect of a relevant person—

(a) shall not attempt to obtain relevant information that is not reasonably required for making a relevant decision,

(b) shall not use relevant information for a purpose other than in relation to a relevant decision, and

(c) shall take reasonable steps to ensure that relevant information—

(i) is kept secure from unauthorised access, use or disclosure, and

(ii) is safely disposed of when he or she believes it is no longer required.”.

SECTION 10

\*30. In page 19, line 14, to delete “person” where it firstly occurs and substitute “person who has also attained that age”.

\*31. In page 20, to delete lines 11 to 18 and substitute the following:

“(5) An appointer may, in the decision-making assistance agreement, appoint more than one person as a decision-making assistant and may specify that the decision-making assistants shall act—

[SECTION 10]

- (a) jointly,
- (b) jointly and severally, or
- (c) jointly in respect of some matters and jointly and severally in respect of other matters.”.

\*32. In page 20, to delete lines 19 to 42, and in page 21, to delete lines 1 to 32.

SECTION 11

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

**“Persons who are not eligible to be decision-making assistants**

11. (1) A person shall not be eligible for appointment as a decision-making assistant if he or she—

- (a) has been convicted of an offence in relation to the person or property of the person who intends to appoint him or her,
- (b) has been the subject of a safety or barring order in relation to the person who intends to appoint him or her,
- (c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,
- (d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
- (e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,
- (f) is a person who is—
  - (i) the owner or registered provider of a designated centre or mental health facility in which the person who intends to appoint him or her as decision-making assistant resides, or
  - (ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be,

unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the person who intends to appoint him or her as decision-making assistant,

- (g) has been convicted of an offence under *section 31, 72#, 73 or 128*, or
- (h) previously acted as decision-making assistant for the person who intends to appoint a decision-making assistant and there was a finding by the court under this Part that he or she should not continue as decision-making assistant for that person.

(2) *Subsection (1)(c), (d) and (e)* shall not apply where it is proposed to give the person

[SECTION 11]

functions relating to personal welfare only.”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*34. In page 21, between lines 32 and 33, to insert the following:

**“Nullity**

**12.** Where an event specified in any of *paragraphs (a) to (c)* occurs, a decision-making assistance agreement shall, with effect from the date on which the event occurs, be null and void to the extent that the decision-making assistance agreement relates to a relevant decision where there is, in respect of the relevant decision—

- (a) a decision-making order, a decision-making representation order or a co-decision-making agreement in relation to the appointer,
- (b) an advance healthcare directive made by the appointer and the appointer lacks capacity, or
- (c) an enduring power of attorney or enduring power under the Act of 1996 made by the appointer that has entered into force.”.

\*35. In page 21, between lines 32 and 33, to insert the following:

**“Disqualification as decision-making assistant**

**13.** (1) A decision-making assistant shall, with effect from the date on which an event specified in *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, and unless the decision-making assistance agreement provides otherwise, be disqualified from being a decision-making assistant for the appointer where the decision-making assistant is the spouse of the appointer and subsequently—

- (a) the marriage is annulled or dissolved either—
  - (i) under the law of the State, or
  - (ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,
- (b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,
- (c) a written agreement to separate is entered into between the spouses, or
- (d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.

(2) A decision-making assistant shall, with effect from the date on which an event specified in *paragraph (a) or (b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, and unless the decision-making assistance agreement provides otherwise, be disqualified from being



[SECTION 11]

a decision-making assistant for the appointer where the decision-making assistant is the civil partner of the appointer and subsequently—

- (a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,
  - (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.
- (3) Subject to *section 2(2)*, a decision-making assistant shall, at the expiry of the period referred to in this subsection, and unless the decision-making assistance agreement provides otherwise, be disqualified from being a decision-making assistant for the appointer where the decision-making assistant is the cohabitant of the appointer and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (4) Subject to *subsection (6)*, where, subsequent to the appointment of a decision-making assistant—
- (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,
  - (c) the decision-making assistant 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 assistant becomes a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
  - (e) the decision-making assistant 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 or any other provisions of that Act,
  - (f) the decision-making assistant becomes—
    - (i) the owner or registered provider of a designated centre or mental health facility in which the appointer resides, or
    - (ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be,unless the decision-making assistant is a spouse, civil partner, cohabitant, parent,

[SECTION 11]

child or sibling of the appointer,

- (g) the decision-making assistant is convicted of an offence under *section 31, 72#, 73 or 128*, or
- (h) the decision-making assistant—
  - (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 or enduring power under the Act of 1996 registered in respect of himself or herself, or
  - (iv) becomes the subject of a declaration under *section 34(1)*,

the decision-making assistant shall be disqualified from being a decision-making assistant for the appointer with effect from the date on which the decision-making assistant falls within any of *paragraphs (a) to (h)*.

- (5) *Subsection (4)(c), (d) and (e)* shall not apply insofar as the decision-making assistant's functions under the decision-making assistance agreement relate to personal welfare.”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

- \*36. In page 21, line 34, to delete “The functions of a decision-making assistant shall be—” and substitute the following:

“In exercising his or her functions as specified in the decision-making assistance agreement, the decision-making assistant shall—”.

- \*37. In page 21, to delete lines 35 to 37 and substitute the following:

“(a) assist the appointer to obtain the appointer’s relevant information,”.

- \*38. In page 21, line 38, to delete “to advise” and substitute “advise”.

- \*39. In page 22, line 1, to delete “to ascertain” and substitute “ascertain”.

- \*40. In page 22, line 2, to delete “to assist” and substitute “assist”.

- \*41. In page 22, line 4, to delete “to assist” and substitute “assist”.

- \*42. In page 22, line 5, to delete “to endeavour” and substitute “endeavour”.

- \*43. In page 22, to delete lines 6 to 14.

- \*44. In page 22, between lines 15 and 16, to insert the following:

“(5) A relevant decision taken by the appointer with the assistance of the decision-making assistant is deemed to be taken by the appointer for all purposes.”.

[SECTION 12]

SECTION 12

\*45. In page 22, between lines 15 and 16, to insert the following:

**“Complaints in relation to decision-making assistants**

**12.** (1) A person may make a complaint in writing to the Director concerning one or both of the following matters:

- (a) that a decision-making assistant has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the decision-making assistance agreement;
- (b) that a decision-making assistant is unable to perform his or her functions under the decision-making assistance agreement;
- (c) that fraud, coercion or undue pressure was used to induce the appointer to enter into the co-decision-making agreement.

(2) Following the receipt of a complaint under *subsection (1)*, the Director shall carry out an investigation of the matter which is the subject of the complaint and—

- (a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter specified in the complaint, or
- (b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for same.

(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal to the court a decision of the Director that the complaint is not well founded.

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

(5) The court may—

- (a) pursuant to an application to it under *subsection (2)(a)* or *(4)*, or
- (b) pursuant to an appeal under *subsection (3)*,

make a determination in relation to a matter specified in *subsection (1)* and may, if it considers it appropriate, determine that a decision-making assistant shall no longer act as such in relation to the appointer concerned.”.

[*Acceptance of this amendment involves the deletion of section 12 of the Bill.*]

SECTION 14

\*46. In page 23, line 23, after “section” to insert “and *section 15*”.

\*47. In page 23, to delete line 33 and substitute the following:

“(b) is able to perform his or her functions under the co-decision-making agreement.”.

[SECTION 14]

- \*48. In page 24, line 10, to delete “*subsection (7)*” and substitute “*subsection (7)(a)*”.
- \*49. In page 24, line 13, to delete “*subsection (7)*” and substitute “*subsection (7)(a)*”.
- \*50. In page 24, line 17, to delete “*subsection (7)*” and substitute “*subsection (7)(b)*”.
- \*51. In page 24, line 26, to delete “(or the person signing on his or her behalf)” and substitute “, or the person signing on his or her behalf,”.
- \*52. In page 25, line 2, to delete “step-child,”.
- \*53. In page 25, line 7, to delete “of the relevant person”.

SECTION 15

- \*54. In page 25, line 16, to delete “or” where it firstly occurs and substitute “or is”.
- \*55. In page 25, to delete lines 25 to 31 and substitute the following:
  - “(f) is a person who is—
    - (i) the owner or registered provider of a designated centre or mental health facility in which the person who intends to appoint him or her as co-decision-maker resides, or
    - (ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be,unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the person who intends to appoint him or her as co-decision-maker,”.
- \*56. In page 25, line 32, to delete “*section 128*” and substitute “*section 31, 72#, 73 or 128*”.  
[# *This is a reference to the section proposed to be inserted by amendment 192.*]
- \*57. In page 25, line 37, to delete “contains only” and substitute “relates only to”.

SECTION 16

- \*58. In page 26, lines 2 to 5, to delete all words from and including “(1) A” in line 2 down to and including line 5.
- \*59. In page 26, line 6, after “functions” to insert “as specified in the co-decision-making agreement”.
- \*60. In page 26, line 11, to delete “them” and substitute “the appointer’s will and preferences”.
- \*61. In page 26, to delete lines 12 to 14 and substitute the following:
  - “(c) assist the appointer to obtain the appointer’s relevant information,”.
- \*62. In page 26, to delete line 15 and substitute the following:
  - “(d) discuss with the appointer the known alternatives and likely outcomes of a relevant decision,”.

[SECTION 16]

- \*63. In page 26, to delete lines 19 to 26.
- \*64. In page 26, to delete lines 34 to 39, and in page 27, to delete lines 1 to 3 and substitute the following:

“(7) Where—

(a) after an application has been made under *section 18* to register a co-decision-making agreement but before registration of the agreement, or

(b) after registration of a co-decision-making agreement,

the co-decision-maker or any person specified in *section 18(3)* has reason to believe that the appointer’s capacity has—

(i) deteriorated to the extent that he or she lacks capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker, or

(ii) improved to the extent that he or she has capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement,

he or she shall promptly inform the Director of that belief.”.

- \*65. In page 27, to delete lines 4 to 8 and substitute the following:

“(8) In this Part, a reference to a relevant decision being made jointly means that a co-decision-maker—

(a) shall acquiesce with the wishes of the appointer in respect of the relevant decision, and

(b) shall not refuse to sign a document referred to in *section 20(3)*,

unless it is reasonably foreseeable that an action pursuant to *paragraph (a)* or *(b)* will result in harm to the appointer or to another person.”.

- \*66. In page 27, line 10, to delete “in relation to those specified in respect of him or her” and substitute “the relevant decisions specified”.

