

DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 17 Meitheamh 2015

Wednesday, 17 June 2015

The Select Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Alan Farrell,	Deputy Pádraig Mac Lochlainn,
Deputy Colm Keaveney,*	Deputy Gabrielle McFadden,
Deputy Seán Kenny,	Deputy Finian McGrath,
<i>Deputy Kathleen Lynch (Minister of State at the Department of Health),</i>	Deputy Fergus O'Dowd.

* In the absence of Deputy Niall Collins.

DEPUTY DAVID STANTON IN THE CHAIR.

Assisted Decision-Making (Capacity) Bill 2013: Committee Stage

Chairman: This meeting has been convened to consider Committee Stage of the Assisted Decision-Making Capacity Bill 2013. I welcome the Minister of State, Deputy Kathleen Lynch, and her officials. Due to other commitments, the Minister of State must leave at 1.30 p.m., so we will adjourn at that time and resume, if necessary, at 9.30 a.m. on Wednesday, 1 July. I propose we suspend for 15 minutes at 11.20 p.m. I remind members and those in the Visitors Gallery, who are very welcome, to turn off their mobile telephones or set them at airplane mode.

I draw the attention of members to typographical errors in two amendments on the list of amendments. In amendment No. 14 the first definition proposed to be inserted should read “designated healthcare representative” as the word “representative” has been misspelt. In amendment No. 52 in the proposed text to be inserted the word “integrity” has been also misspelt.

SECTION 1

Chairman: Amendments Nos. 1, 2, 5, 14, 34, 48, 109, 245, 247, 249, 253 to 264, inclusive, 396, 397 and 416 are related. Amendment No. 1 is consequential on amendment No. 2. Amendments Nos. 1, 2, 5, 14, 34, 48, 109, 245, 247, 249, 253 to 264 inclusive, 396, 397 and 416 will be discussed together.

Deputy Pádraig Mac Lochlainn: Can the Chairman provide a copy of the list of grouped amendments?

Chairman: I thought the Deputy had got that list.

Deputy Pádraig Mac Lochlainn: I do not have a hard copy of the list.

Chairman: I will pass that on to the Deputy.

Deputy Pádraig Mac Lochlainn: I thank the Chairman for that.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I move amendment No. 1:

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

The Committee Stage amendments include an entire new Part, Part 8, which provides a legislative framework for advance health care directives. The incorporation of these provisions into the Bill represents the culmination of a process that was agreed by the Government in March 2013.

Amendments Nos. 1 and 2 provide for the Minister for Health to commence the provisions on advance health care directives, in consultation with the Minister for Justice and Equality. It is standard for the commencement order to be made by the Minister who has policy responsibility for a specific Part.

I propose to discuss the remaining amendments in this grouping somewhat out of sequence in order that the consequential amendments will make sense when I discuss them. As amendments Nos. 253 to 264, inclusive, encompass the new Part on advance health care directives, I

will discuss these amendments together. An advance health care directive is a statement made by a person with capacity setting out his or her will and preferences regarding treatment decisions that may arise in the future, in the event that he or she lacks the capacity to provide consent to or to refuse those treatments. The Assisted Decision-Making (Capacity) Bill was considered the most appropriate vehicle for providing a legislative framework for advance health care directives. This is an efficient and practical method of consolidating the law in this area. Officials in the Department of Health published the draft general scheme of the advance health care directive provisions in February 2014 and conducted an extensive public consultation process on those provisions.

I will now provide a brief overview of the main provisions relating to advance health care directives encompassed by amendments Nos. 253 to 264, inclusive. Amendment No. 253 defines key words and terms used within the advance health care directive provisions. Amendment No. 254 outlines both the purpose of providing the legislative framework for advance health care directives and the guiding principles that underpin the provisions in Part 8. Amendment No. 255 sets out the various practicalities required to make an advance health care directive - for example, in order to make such a directive a person must be an adult, that is, be over 18 years of age, and must have capacity. In addition, a directive must be made in writing, signed and witnessed accordingly.