SECTION 17

- \*67. In page 27, line 16, after “in” to insert “any of”.
- \*68. In page 27, line 18, to delete “it” and substitute “the co-decision-making agreement”.
- \*69. In page 27, line 24, after “attorney” to insert “or enduring power under the Act of 1996”.
- \*70. In page 27, line 26, after “in” where it firstly occurs to insert “any of”.
- \*71. In page 28, to delete lines 7 and 8 and substitute the following:

“(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or

[SECTION 17]

dissolution not or no longer a subsisting valid civil partnership under the law of the State.”.

\*72. In page 28, lines 18 and 19, to delete “the appointment of a co-decision-maker” and substitute “the registration of a co-decision-making agreement”.

\*73. In page 28, to delete lines 27 and 28 and substitute the following:

“(d) the co-decision-maker becomes a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act.”.

\*74. In page 28, line 31, after “Chapter” to insert “or any other provisions of that Act”.

\*75. In page 28, to delete lines 32 to 37 and substitute the following:

“(f) the co-decision-maker becomes—

(i) the owner or registered provider of a designated centre or mental health facility in which the appointer resides, or

(ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be,

unless the co-decision-maker is the spouse, civil partner, cohabitant, parent, child or sibling of the appointer.”.

\*76. In page 28, line 38, to delete “*section 128*” and substitute “*section 31, 72#, 73 or 128*”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*77. In page 29, line 2, after “attorney” to insert “or enduring power under the Act of 1996”.

\*78. In page 29, line 4, to delete “an order under *Part 5*” and substitute “a declaration under *section 34(1)*”.

\*79. In page 29, line 6, to delete “shall” and substitute “should”.

\*80. In page 29, line 11, to delete “contains” and substitute “relates to”.

\*81. In page 29, to delete lines 12 to 23 and substitute the following:

“(8) Where a co-decision-making agreement which stands registered becomes null and void in whole or to the extent that it relates to one or more relevant decisions, the co-decision-maker or, in the case of nullity pursuant to *subsection (6)(h)(iii)* or *(iv)*, his or her attorney, decision-making-representative or the court, as the case may be, shall notify the Director of such nullity and the particulars relating thereto.

(9) The nullity of a co-decision-making agreement or of a relevant decision contained therein shall not operate to prevent a person who relied on the agreement or the relevant decision from recovering damages in respect of any loss incurred by him or her as a result of that reliance.”.

[SECTION 18]

SECTION 18

- \*82. In page 30, lines 20 and 21, after “co-decision-maker” to insert “under *section 16*”.
- \*83. In page 30, line 35, to delete “his or her” and substitute “their”.
- \*84. In page 31, line 7, to delete “details of the notice given” and substitute “a copy of any notice given”.

SECTION 19

- \*85. In page 31, line 12, to delete “whether—” and substitute “whether the following criteria are met:”.
- \*86. In page 31, to delete lines 15 and 16 and substitute the following:
  - “(c) the co-decision-maker is eligible for appointment within the meaning of *section 15*.”.

- \*87. In page 31, line 25, to delete “satisfied” and substitute “of the view”.
- \*88. In page 31, line 34, to delete “satisfied” and substitute “of the view”.

SECTION 21

- \*89. In page 32, line 37, to delete “in respect of” and substitute “to make”.
- \*90. In page 33, line 1, to delete “in respect of” and substitute “to make”.
- \*91. In page 33, line 7, to delete “or falls under *paragraphs (a) to (h) of section 15(1)*” and substitute “or is not eligible for appointment by virtue of *section 15*”.
- \*92. In page 33, between lines 7 and 8, to insert the following:

“(g) that a false statement is included in the application to register the co-decision-making agreement;”.

- \*93. In page 33, line 10, after “*subsection (2)*,” to insert “which has been made in the time period specified in *subsection (1)*.”.

SECTION 23

- \*94. In page 34, line 28, to delete “whether—” and substitute “whether the following criteria are met:”.
- \*95. In page 34, line 30, to delete “falls” and substitute “does not fall”.
- \*96. In page 34, line 31, to delete “effectively”.
- \*97. In page 34, line 32, to delete “effectively”.
- \*98. In page 34, line 34, to delete “and”.
- \*99. In page 35, line 9, to delete “the matters in” and substitute “the criteria set out in”.
- \*100. In page 35, lines 9 and 10, to delete “does not, or no longer continues to, apply,” and substitute “does not apply,”.
- \*101. In page 35, line 16, to delete “the matters in” and substitute “the criteria set out in”.

[SECTION 23]

- \*102. In page 35, lines 16 and 17, to delete “does not, or no longer continues to, apply,” and substitute “does not apply,”.
- \*103. In page 35, lines 20 and 21, to delete “does not, or no longer continues to, apply,” and substitute “does not apply,”.

SECTION 24

- \*104. In page 35, line 38, to delete “notice” and substitute “notification”.
- \*105. In page 35, to delete lines 40 to 42 and substitute the following:
  - “(4) Where a co-decision-maker fails to comply with a notification under *subsection (3)*, the Director shall—
    - (a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance with this section and regulations made under *section 28*, accept the report as if it were in compliance with this section and the relevant regulations, or
    - (b) 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.”.
- \*106. In page 35, line 43, to delete “*subsection (4)*” and substitute “*subsection (4)(b)*”.

SECTION 25

- \*107. In page 36, line 16, after “and” where it firstly occurs to insert “, subject to *section 14(6)*,”.

SECTION 27

- \*108. In page 38, to delete lines 1 to 3 and substitute the following:
  - “(a) that the co-decision-maker has acted, is acting, or is proposing to act outside the scope of his or her functions under the co-decision-making agreement;”.
- \*109. In page 38, line 7, to delete “the” where it firstly occurs and substitute “an”.
- \*110. In page 38, line 9, to delete “the” and substitute “an”.
- \*111. In page 38, line 11, to delete “the” where it firstly occurs and substitute “an”.
- \*112. In page 38, line 14, to delete “the” where it firstly occurs and substitute “an”.
- \*113. In page 38, line 18, after “investigation” to insert “of the matter which is the subject of that complaint”.
- \*114. In page 38, between lines 23 and 24, to insert the following:
  - “(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.”.
- \*115. In page 38, line 25, after “to” to insert “the”.
- \*116. In page 38, line 28, to delete “*subsection (2)*” and substitute “*subsection (2)(a)*”.
- \*117. In page 38, to delete lines 29 and 30 and substitute the following:
  - “(b) pursuant to an appeal under *subsection (3)*,”.



[SECTION 27]

- \*118. In page 38, lines 31 and 32, to delete “which was the subject of a complaint to the Director”.

SECTION 28

- \*119. In page 38, lines 36 and 37, to delete all words from and including “make” in line 36 down to and including line 37 and substitute “prescribe by regulations the following matters:”.
- \*120. In page 38, line 38, to delete “prescribing”.
- \*121. In page 38, line 39, to delete “prescribing”.
- \*122. In page 39, line 2, to delete “prescribing”.
- \*123. In page 39, line 5, to delete “prescribing”.
- \*124. In page 39, line 7, to delete “prescribing”.
- \*125. In page 39, line 9, to delete “prescribing”.
- \*126. In page 39, line 11, to delete “prescribing”.
- \*127. In page 39, line 13, to delete “prescribing”.
- \*128. In page 39, line 16, to delete “prescribing”.
- \*129. In page 39, to delete line 22.
- \*130. In page 39, line 23, to delete “prescribing”.

SECTION 29

- \*131. In page 39, line 25, after “Where” to insert “, under this Part,”.

SECTION 30

- \*132. In page 39, lines 35 and 36, to delete “notice of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement,” and substitute “notification of nullity pursuant to *section 17(8)*,”.

SECTION 31

- \*133. In page 40, line 7, to delete “shall be guilty of” and substitute “commits”.
- \*134. In page 40, lines 21 to 23, to delete all words from and including “a” where it secondly occurs in line 21 down to and including “disabilities,” in line 23 and substitute “a designated centre or mental health facility,”.

SECTION 33

[SECTION 33]

- \*135. In page 41, line 9, to delete “application,” and substitute “application, and”.
- \*136. In page 41, line 11, to delete “applicant),” and substitute “applicant).”.
- \*137. In page 41, to delete lines 12 to 16.
- \*138. In page 42, line 16 to 18, to delete all words from and including “power” in line 16 down to and including “*section 58*”) in line 18 and substitute “enduring power of attorney or enduring power under the Act of 1996”.
- \*139. In page 42, line 22, to delete “and which, to the applicant’s knowledge, still has any force or effect” and substitute “of which the applicant has knowledge”.
- \*140. In page 42, to delete lines 23 to 37.
- \*141. In page 42, to delete line 40 and substitute “commenced, and”.
- \*142. In page 43, to delete lines 1 and 2.
- \*143. In page 43, line 9, after “attorney” to insert “, attorney under the Act of 1996”.
- \*144. In page 43, line 11, after “attorney” to insert “, attorney under the Act of 1996”.
- \*145. In page 43, line 21, after “attorney” to insert “, attorney under the Act of 1996”.
- \*146. In page 43, line 23, after “attorney” to insert “, attorney under the Act of 1996”.

SECTION 34

- \*147. In page 44, line 10, to delete “application” and substitute “declaration”.
- \*148. In page 44, to delete lines 20 to 22.

SECTION 35

- \*149. In page 45, line 12, to delete “suitable person” and substitute “suitable person who has attained the age of 18 years”.
- \*150. In page 45, to delete lines 17 to 20 and substitute the following:

“(3) In making a decision-making order or decision-making representation order in relation to personal welfare, the court shall have regard to the terms of any advance healthcare directive made by the relevant person and shall—

- (a) ensure that the terms of the order are not inconsistent with the directive, and
- (b) where a decision-making representative is appointed, that his or her functions are not inconsistent with the directive or the relevant powers exercisable by any designated healthcare representative under the directive.

(4) In making a decision-making order or decision-making representation order, the court shall have regard to the terms of any enduring power of attorney made by the relevant person or enduring power under the Act of 1996 made by him or her and shall—

- (a) ensure that the terms of the order are not inconsistent with the terms of the enduring power of attorney or enduring power under the Act of 1996, and
- (b) where a decision-making representative is appointed, that his or her functions are not inconsistent with—

[SECTION 35]

- (i) the functions of an attorney under an enduring power of attorney, or
- (ii) the duties and obligations of an attorney under the Act of 1996.”.

SECTION 36

\*151. In page 47, between lines 17 and 18, to insert the following:

**“Persons who are not eligible to be decision-making representatives**

36. (1) Subject to *subsection (2)*, a person shall not be eligible for appointment as a decision-making representative 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 that person,
  - (b) has been the subject of a safety or barring order in relation to the relevant person or a child of that person,
  - (c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,
  - (d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
  - (e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,
  - (f) is a person who is—
    - (i) the owner or registered provider of a designated centre or mental health facility in which the relevant person resides, or
    - (ii) residing with, or an employee or agent of, such owner or registered provider, as the case may be,unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the relevant person, or
  - (g) has been convicted of an offence under *section 31, 72#, 73 or 128*.
- (2) *Subsections (1)(c), (d) and (e)* shall not apply as respects the appointment of a person as decision-making representative for relevant decisions concerning personal welfare matters only.”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*152. In page 47, between lines 17 and 18, to insert the following:

**“Disqualification as decision-making representative**

37. (1) A decision-making representative shall, with effect from the date on which an event specified in *paragraphs (a) to (c)* occurs or, in the case of an event specified in

[SECTION 36]

*paragraph (d)*, at the expiry of the period referred to in that paragraph, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the spouse of the relevant person and—

- (a) the marriage is annulled or dissolved either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,
  - (b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,
  - (c) a written agreement to separate is entered into between the spouses, or
  - (d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.
- (2) A decision-making representative shall, with effect from the date on which an event specified in *paragraph (a)* or *(b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the civil partner of the relevant person and—
- (a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,
  - (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.
- (3) Subject to *section 2(2)*, a decision-making representative shall, at the expiry of the period referred to in this subsection, be disqualified from being a decision-making representative for the relevant person where the decision-making representative is the cohabitant of the appointer and the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (4) Subject to *subsection (5)*, where, subsequent to the appointment of a decision-making representative—
- (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,

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- (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,
- (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 under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
- (e) the decision-making representative 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 or any other provisions of that Act,
- (f) the decision-making representative becomes—
  - (i) the owner or registered provider of a designated centre or mental health facility in which the relevant person resides, or
  - (ii) a person residing with, or an employee or agent of, such owner or registered provider, as the case may be,unless the decision-making representative is a spouse, civil partner, cohabitant, parent, child or sibling of the appointer,
- (g) the decision-making representative is convicted of an offence under *section 31, 72#, 73 or 128*, or
- (h) the decision-making representative—
  - (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 or enduring power under the Act of 1996 registered in respect of himself or herself, or
  - (iv) becomes the subject of a declaration under *section 34(1)*,

the decision-making representative shall be disqualified from being a decision-making representative for the relevant person with effect from the date on which the decision-making representative falls within any of *paragraphs (a) to (h)*.

- (5) *Subsections (4)(c), (d) and (e)* shall not apply to a decision-making representative insofar as he or she exercises functions under the decision-making representation order in relation to the personal welfare of the relevant person.
- (6) Where a decision-making representative becomes disqualified under this section, he or she or, in the case of disqualification pursuant to *subsection (4)(h)(iii) or (iv)* his or her attorney, decision-making representative or the court, as the case may be, shall notify the Director and the court of such disqualification and the particulars relating thereto.

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- (7) Where a decision-making representative becomes disqualified, a relevant decision made solely by him or her after his or her disqualification shall be null and void.
- (8) *Subsection (7)* shall not operate to prevent a person who relied on a relevant decision referred to in that subsection from recovering damages in respect of any loss incurred by him or her as a result of that reliance.”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*153. In page 47, between lines 17 and 18, to insert the following:

**“Performance of functions of decision-making representative**

- 38. (1) In exercising his or her functions as specified in the decision-making representation order, a decision-making representative shall, insofar as this is possible, ascertain the will and preferences of the relevant person on a matter the subject of, or to be the subject of, a relevant decision and assist the relevant person with communicating such will and preferences.
- (2) A decision-making representative shall make a relevant decision on behalf of the relevant person and shall act as the agent of the relevant person in relation to a relevant decision.”.

\*154. In page 47, between lines 17 and 18, to insert the following:

**“Remuneration and expenses**

- 39. (1) 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.
- (2) Where the court so directs in a decision-making representation order, the decision-making representative shall be entitled to reasonable 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.”.

\* *Section proposed to be deleted.*

SECTION 37

\*155. In page 51, between lines 27 and 28, to insert the following:

- “(6) A decision-making representation order may provide for the giving of such security by the decision-making representative to the court as the court considers appropriate in relation to the proper performance of the functions of such decision-making representative.”.

SECTION 38

[SECTION 38]

\*156. In page 52, to delete lines 1 to 26.

157. In page 52, to delete lines 27 to 29.

—*Senator Denis O'Donovan.*

\*158. In page 52, line 27, to delete “A decision-making representative” and substitute the following:

“Subject to the terms of any advance healthcare directive made by the relevant person and subject to relevant powers exercisable by any designated healthcare representative appointed under the directive, a decision-making representative”.

\*159. In page 53, to delete lines 17 and 18.

SECTION 39

\*160. In page 53, between lines 18 and 19, to insert the following:

**“Register of decision-making representation orders**

39. (1) The Director shall establish and maintain a Register (in this Part referred to as “the Register”) of decision-making representation orders.
- (2) The Register shall be in such form as the Director considers appropriate.
- (3) The Director shall make the Register available for inspection by—
- (a) a body or class of persons prescribed by regulations made by the Minister for this purpose, and
  - (b) a person who satisfies the Director that he or she has a legitimate interest in inspecting the Register.
- (4) The Director may issue an authenticated copy of a decision-making representation order, or part thereof, on the Register on payment of a fee prescribed by regulations made by the Minister to—
- (a) a body or class of persons prescribed by regulations made by the Minister for this purpose, and
  - (b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.”.

\*161. In page 53, between lines 18 and 19, to insert the following:

**“Reports by decision-making representative**

40. (1) Subject to *subsection (2)*, a decision-making representative shall, within 12 months after the making of the decision-making representation order appointing him or her, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such decision-making representative during the relevant period.
- (2) The court may direct that a report be submitted to the Director within such shorter period or within such shorter intervals as is specified in *subsection (1)*.

[SECTION 39]

- (3) Every such report submitted to the Director shall be in such form as may be prescribed by regulations made by the Minister and shall include details of all transactions relating to the relevant person's finances which are within the scope of the decision-making representation order and details of all costs, expenses and remuneration claimed by or paid to the decision-making representative during the period to which the report relates.
- (4) A decision-making representative who has restrained the relevant person at any time during the relevant period relates shall include in the report details of each such restraint and the date on which, and the place where, such restraint occurred.
- (5) 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 within 3 months of his or her appointment as decision-making representative, submit to the Director a schedule of the relevant person's assets and liabilities and a projected statement of the relevant person's income and expenditure.
- (6) 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 keep proper accounts and financial records in respect of the relevant person's income and expenditure and shall—
  - (a) submit the accounts and records as part of a report to the Director under this section, and
  - (b) make available for inspection by the Director or by a special visitor, at any reasonable time, such accounts and records.
- (7) Where a decision-making representative fails to submit a report in accordance with this section or submits an incomplete report or fails to comply with *subsection (5)*, the Director shall notify the decision-making representative of that failure or incompleteness and give the decision-making representative such period of time as is specified in the notification to comply or submit a complete report.
- (8) Where a decision-making representative fails to comply with a notification under *subsection (6)*, the Director shall—
  - (a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance with this section and regulations made by the Minister, accept the report as if it were in compliance with this section and the relevant regulations, or
  - (b) make an application to the court for a determination as to whether the decision-making representative should continue as decision-making representative for the relevant person.
- (9) Pursuant to an application to it under *subsection (7)(b)*, the court may determine that a decision-making representative who has not complied with this section shall no longer act as decision-making representative for the relevant person concerned.
- (10) In this section "relevant period" means the period of time to which the report relates



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which shall be the period of time between the date of the decision-making representation order 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.”.

\*162. In page 53, between lines 18 and 19, to insert the following:

**“Complaints in relation to decision making representatives**

41. (1) A person may make a complaint in writing to the Director concerning one or more of the following matters:

- (a) that a decision-making representative has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the decision-making representation order;
- (b) that a decision-making representative is not suitable, having regard to the matters referred to in *section 35(4)*, to be a decision-making representative.

(2) Following the receipt of a complaint under *subsection (1)*, the Director shall carry out an investigation of the matter which is the subject of that complaint and—

- (a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter specified in the complaint, or
- (b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for same.

(3) A person who receives a notification under *subsection (2)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.

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

(5) The court may—

- (a) pursuant to an application to it under *subsection (2)(a)* or *(4)*, or
- (b) pursuant to an appeal under *subsection (3)*,

make a determination in relation to a matter specified in *subsection (1)* and may, if it considers it appropriate, determine that a decision-making representative shall no longer act as such in relation to the relevant person concerned.”.

SECTION 45

\*163. In page 56, line 10, to delete “An application for the review of the capacity of a ward” and substitute “An application for a declaration under *section 46(1)* in respect of a ward”.

164. In page 56, between lines 13 and 14, to insert the following:

- “(b) a relative of a 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

[SECTION 45]

them.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

**\*165.** In page 56, line 17, to delete “review the capacity of a ward” and substitute “make a declaration under *section 46(1)* in respect of a ward”.

**\*166.** In page 56, to delete lines 20 to 22 and substitute the following:

“(3) Where a ward reaches the age of 18 years after the period specified in *subsection (2) (b)*, the wardship court shall, within 6 months of the ward reaching that age, make a declaration under *section 46(1)* in respect of the ward.”.

SECTION 46

**\*167.** In page 56, line 24, to delete “after reviewing the capacity of the ward” and substitute “on an application being made to it under *section 45(1)*, or pursuant to *section 45(2)* or *(3)*”.

**\*168.** In page 57, line 16, to delete “, following the review of the capacity of a ward,”.

SECTION 47

**\*169.** In page 57, between lines 21 and 22, to insert the following:

**“Saver**

**47.** (1) The repeal of the Lunacy Regulation (Ireland) Act 1871 by *section 7* shall not affect the validity of any order—

(a) made by the wardship court within its jurisdiction, and

(b) which was in force immediately before the commencement of this Part.

(2) Pending a declaration under *section 46(1)* the jurisdiction of the wardship court as set out in *section 9* of the Courts (Supplemental Provisions) Act 1961 shall continue to apply.”.