Amendment No. 255 also states that in order for a refusal of treatment in an advance health care directive to be considered legally binding, the person must lack capacity to consent to the treatment at the time in question, the treatment being refused must be clearly identified and the specific situations in which the treatment refusal is intended to apply must also be clearly identified. These provisions also enable a person to outline specific treatment requests in his or her directive. These requests would not be legally binding but would have to be taken into consideration during the decision-making process relating to that person's treatment.

A directive would not be considered applicable if at the time in question the directive-maker still had capacity, or if the treatment in question and/or the circumstances that had arisen were not broadly recognisable as those specified in the directive. A directive would not be applicable to life-sustaining treatment unless it included a specific statement from the directive-maker to that effect.

Amendment No. 256 also outlines the approaches to be adopted when considering the applicability of advance health care directives during pregnancy. Where the directive does not specifically state that it was intended to apply even if the woman is pregnant, there would be a presumption that treatment would be provided or continued. Where the woman specifically stated in her directive that she wanted her refusal of treatment to apply even if she was pregnant, an application would automatically be referred to the High Court to resolve the case.

In addition, an advance health care directive would not be legally binding where a person's treatment is regulated under Part 4 of the Mental Health Act 2001 or where a person is the subject of a conditional discharge order under the Criminal Law (Insanity) Act 2006. However, these restrictions would not apply to such individuals where the treatment refusal outlined in the directive pertains to a physical illness, which is not related to the amelioration of that individual's mental disorder.

Amendment No. 257 sets out the effect of an advance health care directive and also includes considerations regarding liability matters. For example, it clarifies that a treatment refusal outlined in a directive would have the same effect and autonomy as a similar refusal made

contemporaneously by the directive-maker when he or she had capacity. This amendment offers protection from liability to health care professionals in their dealings with advance health care directives, provided certain conditions are satisfied. Amendment No. 257 also clarifies that these provisions do not pertain in any way to euthanasia or assisted suicide and they do not alter the existing legislation on homicide under which both euthanasia and assisted suicide are illegal.

Amendment No. 258 introduces a mechanism through which an adult with capacity may nominate in his or her directive a legal representative to be involved in the health care decision-making process on his or her behalf, if he or she was to subsequently lose capacity. This nominee is known as the designated health care representative. This amendment also outlines the specific safeguards and conditions that apply in relation to who may or may not be nominated as a designated health care representative.

Amendment No. 259 encompasses the functions and powers of designated health care representatives. Under the provision a designated health care representative will be authorised to ensure that the terms of the advance health care directive are upheld. The decision-maker may, if he or she so wishes, confer additional powers on the designated representative, which would include advising on and interpreting the decision-maker's will and preferences regarding treatment as outlined in the directive. The designated health care representative could also be given the authority to consent to or refuse treatment, which could include life-sustaining treatment on behalf of the directive-maker.

Amendment No. 260 sets out the role of the courts and clarifies that an application can be made to the court to decide whether an advance health care directive is valid and applicable or whether or not a designated health care professional is acting in accordance with his or her relevant powers. Such an application might arise where there is doubt or disagreement about the validity and applicability of a given directive. If the application involves consideration of life-sustaining treatment it will be made to the High Court, rather than the Circuit Court.

Amendment No. 261 relates to offences arising under this Part. It would be an offence for a person to use fraud, coercion or undue influence to force another person to make, alter or revoke an advance health care directive or to knowingly create, falsify, alter or try to revoke a directive on behalf of somebody else without the person's written consent.

Amendment No. 262 clarifies that the Minister for Health will convene a multidisciplinary expert group to assist with the development of a code of practice to provide advice and guidance in relation to the advance health care directive's provisions.

Amendment No. 263 outlines certain practical and procedural matters relating to court applications under the advance health care directive's provisions. Amendment No. 264 clarifies that the Minister for Health will conduct a review of the functioning of the advance health care directive provisions before the fifth anniversary of the commencement of this Part of the Bill.

The remaining amendments in group one are consequential amendments arising as a result of the incorporation of the new Part on advance health care directives. I will deal with these amendments in the order that they appear.

Chairman: We are dealing with all the amendments in the group now. They cannot be discussed later but the Minister of State will move them in the order in which they arise.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 2:

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

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

Amendment agreed to.

Section 1, as amended, agreed to.