[*Acceptance of this amendment involves the deletion of section 47 of the Bill.*]

SECTION 49

\* *Section proposed to be deleted.*

SECTION 50

**\*170.** In page 58, between lines 17 and 18, to insert the following:

**“Interpretation - Part 7**

**50.** (1) In this Part—

“attorney” has the meaning given to it in *section 51(1)*##;

“disqualified”, in relation to an attorney, means the attorney becomes a person referred to in *section 58*## or a person that the court determines under this Part shall no longer act as attorney for the donor concerned;

“donor” has the meaning given to it in *section 51(1)*##;

“donor under the Act of 1996” means a person who has created an enduring power

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under the Act of 1996;

“enduring power of attorney” has the meaning given to it in *section 51(2)*##;

“prescribed” means prescribed by regulations made by the Minister under *section 71*####;

“trust corporation” has the meaning it has in section 30 of the Succession Act 1965 but shall not include a designated centre or mental health facility in which the donor resides.

- (2) In this Part “person”, in relation to an attorney, includes a trust corporation but only to the extent that the authority conferred under the enduring power of attorney relates to property and affairs.”.

[# *This is a reference to the section proposed to be inserted by amendment 171.*]

[## *This is a reference to the section proposed to be inserted by amendment 178.*]

[### *This is a reference to the section proposed to be inserted by amendment 191.*]

\*171. In page 58, between lines 17 and 18, to insert the following:

**“Enduring power of attorney - general**

**51.** (1) Subject to the provisions of this section and sections 52#, 54## and 55####, a person who has attained the age of 18 years (in this Act referred to as “donor”) may appoint one or more suitable persons (in this Act referred to as “attorney”) on whom he or she confers either or both of the following:

- (a) general authority to act on the donor’s behalf in relation to all or a specified part of the donor’s property and affairs; or
- (b) authority to do specified things on the donor’s behalf in relation to the donor’s personal welfare or property and affairs, or both;

which may, in either case, be conferred subject to conditions and restrictions.

- (2) The authority referred to in *subsection (1)* shall be known as an enduring power of attorney and shall be conferred in writing in an instrument which is in compliance with this Part and regulations made under *section 71*#####.
- (3) A donor may, in an enduring power of attorney, appoint a person who shall act as attorney for the donor in respect of the relevant decisions specified therein in the event that an attorney on whom authority is conferred dies or is unable to act or is disqualified from acting as attorney.
- (4) An enduring power of attorney shall not enter into force until—
  - (a) the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power, and
  - (b) the instrument creating the enduring power of attorney has been registered in accordance with *section 61*#####.
- (5) Where an enduring power of attorney is expressed to confer general authority in

[SECTION 50]

respect of all or a specified part of the donor's property and affairs, it operates to confer, subject to any restrictions provided in the power or in this Part, authority to do on behalf of the donor anything which the donor can lawfully do by attorney.

- (6) A person is suitable for appointment as an attorney if he or she is able of performing the functions of attorney as specified in the enduring power of attorney.”.

[# *This is a reference to the section proposed to be inserted by amendment 172.*]

[## *This is a reference to the section proposed to be inserted by amendment 174.*]

[### *This is a reference to the section proposed to be inserted by amendment 175.*]

[#### *This is a reference to the section proposed to be inserted by amendment 191.*]

[##### *This is a reference to the section proposed to be inserted by amendment 181.*]

\*172. In page 58, between lines 17 and 18, to insert the following:

**“Content of instrument creating an enduring power of attorney**

52. (1) An instrument creating an enduring power of attorney shall include the following statements:

- (a) by the donor that he or she—
  - (i) understands the implications of creating the power,
  - (ii) intends the power to be effective at any subsequent time when he or she lacks capacity in relation to one or more relevant decisions which are the subject of the power, and
  - (iii) is aware that he or she may vary or revoke the power prior to its registration;
- (b) by a legal practitioner that, after interviewing the donor and making any necessary enquiries, he or she—
  - (i) is satisfied that the donor understands the implications of creating the power,
  - (ii) is satisfied that the donor is aware that he or she may vary or revoke the power prior to its registration, and
  - (iii) has no reason to believe that the instrument is being executed by the donor as a result of fraud, coercion or undue pressure;
- (c) by a registered medical practitioner that in his or her opinion at the time the power was executed, the donor had the capacity to understand the implications of creating the power;
- (d) by a healthcare professional of a class that shall be prescribed, that in his or her opinion at the time the power was executed, the donor had the capacity to understand the implications of creating the power; and
- (e) by the attorney, that he or she—
  - (i) understands the implications of undertaking to be an attorney for the donor and has read and understands the information contained in the instrument,

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- (ii) understands and undertakes to act in accordance with the functions of an attorney,
  - (iii) understands and undertakes to act in accordance with the guiding principles,
  - (iv) understands and undertakes to comply with the reporting obligations under *section 67#*, and
  - (v) understands the requirements in relation to registration of the power.
- (2) An instrument creating an enduring power of attorney shall include the following:
- (a) the name, date of birth and contact details of the donor;
  - (b) subject to *subsection (3)*, the signature of the donor and the date that he or she signed the power;
  - (c) the name, date of birth and contact details of the attorney;
  - (d) the signature of the attorney and the date that he or she signed the enduring power of attorney;
  - (e) the signatures of the 2 witnesses referred to in *subsection (4)(a)*.
- (3) An instrument creating an enduring power of attorney may be signed on behalf of the donor by a person who has attained the age of 18 years and who is not the attorney or a witness referred to in *subsection (4)(a)* if—
- (a) the donor is unable to sign the instrument,
  - (b) the donor is present and directs that the instrument be signed on his or her behalf by that person, and
  - (c) the signature of the person is witnessed in accordance with *subsection (4)(b)*.
- (4) (a) The donor, or the person signing on his or her behalf in accordance with *subsection (3)*, and the attorney shall sign the instrument creating the enduring power of attorney in the presence of each other and in the presence of 2 witnesses—
- (i) each of whom has attained the age of 18 years,
  - (ii) of whom at least one is not an immediate family member of the donor or the attorney, and
  - (iii) neither of whom is an employee of or agent of the attorney.
- (b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the donor (or the person signing on his or her behalf) and the signature of the attorney by applying his or her own signature to the enduring power of attorney.
- (5) Where a donor proposes to remunerate an attorney for performing his or her functions as attorney, the instrument creating the enduring power of attorney shall specify the proposed remuneration and the functions to which it relates.
- (6) In this section, “immediate family member” means—

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

[# *This is a reference to the section proposed to be inserted by amendment 187.*]

\*173. In page 58, between lines 17 and 18, to insert the following:

**“Notice of execution of an enduring power of attorney**

**53.** (1) The donor shall, as soon as practicable after the execution of the enduring power of attorney, give notice, in such form as shall be prescribed, of such execution to the following persons:

- (a) a spouse or civil partner of the donor;
- (b) the cohabitant (if any) of the donor;
- (c) any children of the donor who have attained the age of 18 years;
- (d) any decision-making assistant for the donor;
- (e) any co-decision-maker for the donor;
- (f) any decision-making representative for the donor;
- (g) any designated healthcare representative for the donor;
- (h) any other attorney for the donor or attorney under the Act of 1996 in respect of the donor;
- (i) any other person or persons as may be specified by the donor in the instrument creating the enduring power of attorney as a person or persons to whom notice shall be given under this section and *section 60(3)#*.

(2) Where there are fewer than 3 persons to whom notice may be given pursuant to *subsection (1)*, the donor shall specify 2 persons in the instrument creating the enduring power of attorney as persons to whom notice shall be given under this section and *section 60(3)#*.”.

[# *This is a reference to the section proposed to be inserted by amendment 180.*]

\*174. In page 58, between lines 17 and 18, to insert the following:

**“Scope of authority - personal welfare decisions**

**54.** (1) Where an enduring power of attorney confers authority in relation to personal welfare, the power does not authorise an attorney to do an act that is intended to

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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.
- (2) 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,
  - (c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the donor’s behaviour or ensuring that he or she is compliant or not capable of resistance, or
  - (d) authorises another person to do any of the things referred to in *paragraph (a)* to *(c)*.
- (3) An attorney 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.
- (4) *Subsections (1) to (3)* shall not be construed to prejudice the generality of section 69 of the Mental Health Act 2001 or of rules made under that section.
- (5) A donor shall not, in an enduring power of attorney, include a relevant decision—
- (a) relating to refusal of life-sustaining treatment, or
  - (b) which is the subject of an advanced healthcare directive made by him or her.
- (6) To the extent that an enduring power of attorney includes a relevant decision specified in *subsection (5)*, it shall be null and void.”.

\*175. In page 58, between lines 17 and 18, to insert the following:

**“Scope of authority – property and affairs**

55. (1) An attorney may act under an enduring power of attorney relating to property and affairs for the attorney’s benefit or that of other persons to the extent provided for in the power, where specific provision to that effect is made in the power and subject to any conditions or restrictions contained in the power.
- (2) An attorney may not dispose of the property of the donor by way of gift unless specific provision to that effect is made in the enduring power of attorney.
- (3) Where an enduring power of attorney authorises the disposal of the donor’s property

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by way of gift, the attorney's power to make such gifts shall, in addition to being subject to any conditions or restrictions in the enduring power, be limited to—

- (a) gifts made on customary occasions to persons (including the attorney) who are related to or connected to the donor and in relation to whom the donor might be expected to make gifts, and
- (b) gifts to any charity to which the donor made or might 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 and any financial obligations.”.

\*176. In page 58, between lines 17 and 18, to insert the following:

**“Application to joint and joint and several attorneys**

**56.** (1) A donor may, in an enduring power of attorney, appoint more than one attorney and may specify that the attorneys shall act—

- (a) jointly,
- (b) jointly and severally, or
- (c) jointly in respect of some matters and jointly and severally in respect of other matters,

and, in default of the power so specifying, the attorneys shall be deemed to have authority to to act jointly.

- (2) Where 2 or more persons have authority 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 enduring power expressly provides to the contrary.”.