SECTION 2

Chairman: Amendments Nos. 3, 4, 140, 141, 146, 147, 200 and 201 are related and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 3:

In page 10, to delete line 9.

The amendments grouped with amendment No. 3, namely, amendments Nos. 4, 140, 141, 146, 147, 200 and 201, are technical amendments which substitute references to the Companies Act 1990.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 4:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 5:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 6:

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

The change to the definition of capacity is to remove the implication and the definition is a status-related definition, linked to a person’s mental condition. The focus of the Bill is on decision-making capacity as reflected in the Title of the Bill. The definition, therefore, needs to enshrine the functional principle that the capacity to be assessed relates to decision-making rather than to the person’s relevant mental condition more broadly.

Amendment agreed to.

Chairman: Amendments Nos. 7 to 10, inclusive, 28, 36, 86 to 101, inclusive, 105, 113, 120, 122, 123 and 202, are related and may be discussed together. Amendments Nos. 7 to 9, inclusive, are consequential on amendment No. 86.

Deputy Kathleen Lynch: I move amendment No. 7:

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

These amendments arise from the decision that entry into co-decision-making should be a voluntary choice and not a matter of court order and that autonomy for the administration of co-decision-making should rest with the decision support services formerly referred to as the Office of Public Guardian rather than the courts. Whereas the published Bill provides for a court order approving a co-decision-making agreement made voluntarily between two persons, an appointer and a co-decision-maker, on the basis of a court order finding that the appointer lacks capacity but with the assistance of a suitable co-decision-maker or makers, the new proposed system essentially transfers the responsibility for the approval of the decision to the decision support service. Under the new approach the relevant person will choose a trusted co-decision-maker and can receive advice and support from the decision support service. On drawing up the co-decision-making agreement, the service will verify that everything is in order and that the relevant person is making the agreement freely. It will then register the agreement whereupon it will come into effect.

The service itself will not make the finding that the appointer lacks capacity, without assistance. That assistance is provided by a medical doctor and another health care professional, to be identified in ministerial regulation. The advantages of the new approach will be that the entry procedure will be undertaken in a non-intimidatory and non-adversarial environment which will be less stressful for the person with capacity difficulties. The person will retain greater control over the process as the only action available to the decision support service will be to register the agreement or not to register. It will not be possible for the service to force the person into a more intrusive option as the court can do under the provisions as published. There will be less pressure on court resources. In terms of the ongoing input of the courts, legal advice to the Department has been that the director’s discretion in assessing applications must be confined to straightforward situations which will be the majority of cases and that questions such as the appropriateness of a co-decision-maker or the capacity of the relevant person must be referred to the courts. Determination of whether a person has capacity is a judicial function and where there is an objection or dispute relating to the person’s capacity for entering into co-decision-making, it is not appropriate for the director to make such a decision. Similarly, allegations of fraud in certain contexts which is a criminal offence, are not suitable for a non-judicial person to make a finding on.

The policy decision has necessitated a great number of textual changes and it has been considered that the best way to do this is by means of inserting a new Part, new sections 13 to 28, and deleting Chapter 4, sections 16 to 22. Additional consequential changes elsewhere throughout the text of the Bill are also addressed in this grouping. The new Part is inserted by means of amendments Nos. 86 to 101, inclusive. The consequential changes are addressed here by amendments Nos. 7, 9, 10, 28, 36, 105, 113, 120, 122, 123 and 202.

Deputy Pádraig Mac Lochlainn: I am speaking to amendments Nos. 122 and 123. This is in line with recommendations from Mental Health Reform which welcomes the provisions

in the Bill regarding co-decision-making and decision-making representatives. In order to protect the independence and integrity of the position of co-decision-makers and decision-making representatives, it is important that the list of persons who cannot act as co-decision-makers or decision-making representatives, be extended to include staff of approved centres as designated under the Mental Health Act 2001 in which a person is a patient. Obviously, that does not include a member of staff who is a next of kin or spouse. That is the rationale for the amendment.

Deputy Kathleen Lynch: This legislation and these amendments, as the Deputy is very well aware, are about allowing people freedom. They may lack capacity in one area but not in another. It is also very much to do with protection. As we know from our experiences, undue influence can often arise in too close a relationship even though people would know one another very well. We need to be careful about that. We have taken on board what Mental Health Reform has indicated.