\*177. In page 58, between lines 17 and 18, to insert the following:

**“Persons who are not eligible to be attorneys**

**57.** (1) A person shall not be eligible for appointment as an attorney under an enduring power of attorney if he or she—

- (a) has been convicted of an offence in relation to the person or property of the person who intends to appoint an attorney,
- (b) has been the subject of a safety or barring order in relation to the person who intends to appoint an attorney,
- (c) is an undischarged bankrupt or is currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,
- (d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,



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- (e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,
  - (f) is a person who is—
    - (i) the owner or the registered provider of a designated centre or mental health facility in which the intending donor resides, or
    - (ii) residing with, or an employee or agent of, such owner or registered provider, unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the intending donor, or
  - (g) has been convicted of an offence under *sections 31, 72#, 73 or 128*.
- (2) *Subsection (1)(c), (d) and (e) shall not apply where it is proposed to confer authority only in relation to personal welfare matters.”.*

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*178. In page 58, between lines 17 and 18, to insert the following:

**“Disqualification of attorney**

58. (1) An attorney shall, with effect from the date on which an event specified in any of *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being an attorney for the donor where the attorney is the spouse of the donor and subsequently—
- (a) the marriage is annulled or dissolved either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,
  - (b) 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.
- (2) An attorney shall, with effect from the date on which an event specified in *paragraph (a)* or *(b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being attorney for the donor where the attorney is the civil partner of the donor and subsequently—

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- (a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,
  - (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.
- (3) Subject to *section 2(2)*, an attorney shall, at the expiry of the period referred to in this subsection, and unless the instrument creating the enduring power of attorney provides otherwise, be disqualified from being an attorney for the donor where the attorney is the cohabitant of the donor and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.
- (4) Subject to *subsection (5)*, where, subsequent to the appointment of an attorney—
- (a) 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,
  - (b) a safety or barring order is made against the attorney in relation to the donor or a child of the donor,
  - (c) 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,
  - (d) the attorney becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
  - (e) the attorney 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 or any other provisions of that Act,
  - (f) the attorney becomes—
    - (i) the owner or the registered provider of a designated centre or mental health facility in which the intending donor resides, or
    - (ii) a person residing with, or an employee or agent of, a person referred in to *subparagraph (i)*,  
  
unless the person is a spouse, civil partner, cohabitant, parent, child or sibling of the intending donor,
  - (g) the attorney is convicted of an offence under *section 31, 72#, 73 or 128*,
  - (h) the attorney—

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- (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 or an enduring power under the Act of 1996 registered in respect of himself or herself, or
  - (iv) becomes the subject of a declaration under *section 34(1)*, or
- (i) the attorney is a trust corporation and the trust corporation is dissolved,
- the attorney shall be disqualified from being an attorney for the donor with effect from the day on which the attorney falls within any of *paragraphs (a) to (i)*.
- (5) *Subsections (4)(c), (d) and (e)* shall not apply to an attorney insofar as authority is conferred on him or her under the enduring power of attorney in relation to personal welfare matters.
  - (6) Where an attorney becomes disqualified under this section, he or she, or in the case of disqualification pursuant to *subsection (4)(h)(iii) or (iv)*, his or her attorney, decision making-representative or the court, as the case may be, shall notify the Director of such disqualification and the particulars relating thereto.
  - (7) Where an attorney becomes disqualified, a relevant decision made solely by him or her after his or her disqualification shall be null and void.
  - (8) *Subsection (7)* shall not operate to prevent a person who relied on a relevant decision referred to in that subsection from recovering damages in respect of any loss incurred by him or her as a result of that reliance.”.

[# *This is a reference to the section proposed to be inserted by amendment 192.*]

\*179. In page 58, between lines 17 and 18, to insert the following:

**“Function of court prior to registration**

- 59. On application to it by any interested party, the court may, where it has reason to believe that the donor of an enduring power of attorney lacks capacity in relation to one or more relevant decisions, exercise any power which would become exercisable under *section 69(3)#* on its registration and may do so whether or not the attorney concerned has made an application to the Director for registration of the instrument.”.

[# *This is a reference to the section proposed to be inserted by amendment 189.*]

\*180. In page 58, between lines 17 and 18, to insert the following:

**“Application for registration of instrument creating enduring power**

- 60. (1) Where an attorney has reason to believe that the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power of attorney, the attorney shall, as soon as is practicable, make an application, in compliance with this Part and regulations made under *section 71#*, to the Director to register the instrument creating the enduring power of attorney.
- (2) An application to register an instrument under *subsection (1)* shall be made in such

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form and accompanied by such fee as shall be prescribed.

- (3) The attorney shall, at the same time as he or she makes an application under *subsection (1)*, give notice, in such form (if any) as shall be prescribed, of the application and give a copy of the enduring power to the following persons:
  - (a) the donor;
  - (b) a spouse or civil partner of the donor;
  - (c) the cohabitant (if any) of the donor;
  - (d) any children of the donor who have attained the age of 18 years;
  - (e) any decision-making assistant for the donor;
  - (f) any co-decision-maker for the donor;
  - (g) any decision-making representative for the donor;
  - (h) any designated healthcare representative for the donor;
  - (i) any other attorney for the donor or attorney under the Act of 1996 in respect of the donor;
  - (j) any other person specified by the donor under *section 53###*.
- (4) An attorney may, before making an application to register an instrument creating an enduring power of attorney, apply to the court for a determination on any question as to the validity of the power.
- (5) Where an attorney has made an application to register an instrument creating an enduring power of attorney, then pending determination of the application, the attorney, or if more than one attorney has been appointed to act jointly or jointly and severally, as the case may be, any one of them, may take action under the power—
  - (a) to maintain the donor or prevent loss to the donor's assets,
  - (b) to the extent permitted by the enduring power, to make a relevant decision which cannot reasonably be deferred until the application has been determined, or
  - (c) to maintain the attorney or other persons in so far as that is permitted under the power.
- (6) Following the taking of the action pursuant to *subsection (5)*, the attorney shall report to the Director—
  - (a) what action he or she took,
  - (b) the reasons as to why the action could not be deferred until after the registration of the instrument creating the enduring power of attorney,
  - (c) any measures he or she took to encourage the donor to participate in the action taken, and
  - (d) the outcome of the action.
- (7) An application to register an instrument creating an enduring power of attorney shall

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be accompanied by—

- (a) the instrument creating the enduring power of attorney,
  - (b) a statement by a registered medical practitioner and a statement by such other healthcare professional of a class as shall be prescribed that in their opinion the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power,
  - (c) 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,
  - (d) a copy of any notice given pursuant to *subsection (3)*,
  - (e) a copy of any notice given pursuant to *section 53##*, and
  - (f) the prescribed fee.
- (8) Where there is more than one attorney appointed under an enduring power of attorney, any two or more of the attorneys may make a joint application to register the instrument.”.

[# *This is a reference to the section proposed to be inserted by amendment 191.*]

[## *This is a reference to the section proposed to be inserted by amendment 173.*]

\*181. In page 58, between lines 17 and 18, to insert the following:

**“Registration of an instrument creating an enduring power of attorney**

- 61.** (1) On receipt of an application under *section 60#*, the Director shall review the application and any objections received under *section 63##* and shall carry out such reasonable enquiries as he or she considers necessary in order to establish whether—
- (a) the enduring power of attorney and the instrument creating it is in accordance with *sections 51###, 52####, 54##### and 55#####*,
  - (b) the attorney is a suitable person within the meaning of *section 51(6)###*,
  - (c) the attorney is eligible for appointment within the meaning of *section 57#####* or not disqualified by virtue of *section 58#####*,
  - (d) notice has been given in accordance with *section 53#####* and *section 60(3)#*, and
  - (e) the application is in accordance with *section 60#*.
- (2) Where, after reviewing an application under *section 60#*, the Director is satisfied that the application is in order, he or she shall, subject to *section 63##*, register the instrument creating the enduring power of attorney.
- (3) Where, after reviewing an application under *section 60#*, the Director forms the view that one or more of the criteria in *paragraphs (a) to (e) of subsection (1)* are not satisfied, he or she shall notify the attorney and the donor of his or her view, provide

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reasons for that view and give the attorney and the donor an opportunity, within a reasonable timeframe specified by the Director, to respond.

- (4) Following a review of any response received pursuant to *subsection (3)*, the Director shall—
  - (a) where he or she is of the view that the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* are satisfied, register, subject to *section 63##*, the instrument creating the enduring power of attorney, or
  - (b) where he or she remains of the view that one or more of the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* is not satisfied, refuse to register the instrument creating the enduring power of attorney and notify the attorney and the donor of that fact and the reasons for his or her view.
- (5) An attorney whose application under *section 60#* is refused may, not later than 21 days after the date of issue of the notification of refusal by the Director, appeal the refusal to the court.
- (6) Upon an appeal under *subsection (5)*, the court may—
  - (a) require the Director to register the instrument creating the enduring power of attorney,
  - (b) affirm the decision of the Director, or
  - (c) make such other order or declaration as it considers appropriate.
- (7) Following registration of an instrument creating an enduring power of attorney, the Director shall send an authenticated copy of the instrument to the attorney and the donor.
- (8) A document purporting to be a copy of instrument creating an enduring power of attorney which has been authenticated by the Director shall be evidence of the contents of the instrument and the date upon which it was registered.”.

[# *This is a reference to the section proposed to be inserted by amendment 180.*]

[## *This is a reference to the section proposed to be inserted by amendment 183.*]

[### *This is a reference to the section proposed to be inserted by amendment 171.*]

[#### *This is a reference to the section proposed to be inserted by amendment 172.*]

[##### *This is a reference to the section proposed to be inserted by amendment 174.*]

[##### *This is a reference to the section proposed to be inserted by amendment 175.*]

[##### *This is a reference to the section proposed to be inserted by amendment 177.*]

[##### *This is a reference to the section proposed to be inserted by amendment 178.*]

[##### *This is a reference to the section proposed to be inserted by amendment 173.*]

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\*182. In page 58, between lines 17 and 18, to insert the following:

**“Effect and proof of registration**

62. (1) The effect of the registration of an instrument is that—
- (a) no revocation of the enduring power of attorney by the donor shall be valid unless the court confirms the revocation under *section 65(6)#*,
  - (b) no disclaimer of the enduring power shall be valid except on notice to the donor and with the consent of the court, and
  - (c) the donor may not extend or restrict the scope of the authority conferred by him or her in the enduring power and no consent or instruction given by the donor after registration of the instrument 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.
- (2) *Subsection (1)* applies for so long as the instrument is registered whether or not the donor has for the time being capacity.”.