The section in which the Deputy proposes to insert the suggested text is proposed for deletion as part of the rewriting of the co-decision-making process. For this reason we will not be accepting the amendments. The section as rewritten gives us sufficient protection. It is up to yourself whether you press the amendment, Deputy, but I think the new section, as rewritten, addresses the concerns.

Chairman: I ask everyone to speak through the Chair, please.

Deputy Pádraig Mac Lochlainn: I acknowledge the Minister of State's Department has engaged extensively with the NGOs and has taken on board many of their concerns in the new amendments. One of the areas of concern is that the new protections to address the historic mistreatment of people with intellectual disabilities or with mental health difficulties should be extended to people in centres. The concern would be that there is not the necessary independence being given to the relevant persons. The Minister of State says she believes the new section will address the concerns. I ask her to elaborate how her amendments address the specific concerns of the NGOs and Mental Health Reform.

Deputy Kathleen Lynch: The new section will be very careful to state that a manager or an owner of an institution cannot be a co-decision-maker. Where a person has been in an institution for a long period of time, he or she may have formed relationships with people. We believe that undue influence could arise if those persons were the owner or manager of the institution and this is a concern of ours. Therefore, such persons have been deliberately excluded. The director's office will operate independently and will provide a protection by means of its analysis of any co-decision-maker and the registration of the agreement will also provide a protection.

Deputy Pádraig Mac Lochlainn: I am not convinced that the Minister of State has addressed the concerns, so I will press the amendment when we deal with it.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 8:

In page 10, line 29, to delete "*section 16*" and substitute "*section 13*".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 9:

In page 10, line 31, to delete "*section 16*" and substitute "*section 13*".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 10:

In page 10, to delete lines 32 and 33.

Amendment agreed to.

Chairman: Amendments Nos. 11, 16, 20, 26, 35, 65, 104, 118, 128, 151, 153, 156, 165, 166, 168, 187, 199, 209 to 229, inclusive, 267, 272, 278 to 287, inclusive, 289 to 294, inclusive, 296, 301 to 303, inclusive, 305 to 307, inclusive, 310 to 312, inclusive, 316, 318, 319, 321 to 334, inclusive, 337, 404, 406 to 409, inclusive, and 417 are consequential on amendment No. 265 and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 11:

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

These amendments propose to replace all references to public guardian with that of director. It is proposed that the person appointed will be titled the director of the decision support service. The change of name is to communicate the message that a service is being established within the Courts Service to give information, advice and support to people with capacity difficulties, or to families, friends and organisations, on decision-making involving persons with capacity difficulties. The previous title was criticised as paternalistic and as being at odds with the purpose of the Bill which is to enable persons with capacity difficulties to make decisions, where possible.

Amendment No. 265 specifies that the Courts Service shall appoint a person to be known as the director of the decision support service to head the service which will carry out the functions assigned to it under this Act.

Amendment agreed to.

Chairman: Amendments Nos. 12, 142 to 145, inclusive, 148, 161, 163, 164 and 167 are related. Amendment No. 144 is a physical alternative to amendment No. 143. Amendments Nos. 12, 142 to 145, inclusive, 148, 161, 163, 164 and 167 may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 12:

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

“ “customary occasion” means—

(a) the occasion or anniversary of a birth, marriage or civil partnership, or

(b) any other occasion on which gifts are customarily made within families or among friends or associates;”.

I am sympathetic to Deputy Mac Lochlainn’s proposed amendments Nos. 142 and 143. I share his concern that a person should not be appointed as decision-making representatives if he or she has a conflict of interest. However, the legal advice that I have received indicates that the grounds for disqualification need to be very clear so that persons can know with certainty whether they qualify to be decision-making representatives. For that reason, I cannot accept his amendments but I will consider this issue further. I ask him not to press his amend-

ments.

Amendment No. 145 proposes that a person cannot be appointed as a decision-making representative if convicted under section 113 of ill treating or of wilfully neglecting a person with capacity difficulties.

Amendment No. 144 is a consequential amendment to allow for this extra prohibition to be inserted into subsection (2).

Amendment No. 148 proposes a number of additional grounds according to which a person would be disqualified from continuing to act as a decision-making representative. It would not be possible for a person to continue as a decision-making representative if he or she had been convicted of ill treating or wilfully neglecting the person with capacity difficulties. Similarly, if he or she requires any of the support options of the Bill, that is, decision-making assistance, co-decision-making, an enduring power of attorney or a decision-making representative, he or she could no longer act as a decision-making representative.

Deputy Pádraig Mac Lochlainn: I appreciate that the Minister has outlined a shared concern about the amendments that I have submitted. She has outlined that her legal advice states that the matter is problematic. I am happy, when we reach the amendments, to withdraw for now. However, I reserve the right to resubmit them on Report Stage.

This aspect is something that we could not accept because it would undermine the overall strength of the Bill. I ask the Minister to work with the legal drafters to see if she can address my concern. It will be on that basis that I will withdraw my amendments, when we reach them, and resubmit them on Report Stage in order to place the matter back on the agenda for discussion.

Deputy Kathleen Lynch: I thank the Deputy and I appreciate his comments. At this stage people will know that we have gone probably wider on this Bill than on any other legislation. There were certain pieces where we could simply not get over that legal hurdle but I assure the Deputy that we will take another look.

Amendment No. 161 proposes the deletion of the provisions of section 26(1) as the definition of property and affairs, and it has been moved to section 2 in order to make clear that it applies to any decisions relating to property and affairs under the Bill, not just to decisions made by decision-making representatives. No changes are proposed to the existing definition.

The proposed new section 26(1) is intended as an additional safeguard to prevent a decision-making representative from making gifts using the property or income of a person with capacity difficulties, unless specifically authorised to do so, by the court in the decision-making representation order. It is intended as a protection against potential financial abuse by the decision-making representative.

Amendment No. 163 is intended to tighten the provisions concerning gift giving by a decision-making representative on behalf of a person lacking capacity. It is intended as an additional safeguard to prevent a decision-making representative from considering himself or herself permitted to engage in extensive gift giving from the person's assets or income. The circumstances in which gift giving is authorised are limited to customary occasions in which gifts are given to persons related or connected to the person lacking capacity. The provision for gifts to be given to charity has been retained.

Amendment No. 164 is intended to ensure that account must be taken of the financial obli-

gations of the person lacking capacity, as well as of that person's assets, when deciding whether it is appropriate to give gifts. If the person were to have extensive financial obligations, for instance, it would be important that such obligations would be honoured first before engaging in gift giving.

The aim of the proposed amendment No. 167 is to tighten the conditions in which a court can confer management of the property of a person lacking capacity on the director of the decision support service. As the aim is that decisions on that person's property and assets would be made by a person who knows the person lacking capacity, and preferably that person's will and preferences, it is important that decisions on the person's property and affairs should be made by a decision-making representative. The option of having decisions made by the director of the decision support service should be a last resort option. As a result, the amendment proposes a new provision, subsection (b), whereby the court could confer the role, on the director of the decision support service, only where there is no person suitable or willing to act as a decision-making representative in regard to the property and affairs of the person lacking capacity.

Amendment agreed to.

Chairman: Amendments Nos. 13, 29, 110, 131, 133, 135 to 137, inclusive, 139, 149, 150, 155, 157 to 159, inclusive, 162 and 185 are cognate and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 13:

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

As a group, these amendments propose that the title of the order that will apply, when a decision-making representative is appointed, should be changed to decision-making representation order rather than decision-making representative order, to make the title consistent with the titles of the other support options which are co-decision-making agreements and decision-making assistance agreements.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 14:

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

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

"Director" has the meaning given to it in *section 55*;"

Amendment agreed to.

Chairman: Amendments Nos. 15 and 338 to 342, inclusive, are related and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 15:

In page 11, to delete lines 24 to 27.

Amendments Nos. 15, 338, 339 and 342 propose to remove the specific reference to the Eu-

European Convention on Human Rights in the provisions of the Bill. The Long Title of this Bill now provides that the protections of the ECHR will apply to all provisions of this Bill and do not need to be referenced in specific sections.