[# *This is a reference to the section proposed to be inserted by amendment 185.*]

\*183. In page 58, between lines 17 and 18, to insert the following:

**“Objections to registration**

63. (1) Any of the persons referred to in *section 60(3)#*, or any other person who appears to the Director to have sufficient interest or expertise in the welfare of the donor, may, no later than 5 weeks from the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed registration.
- (2) An objection under *subsection (1)* shall be in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section 71##* and may be made on one or more of the following grounds:
- (a) that the enduring power of attorney or instrument creating it is not in accordance with *section 51###, 52####, 54##### or 55#####*;
  - (b) that the notice requirement of *section 53##### or section 60(3)#* was not complied with;
  - (c) that the donor does not lack capacity;
  - (d) that fraud, coercion or undue influence was used to induce the donor to execute the instrument creating the enduring power of attorney;
  - (e) that a false statement is included in the instrument creating the enduring power of attorney or the application to register the instrument;
  - (f) that the attorney is not a suitable person within the meaning of *section 51(6)###*.
- (3) Where the Director receives an objection in accordance with *subsection (2)*, made in

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the time period which has been specified in *subsection (1)*, he or she shall—

- (a) review the objection,
- (b) consult with the attorney and, where the Director considers it is appropriate to do so, the donor, and
- (c) consult with such other persons as he or she considers relevant,

and shall—

- (i) where he or she is of the view that the objection is not well founded, notify the person who made the objection of his or her view, provide reasons for that view and proceed, subject to this section, to register the instrument concerned, or
  - (ii) where he or she is of the view that the objection is well founded, notify the person who made the objection of his or her view and make an application to the court for a determination on the matter and for a determination as to whether the enduring power should be registered.
- (4) The court, pursuant to an application made to it under *subsection (3)(ii)*, may—
- (a) require the Director to register the instrument creating the enduring power of attorney,
  - (b) declare that the instrument creating the enduring power of attorney should not be registered, or
  - (c) make such other declaration or order as it considers appropriate.
- (5) A person who makes an objection under *subsection (1)* may, not later than 21 days after the date of issue of the notification by the Director under *subsection (3)(i)*, appeal a decision to register the instrument concerned to the court.
- (6) Upon an appeal under *subsection (5)*, the court may—
- (a) require the Director to remove the instrument concerned from the Register,
  - (b) affirm the decision of the Director, or
  - (c) make such other declaration or order as it considers appropriate.”.

[# *This is a reference to the section proposed to be inserted by amendment 180.*]

[## *This is a reference to the section proposed to be inserted by amendment 191.*]

[### *This is a reference to the section proposed to be inserted by amendment 171.*]

[#### *This is a reference to the section proposed to be inserted by amendment 172.*]

[##### *This is a reference to the section proposed to be inserted by amendment 174.*]

[##### *This is a reference to the section proposed to be inserted by amendment 175.*]

[##### *This is a reference to the section proposed to be inserted by amendment 173.*]



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\*184. In page 58, between lines 17 and 18, to insert the following:

**“Register of enduring powers**

64. (1) The Director shall establish and maintain a register (in this Part referred to as “the Register”) of enduring powers of attorney.
- (2) The Register shall be in such form as the Director considers 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 71#* for this purpose, and
  - (b) any 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 an enduring power, or part thereof, on the Register on payment of the prescribed fee to—
- (a) a body or class of person prescribed by regulations made under *section 71#* for this purpose, and
  - (b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.
- (5) The Director shall keep a record of any body or person that has inspected the Register or received an authenticated copy from him or her.”.

[# *This is a reference to the section proposed to be inserted by amendment 191.*]

\*185. In page 58, between lines 17 and 18, to insert the following:

**“Revocation and variation of enduring power**

65. (1) An enduring power of attorney may be varied or revoked by the donor, where the instrument creating the enduring power of attorney has not been registered and where the donor has capacity to make the variation or revocation, as the case may be.
- (2) A variation or revocation under *subsection (1)* shall be done in such form as shall be prescribed.
- (3) Subject to *section 52(3)#*, a revocation or variation of an enduring power of attorney shall be signed by the donor and his or her signature shall be acknowledged by 2 witnesses and *section 52(4)#* shall apply with the necessary modifications.
- (4) A variation or revocation of an enduring power of attorney shall be accompanied by the following statements:
- (a) by the donor, that he or she understands the implication of varying or revoking the enduring power, as the case may be;
  - (b) by a legal practitioner that, after interviewing the donor and making any necessary enquiries, he or she—

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- (i) is satisfied that the donor understands the implication of varying or revoking, as the case may be, the enduring power, and
  - (ii) has no reason to believe that the variation or revocation, as the case may be, is the result of fraud, coercion or undue pressure on the donor;
  - (c) by a registered medical practitioner that in his or her opinion, at the time of the variation or revocation, as the case may be, the donor had the capacity to understand the implication of the variation or revocation;
  - (d) by such other healthcare professional as shall be prescribed that in his or her opinion, at the time of the variation or revocation, as the case may be, the donor had the capacity to understand the implication of the variation or revocation; and
  - (e) by the attorney, that he or she is aware of the variation or revocation and undertakes to act accordingly.
- (5) Subject to *subsection (6)* a donor may, after an enduring power of attorney has been registered, revoke the enduring power where he or she has capacity to do so.
- (6) A revocation referred to in *subsection (5)* is not valid unless an application is made to the court and the court is satisfied that—
- (a) the donor has done whatever is necessary in law to effect an express revocation of the enduring power of attorney and had capacity at the time of the purported revocation, and
  - (b) the donor has given notice to the attorney of the revocation.”.

[# *This is a reference to the section proposed to be inserted by amendment 172.*]

**\*186.** In page 58, between lines 17 and 18, to insert the following:

**“Disclaimer by attorney**

- 66.** (1) An attorney may disclaim an enduring power of attorney which has not been registered subject to his or her giving notice of such disclaimer, to the donor.
- (2) An enduring power of attorney which has been registered may be disclaimed by an attorney only with the consent of the court.”.

**\*187.** In page 58, between lines 17 and 18, to insert the following:

**“Reports by attorney**

- 67.** (1) An attorney under an enduring power of attorney which confers authority in relation to property and affairs shall, within 3 months of the registration of the instrument appointing him or her as attorney, submit to the Director a schedule of the donor’s assets and liabilities and a projected statement of the donor’s income and expenditure.
- (2) An attorney under an enduring power of attorney which confers authority in relation to property and affairs shall keep proper accounts and financial records in respect of the donor’s income and expenditure and shall—

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- (a) submit such accounts and records as part of a report to the Director under this section, and
  - (b) make available for inspection by the Director or by a special visitor, at any reasonable time, such accounts and records.
- (3) An attorney shall, within 12 months after registration of the instrument appointing him or her as attorney, 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 attorney during the relevant period.
- (4) Every report submitted to the Director pursuant to this section shall be in such form as shall be prescribed by regulations made under *section 71#* and shall include details of all costs, expenses and remuneration paid to and claimed by the attorney in the relevant period together with such other matters as are prescribed.
- (5) An attorney who has restrained the donor at any time during the relevant period shall include in the report details of each such restraint and the date on which, and the place where, such restraint occurred.
- (6) Where an attorney fails to submit a report in accordance with this section or submits an incomplete report, the Director shall notify the attorney of that failure or incompleteness and give him or her such period of time as is specified in the notification to comply or submit a complete report.
- (7) Where an attorney fails to comply with a notification under *subsection (6)*, the Director shall—
  - (a) in the case of the submission of an incomplete report and following any necessary enquiries to satisfy himself or herself that the report is substantially in accordance with this section and regulations made under *section 71#*, accept the report as if it were in compliance with this section and the relevant regulations, or
  - (b) make an application to the court for a determination as to whether the co-decision-maker should continue as attorney for the donor.
- (8) Pursuant to an application to it under *subsection (7)(a)*, the court may determine that an attorney who has not complied with this section shall no longer act as attorney for the donor concerned.
- (9) In this section “relevant period” means the period of time to which the report relates which shall be the period of time between the date of registration of the instrument creating the enduring power of attorney 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.
- (10) This section shall apply to an attorney under the Act of 1996 where, by the date of commencement of this Part, an application to register the instrument which appointed him or her under that Act has not been made under that Act.
- (11) Insofar as this section applies to an attorney under the Act of 1996—
  - (a) the reference to “functions” in this section shall be construed as a reference to

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that person's duties and obligations as construed in accordance with that Act, and

- (b) the reference to "date of registration of the instrument creating the enduring power of attorney" shall be construed as a reference to the date on which the enduring power under the Act of 1996 was registered in accordance with that Act.
- (12) The reference to "attorney" in *sections 78 and 79* shall, for the purposes of this section, be construed as including an attorney under the Act of 1996.
- (13) The reference to "relevant person" in *sections 78, 79 and 82* shall, for the purposes of this section, be construed as including a donor under the Act of 1996."

[# *This is a reference to the section proposed to be inserted by amendment 191.*]

**\*188.** In page 58, between lines 17 and 18, to insert the following:

**"Complaints in relation to attorneys**

- 68.** (1) A person may make a complaint in writing to the Director concerning one or more of the following matters:
- (a) that an attorney has acted, is acting, or is proposing to act outside the scope of his or her functions as specified in the instrument creating the enduring power of attorney;
  - (b) that an attorney is not a suitable person within the meaning of *section 51(6)*;
  - (c) that fraud, coercion or undue pressure was used to induce a donor to appoint an attorney.
- (2) A person may, in respect of an attorney under the Act of 1996, make a complaint in writing to the Director concerning one or more of the following matters:
- (a) that an attorney under the Act of 1996, is acting or is proposing to act outside the scope of the enduring power under the Act of 1996;
  - (b) that an attorney under the Act of 1996 is unable, for whatever reason, to perform his or her duties and obligations as construed in accordance with that Act;
  - (c) that fraud, coercion or undue pressure was used to induce a donor under the Act of 1996 to appoint an attorney under the Act of 1996.
- (3) Following the receipt of a complaint under *subsection (1) or (2)*, the Director shall carry out an investigation of the matter which is the subject of that complaint and—
- (a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to a matter specified in the complaint, or
  - (b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for that view.
- (4) A person who receives a notification under *subsection (3)(b)* may, not later than 21 days after the date of issue of the notification, appeal a decision of the Director that the complaint is not well founded to the court.

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- (5) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an application to the court for a determination in relation to any matter specified in *subsection (1) or (2)*.
- (6) The court may—
  - (a) pursuant to an application to it under *subsection (3)(a) or (5)*, or
  - (b) pursuant to an appeal under *subsection (4)*,make a determination in relation to a matter specified in *subsection (1) or (2)* and may, if it considers it appropriate, determine that—
  - (i) an attorney shall no longer act as such in relation to the donor concerned, or
  - (ii) an attorney under the Act of 1996 shall no longer act as such in relation to a donor under the Act of 1996.
- (7) The reference to “attorney” in *sections 78 and 79* shall, for the purposes of this section, be construed as including an attorney under the Act of 1996.
- (8) The reference to “relevant person” in *sections 78, 79 and 82* shall, for the purposes of this section, be construed as including a donor under the Act of 1996.”.

[# *This is a reference to the section proposed to be inserted by amendment 171.*]

\*189. In page 58, between lines 17 and 18, to insert the following:

**“Applications to court**

- 69.** (1) Where the Director makes an application to the court for a determination on whether the instrument creating an enduring power of attorney should be registered, the court may, notwithstanding that—
- (a) the power does not comply with *section 51# or section 52##*, or
  - (b) the application to register an enduring power was not in accordance with *section 60###*,
- register the instrument where it is satisfied that—
- (i) the donor intended the power to be effective during any period when the donor lacks capacity,
  - (ii) the power was not executed as a result of fraud or undue pressure,
  - (iii) the attorney is suitable within the meaning of *section 51(6)#* to be the donor’s attorney, and
  - (iv) it is desirable in the interests of justice to register the enduring power.
- (2) In determining whether an attorney is suitable within the meaning of *section 51(6)#*, the court, in addition to any other matters which it considers relevant shall have regard to—
- (a) the relationship and degree of connection between the donor and the attorney,

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- (b) the degree of involvement which will be required on the part of the attorney in the care of the donor,
  - (c) the willingness of the attorney to carry out his or her functions under the enduring power, and
  - (d) any conflict of interest which may arise.
- (3) Where an instrument creating an enduring power of attorney has been registered, the court may, whether on application by the donor, the attorney, the Director or an interested party—
- (a) determine any question as to the meaning or effect of the power,
  - (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,
    - (ii) the management or disposal by the attorney of the property and affairs of the donor,
    - (iii) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision of the enduring power, including directions for the repayment of excessive, or the payment of additional, remuneration, and
  - (c) consent to a disclaimer by the attorney of enduring power.
- (4) Where the court gives a determination under *subsection (3)(a)*, a direction under *subsection (3)(b)* or a consent under *subsection (3)(c)*, it shall cause the Director to be notified of such direction or consent and the Director shall monitor the giving of effect by the attorney to such direction or consent as the case may be.”.

[# *This is a reference to the section proposed to be inserted by amendment 171.*]

[## *This is a reference to the section proposed to be inserted by amendment 172.*]

[### *This is a reference to the section proposed to be inserted by amendment 180.*]

**\*190.** In page 58, between lines 17 and 18, to insert the following:

**“Removal of instrument from the Register**

- 70.** (1) The Director shall remove from the Register an instrument creating an enduring power of attorney where—
- (a) there has been a revocation in accordance *section 65(6)#*, or
  - (b) subject to *subsection (2)*, the attorney appointed under the instrument becomes disqualified.
- (2) Where there is more than one attorney appointed under an enduring power of attorney or where the donor has specified a person who shall act as attorney for him or her in the event that the attorney on whom the authority is conferred dies or is unable to act

[SECTION 50]

or is disqualified, then in the circumstances described in *subsection (1)*, the Director shall note on the Register in connection with the power concerned the revocation or disqualification, as the case may be.”.

[# *This is a reference to the section proposed to be inserted by amendment 185.*]

\*191. In page 58, between lines 17 and 18, to insert the following:

**“Regulations**

71. The Minister, having regard to the requirements of this Part, shall prescribe by regulations the following matters:

- (a) the form of an instrument creating an enduring power of attorney;
- (b) the form of notice under *section 53#* to register an instrument creating an enduring power of attorney;
- (f) the form of an objection under *section 63(2)##* to the registration of an instrument creating an enduring power of attorney;
- (g) the form of variation or revocation under *section 65(2)###* of an enduring power of attorney;
- (h) the bodies or classes of persons under *sections 64(3)####* and *(4)####* who may inspect the Register and receive an authenticated copy of an enduring power of attorney;
- (i) the fees to be paid in connection with—
  - (i) an application to register an enduring power of attorney,
  - (ii) an objection to an application to register an enduring power of attorney,
  - (iii) the issue of an authenticated copy of an enduring power of attorney.”.

[# *This is a reference to the section proposed to be inserted by amendment 173.*]

[## *This is a reference to the section proposed to be inserted by amendment 183.*]

[### *This is a reference to the section proposed to be inserted by amendment 185.*]

[#### *This is a reference to the section proposed to be inserted by amendment 184.*]

\*192. In page 58, between lines 17 and 18, to insert the following:

**“Offences in relation to enduring powers of attorney**

72. (1) A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke an enduring power of attorney commits an offence and shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

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- (2) A person who, in an instrument creating an enduring power of attorney, in an application for registration of an enduring power of attorney, or in connection with such an application, makes a statement which he or she knows to be false in a material particular commits an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 2 years, or both.
- (3) The reference in *subsection (1)* to coercion or undue influence includes any case where a person's access to, or continued stay in, a designated centre or mental health facility, is contingent (whether in whole or in part) on the person having to, or being led to believe that he or she has to, create, vary or revoke an enduring power of attorney.”.

\*193. In page 58, between lines 17 and 18, to insert the following:

**“Transitional provisions**

- 73.** (1) Subject to *sections 67#, 68(2)##, 68(3)##, 68(4)##, 68(5)##, 68(6)## and 68(7)##*, this Part shall not apply to—
- (a) an enduring power of attorney under the Act of 1996,
  - (b) an attorney under the Act of 1996, and
  - (c) a donor under the Act of 1996.
- (2) From the date of commencement of this Part—
- (a) a person shall not create an enduring power of attorney under the Act of 1996, and
  - (b) the Act of 1996 shall not apply to an enduring power of attorney created after that date.”.

[# *This is a reference to the section proposed to be inserted by amendment 187.*]

[## *This is a reference to the section proposed to be inserted by amendment 188.*]

\* *Section proposed to be deleted.*

SECTION 51

\* *Section proposed to be deleted.*

SECTION 52

\* *Section proposed to be deleted.*

SECTION 53

\* *Section proposed to be deleted.*

SECTION 54



[SECTION 54]

\* *Section proposed to be deleted.*

SECTION 55

\* *Section proposed to be deleted.*

SECTION 56

\* *Section proposed to be deleted.*

SECTION 57

\* *Section proposed to be deleted.*

SECTION 58

\* *Section proposed to be deleted.*

SECTION 59

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SECTION 60

\* *Section proposed to be deleted.*

SECTION 61

\* *Section proposed to be deleted.*

SECTION 62

\* *Section proposed to be deleted.*

SECTION 63

\* *Section proposed to be deleted.*

SECTION 64

\* *Section proposed to be deleted.*

SECTION 65

**\*194.** In page 73, line 22, to delete “*sections 67 and 68*” and substitute “*section 67*”.

SECTION 67

**195.** In page 74, line 34, after “directive” to insert the following:

“other than a request for the provision or continuance of artificially delivered nutrition and hydration”.

—*Senator Rónán Mullen.*

**\*196.** In page 75, line 22, to delete “in accordance with *subsection (6)*” and substitute “referred to in *subsection (6)(a)*”.

**\*197.** In page 75, line 29, to delete “*subsection (6)*” and substitute “*subsection (6)(b)*”.

**\*198.** In page 75, line 38, to delete “(or the person signing on his or her behalf)” and substitute “or the person signing on his or her behalf”.

**\*199.** In page 76, line 34, to delete “step-child”.

**\*200.** In page 76, line 39, to delete “of the relevant person”.

SECTION 68

[SECTION 68]

**201.** In page 77, between lines 16 and 17, to insert the following:

- “(4) (a) An advance healthcare directive is not applicable if at the time in question the healthcare professional concerned reasonably believes that the directive was made with the intention or has the effect of facilitating the completion of a suicide attempt.
- (b) In paragraph (a) “reasonable belief” is to be ascertained by having regard to—
- (i) the type and circumstances of the injury suffered by the patient,
  - (ii) the proximity between the making of the advance healthcare directive and the sustaining of the injury,
  - (iii) whether the patient was recently or is currently in receipt of treatment for depression and/or a mental illness,
  - (iv) statements volunteered by one or more immediate family member(s).”.

—*Senator Rónán Mullen.*

**202.** In page 77, to delete lines 34 to 40, and in page 78, to delete lines 1 to 12 and substitute the following:

- “(6) (a) Where a directive-maker lacks capacity and is pregnant, and it is considered by the healthcare professional concerned that a refusal of artificial nutrition and hydration as set out in her advance healthcare directive would have a deleterious effect on the unborn, this refusal shall not apply.
- (b) Where a directive-maker lacks capacity and is pregnant, and it is considered by the healthcare professional concerned that a refusal of treatment set out in her advance healthcare directive, not being a refusal of artificial nutrition and hydration, would have a deleterious effect on the unborn, an application shall be made to the High Court to determine whether or not the refusal of treatment should apply.
- (c) In determining an application under paragraph (b), the High Court shall have regard to the following:
- (i) a presumption that treatment shall be provided or continued;
  - (ii) the potential impact of the refusal of treatment on the unborn;
  - (iii) 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;
  - (iv) any other matter which the High Court considers relevant to the application.”.

—*Senator Rónán Mullen.*

**203.** In page 78, to delete lines 13 to 22.

—*Senators Jillian van Turnhout, Katherine Zappone.*

[SECTION 69]

SECTION 69

- \*204. In page 78, line 29, to delete “specific”.
- \*205. In page 78, line 31, to delete “the refusal” and substitute “the advance healthcare directive”.
- \*206. In page 78, line 33, to delete “specific”.
- \*207. In page 78, line 34, after “directive” to insert “and”.
- \*208. In page 78, line 35, to delete “the refusal” and substitute “the advance healthcare directive”.
- \*209. In page 78, line 39, to delete “an advance healthcare directive” and substitute “a refusal of treatment set out in an advance healthcare directive”.
- \*210. In page 78, line 41, to delete “if”.
- 211. In page 79, between lines 8 and 9, to insert the following:

“(5) Nothing in this Part shall be construed as obliging a healthcare professional to carry out, or to assist in carrying out, the cessation of the delivery of artificial nutrition and hydration to a directive-maker where the healthcare professional has a conscientious objection to participating in the cessation of this treatment.”.

—*Senator Rónán Mullen.*

SECTION 70

- \*212. In page 79, lines 19 and 20, to delete all words from and including “shall” in line 19 down to and including line 20 and substitute “shall not be eligible to be a designated healthcare representative if—”.
- \*213. In page 79, to delete lines 27 to 32 and substitute the following:
  - “(d) the individual is—
    - (i) the owner or the registered provider of a designated centre or mental health facility in which the directive-maker resides, or
    - (ii) a person residing with, or an employee or agent of, such owner or registered provider,unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or”.
- \*214. In page 79, lines 38 and 39, to delete all words from and including “subsequent” in line 38 down to and including line 39 and substitute “subsequent to the designation of an individual as a designated healthcare representative—”.
- \*215. In page 80, to delete lines 5 to 10 and substitute the following:

“(c) the individual becomes—

- (i) the owner or the registered provider of a designated centre or mental health facility in which the directive-maker resides, or
- (ii) a person residing with, or an employee or agent of, such owner or registered provider,

”

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unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker.”.