I have received legal advice that the references as currently drafted are problematic as they, being within brackets, only serve as guidance and do not have the legal effect we had intended when including them originally. I am advised that including the reference instead in the Long Title is the most appropriate means of referring to the protections offered by the ECHR. The removal of the specific reference to the ECHR does not diminish the protections for wards who are the subject of detention orders. The provisions of Part 9 have been explicitly drafted within the context of the ECHR and to comply with its obligations. Consequently, the protections of the ECHR will remain available to persons coming within the scope of this Part.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 16:

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

Amendment agreed to.

Chairman: Amendments Nos. 17 to 19, inclusive, 230, 231, 233 to 244, inclusive, 248, 250 to 252, inclusive, 400, 401, and 413 to 415, inclusive, are related and will be discussed together. Amendment No. 19 is a physical alternative to No. 18. Amendment No. 401 is a physical alternative to No. 400. Amendments Nos. 414 and 415 are physical alternatives to No. 413.

Deputy Kathleen Lynch: I move amendment No. 17:

In page 11, to delete lines 36 and 37.

The intention when drafting Part 7 was to develop provisions to protect persons from liability where they took decisions in good faith on the personal welfare of a person with capacity difficulties. The primary target group for these provisions was intended to be health care professionals. When drafting the provisions, we also thought in terms of family, friends or neighbours who might have to take decisions on behalf of a person at a time of emergency.

Although it was never the intention to create a new category of informal decision-makers, the feedback on the Bill as published indicated that stakeholders were concerned we were creating such a category and were giving too many rights to that group, thus potentially undermining the impetus for a person to take on a formal decision-making role under the Bill, with all the consequent obligations.

In that context, the amendments proposed to sections 53 and 54 remove all references to “informal decision makers”. Instead, the provisions of Part 7 can apply to anyone other than those who have formal roles in terms of taking decisions with, or on behalf of, another person.

I have proposed consequential amendments Nos. 17 and 19 which remove references to informal decision-makers from the Bill. As these references will now be removed, I ask Deputy Anne Ferris, who has proposed a similar amendment to section 2 in her amendment No. 18, not to press the amendment.

Deputy Colm Keaveney: I wish to put on record that I will submit an amendment on Report Stage.

Chairman: Will the Deputy be more explicit, please?

Deputy Colm Keaveney: I have three concerns. Further debate is warranted on decision-making. There is a fundamental flaw with respect to the model we are using. On Report Stage I intend to propose an amendment with respect to the Minister of State's recommendations on section 7. I am concerned in particular about decision-making and the assistance of decision-making in that process. The Minister of State is proposing a feature of informal decision-making and even after the amendment will be removed, there would be unintentional consequences. I wish to assist the Minister of State with a proposal that would technically enhance her proposals.

Chairman: The amendment will be introduced on Report Stage. In terms of signalling the introduction of amendments, it is important for Members to be explicit about what they mean to bring forward. I thank Deputy Keaveney.

Deputy Colm Keaveney: I appreciate that.

Deputy Pádraig Mac Lochlainn: The amendments submitted by Deputy Anne Ferris have been introduced in response to concerns from a human rights perspective. Does the Minister of State feel she has taken them on board and addressed those concerns?

Deputy Kathleen Lynch: I have spoken to Deputy Ferris and she is satisfied we have addressed those concerns. I do not wish to delay proceedings but it would be helpful if Deputy Keaveney could let us know of his exact concerns in advance. From the very outset we have said that while we are setting provisions in stone in the legislation, we are open to looking at ways to enhance the Bill.

Deputy Colm Keaveney: I welcome the fact the Minister of State will take a written proposal and we will have it prepared for her before the end of the week. I am sure she appreciates it will be sent in good faith. We have a mutual interest in the progress of the legislation and I would be grateful if she would positively consider proposals in this respect.

Deputy Pádraig Mac Lochlainn: The specific concerns we have received are from the centre for disability law and policy in NUI Galway. There is concern about informal decision-makers. The Minister of State might have received similar representations to the Department. Does she feel those concerns have been addressed?

Deputy Kathleen Lynch: There was a concern about giving too much power to an informal decision-maker, but we feel we have addressed that. We did receive correspondence from the centre in Galway. We can discuss the matter in a less formal setting if the Deputies wish to speak to the officials and we can see whether people are satisfied with the amendments we have made.