**\*216.** In page 80, to delete line 11.

**\*217.** In page 80, line 16, to delete “directive-maker,” and substitute “directive-maker, or”.

**\*218.** In page 80, between lines 16 and 17, to insert the following:

“(e) the individual is unable, for whatever reason, to exercise the relevant powers,”.

**\*219.** In page 80, to delete lines 17 to 19 and substitute the following:

“that individual shall not, from the date on which he or she falls within any of *paragraphs (a) to (e)*, be permitted to exercise relevant powers.”.

**\*220.** In page 80, to delete lines 22 to 24 and substitute the following:

“(5) Unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the date on which an event specified in any of *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, be permitted to exercise relevant powers where the representative is the spouse of the directive-maker and—”.

**\*221.** In page 80, to delete lines 36 to 38 and substitute the following:

“(6) Unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the date on which an event specified in *paragraphs (a) or (b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, be permitted to exercise relevant powers where the representative is the civil partner of the directive-maker and—”.

**\*222.** In page 80, to delete line 39 and substitute the following:

“(a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—

(i) under the law of the State, or

(ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,”.

**\*223.** In page 81, to delete lines 3 to 6 and substitute the following:

“(7) Subject to *section 2(2)* and unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the expiry of the period referred to in this subsection, be permitted to exercise relevant powers where the representative is the cohabitant of the directive-maker and the cohabitants separate and cease to cohabit for a continuous period of 12 months.”.

[SECTION 70]

- \*224. In page 81, to delete lines 7 to 9.

SECTION 71

- \*225. In page 82, lines 7 and 8, to delete “invalidating the advance healthcare directive to the extent that it relates to” and substitute “prohibiting”.
- \*226. In page 82, line 8, after “representative” to insert “from”.
- \*227. In page 82, lines 19 and 20, to delete “(whether by reason of lack of capacity or otherwise) or declines to act,” and substitute “, for whatever reason, to exercise the relevant powers,”.
- \*228. In page 82, line 21, to delete “qualified” and substitute “eligible”.

SECTION 73

- \*229. In page 83, line 10, to delete “shall be guilty of” and substitute “commits”.
- \*230. In page 83, line 18, to delete “so shall be guilty of” and substitute “commits”.
- \*231. In page 83, lines 25 to 27, to delete all words from and including “a” where it secondly occurs in line 25 down to and including “disabilities,” in line 27 and substitute “a designated centre or mental health facility”.

SECTION 75

- \*232. In page 86, line 25, to delete “under *section 58*”.
- \*233. In page 86, to delete line 27 and substitute the following:
- “(b) any decision-making order or decision-making representation order in respect of the directive-maker,”.
- \*234. In page 86, to delete lines 29 to 38, and in page 87, to delete lines 1 to 5.

SECTION 78

- \*235. In page 88, between lines 18 and 19, to insert the following:
- “(d) to provide information on the creation of an enduring power of attorney or the making of an advance healthcare directive to enable a person who has capacity to express his or her wishes to be given effect when he or she lacks decision-making capacity;”.

—*Senator Marie-Louise O'Donnell.*

- \*236. In page 88, between lines 29 and 30, to insert the following:
- “(h) to provide information and guidance to organisations and bodies in the State in relation to their interaction with decision-making assistants, co-decision-makers, decision-making representatives, attorneys and designated healthcare representatives;”.
- \*237. In page 89, between lines 1 and 2, to insert the following:
- “(3) The Director, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, prescribe by regulations the fees to be paid to him or her and when they fall due in respect of—

[SECTION 78]

- (a) the performance of functions,
  - (b) the provision of services, and
  - (c) the provision of information and guidance,
- by him or her under the Act.

- (4) Without prejudice to the generality of *subsection (3)*, the Director's power under that subsection to prescribe fees includes the power to provide for exemptions from the payment of fees, in different circumstances or classes of circumstances or in different cases or classes of cases."

SECTION 79

- 238.** In page 89, line 8, to delete "for a relevant person" and substitute the following:

"(acting under an enduring power of attorney created under this Act or under the Act of 1996)".

—*Senator Marie-Louise O'Donnell.*

SECTION 82

- 239.** In page 91, between lines 11 and 12, to insert the following:

"(c) 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 of financial matters, as respects the capacity of persons. This special visitor who is—

- (i) selected under *paragraph (c)*, will be a representative of the NTMA,
- (ii) selected under *paragraph (c)*, will provide expert guidance on reinvestment of the financial portfolio to sustain costs necessary to the relevant person,
- (iii) appointed, will provide annual reports to the relevant person, or, in accord with *section 41(2)*."

—*Senator David Norris.*

- \*240.** In page 91, to delete lines 28 to 39 and substitute the following:

"(6) Subject to *subsections (7) and (8)#*, for the purposes of enabling the Director to perform his or her functions, he or she may direct a special visitor or general visitor to—

- (a) at any reasonable time, examine and take copies of any health, personal welfare or financial record held in relation to a relevant person by any person, body or organisation, and
- (b) interview a relevant person in private or otherwise than in public."

[# *This is a reference to the subsection proposed to be inserted by amendment 241.*]

- \*241.** In page 92, between lines 3 and 4, to insert the following:

"(8) Prior to taking an action pursuant to *paragraph (a) of subsection (6)#*, the special visitor or general visitor, as the case may be, shall seek the consent of the relevant

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person to the taking of such action, unless the Director dispenses with this requirement where—

- (a) there has been a declaration under *section 34(1)(b)* in respect of the person, or
  - (b) an enduring power of attorney has been registered in respect of the person.
- (9) A special visitor or general visitor shall not—
- (a) attempt to obtain information that is not reasonably required for the purposes referred to in *subsection (6)#*, or
  - (b) use such information for a purpose that is not in accordance with this section.
- (10) A special visitor or general visitor shall take reasonable steps to ensure that any information obtained pursuant to this section is—
- (a) kept secure from unauthorised access, use or disclosure, and
  - (b) safely disposed of when he or she believes it is no longer required.
- (11) The Director shall, on an annual basis, carry out checks to ascertain if special visitors and general visitors are complying with *subsections (9) and (10)*.”.

[# *This is a reference to the subsection proposed to be inserted by amendment 240.*]

SECTION 83

\*242. In page 92, to delete lines 12 to 24 and substitute the following:

- “(3) Subject to *subsections (4) and (5)#*, for the purposes of assisting a relevant person in relation to an application under *Part 5*, a court friend may—
- (a) at any reasonable time, examine and take copies of any health, personal welfare or financial record held in respect of the relevant person by any person, body or organisation, and
  - (b) interview the relevant person in private or otherwise than in public.”.

[# *This is a reference to the subsection proposed to be inserted by amendment 243.*]

\*243. In page 92, between lines 26 and 27, to insert the following:

- “(5) Prior to taking an action pursuant to *paragraph (a) of subsection (3)#*, the court friend shall seek the consent of the relevant person to the taking of such action, unless the Director dispenses with this requirement where—
- (a) there has been a declaration under *section 34(1)(b)* in respect of the person, or
  - (b) an enduring power of attorney has been registered in respect of the person.
- (6) A court friend shall not—
- (a) attempt to obtain information that is not reasonably required for the purposes referred to in *subsection (3)#*, or
  - (b) use such information for a purpose other than provided for in that subsection.
- (7) A court friend shall take reasonable steps to ensure that any information obtained

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pursuant to this section is—

- (a) kept secure from unauthorised access, use or disclosure, and
  - (b) safely disposed of when he or she believes it is no longer required.
- (8) The Director shall, on an annual basis, carry out checks to ascertain if court friends are complying with *subsections (6)## and (7)##*.”.

[# *This is a reference to the subsection proposed to be inserted by amendment 242.*]

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

SECTION 121

244. In page 107, between lines 10 and 11, to insert the following:

**“Financial powers of oversight and management by the Court**

121. (1) This section refers to court management of funds where the court assumes responsibility for relevant person’s funds due to—

- (a) the absence of a suitable person to act as co-decision-maker, or
  - (b) any other condition in which the court retains, or assumes responsibility for relevant person’s funds.
- (2) The primary purpose of court management of the relevant person’s funds, in accord with *section 8(7)#* is the provision of adequate financial support to provide for medical and sundry expenses, to cover the period of their time as relevant persons.
- (3) (a) Assets must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole, so far as is appropriate, having regard to the nature and duration of the expected liabilities.
- (b) Assets must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must in any event be kept to a prudent level.
- (c) Assets must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.
- (d) Investment in derivative instruments may be made only in so far as they—
- (i) contribute to a reduction of investment risks, or
  - (ii) facilitate efficient portfolio management, and any such investment must be made so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.
- (4) Annual financial reports on the condition, progress, and management of relevant person’s funds; both liquid funds and investments; will be made available to—
- (a) the court, and



[SECTION 121]

(b) relevant persons.

- (5) If an endowment as individual principal value falls by 10 per cent, or more, within one financial quarter, the portfolio will be liquidised into cash, and a special visitor, under *section 82(2)(c)* will be made responsible for the future financial oversight of those funds.”.

—*Senator David Norris.*

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

[## *This is a reference to the paragraph proposed to be inserted by amendment 239.*]

SECTION 129

245. In page 111, between lines 1 and 2, to insert the following:

**“Chemical restraint**

129. (1) Nothing in this Act shall be construed as authorising any person to administer to a relevant person any medication for the purpose of controlling or modifying the relevant person’s behaviour or to ensure that a relevant person is compliant and not capable of resistance when no medically identified condition is being treated, where the treatment is not necessary for the condition, or the intended effect of the medication is to sedate the relevant person for convenience or for disciplinary purposes.
- (2) Notwithstanding the provisions of *subsection (1)*, the appropriate use of drugs to reduce symptoms in the treatment of a medical condition does not constitute chemical restraint but the administration of such medication should be clearly documented on the relevant person’s file and the reasons for the administration of such medication specified.”.

—*Senators Denis O’Donovan, David Norris, Fidelma Healy Eames, Jillian van Turnhout, Katherine Zappone.*

SCHEDULE 1

\* *Schedule proposed to be deleted.*

SCHEDULE 2

\* *Schedule proposed to be deleted.*