Deputy Pádraig Mac Lochlainn: That is a reasonable offer. Could the Minister's official e-mail both Deputy Keaveney and me to establish contact? As late as yesterday evening I was receiving representations on the matter which suggests there still seems to be a concern. In fairness, the Minister of State has made a very constructive offer to resolve the issue rather than have an argument back and forth now. We will forward the concerns of the relevant people and the Minister of State can seek to address them. I reserve the right to submit Report Stage amendments if we do not feel the concerns have been addressed.

Deputy Kathleen Lynch: It is important to say that I am not certain we will be able to address all concerns. I do not make such a commitment. What I say is that we are open to changes that are reasonable and that will make the Bill better.

Deputy Pádraig Mac Lochlainn: That is fair enough.

Deputy Colm Keaveney: We are very reasonable people.

Chairman: That is good because we still have more than 400 amendments to discuss. If everyone is satisfied then I will put the question on amendment No. 17. Is that agreed?

Deputy Pádraig Mac Lochlainn: Amendments Nos. 17 to 415 were discussed together. Have all of those amendments been dealt with?

Chairman: The grouping of the amendments is listed. Amendment No. 415 is included in the group for discussion. We cannot discuss it when we get to it because we are discussing it now.

Deputy Pádraig Mac Lochlainn: My concerns relate to amendments Nos. 250 and 252, which are my amendments. Could I speak to them now, if that is in order?

Chairman: Of course.

Deputy Pádraig Mac Lochlainn: Amendment No. 250 is in line with recommendations from Mental Health Reform to address the concern in respect of the position of incapacitated but compliant patients who are subjected to informal decision-making. Mental Health Reform considers it imperative that measures would be included in the Bill to protect against the inappropriate and-or persistent use of informal decision-making, in particular with regard to persons who are resident in mental health facilities and-or in respect of patients in approved centres. In its submission to the Oireachtas Joint Committee on Justice, Defence and Equality, Mental Health Reform also drew particular attention to the issue of over-prescription of high dosage medication and anti-psychotic medication as well as the overuse of polypharmacy for people with mental health conditions. Mental Health Reform is concerned to ensure the legislation does not permit informal decision-makers to take decisions that involve the administration or authorisation of prescription medication to persons who are not consenting or lack the capacity to consent to the administration of such medication. This amendment seeks to address these concerns.

Deputy Kathleen Lynch: On Deputy Mac Lochlainn's amendment No. 250, section 104 already provides that this Bill does not authorise a person to take a decision to give a patient treatment for mental disorder or to consent to that treatment where that is regulated by Part 4 of the 2001 Act. The Department of Health is currently developing its policy approach regarding the review of the Mental Health Act. This will include considering the specific situation of persons who lack capacity and who require treatment for mental illness. In this context, it is not appropriate to include a specific provision in this Bill relating to informal decision makers and decisions regarding the admission or detention of a person in a mental health service. My view, in any case, is that the provisions concerning informal decision makers should be as limited as possible as the aim is that any decisions needing to be taken on behalf of a person lacking capacity should be taken by those who are subject to oversight under the Bill. For these reasons, I cannot accept the Deputy's amendment No. 250 or the consequential amendment No. 243. I would ask the Deputy not to press his amendments. We have already had a detailed discussion on this subject. I understand the worries about mental health reforms but this element needs to be dealt with and would be dealt with much better under the review of the Mental Health Act 2001, where we will put in the necessary safeguards. I am not certain that the Deputy read the recommendations of the review panel but they are quite comprehensive and deal with a range of

issues including capacity. If the Deputy were to take a look at those recommendations he will see that we are dealing with the issue under the review of the Mental Health Act. This is not the appropriate vehicle for this point.

Deputy Pádraig Mac Lochlainn: When will the Minister of State introduce amendments to the Mental Health Act?

Deputy Kathleen Lynch: It is being worked on. This type of legislation is extensive and needs to be very carefully crafted and the drafters will start on the process very shortly. They have already held discussions with the Department of Health about how we will do it. The first thing we will do, because it is easier than other aspects, is deal with people who are unwilling to undergo ECT.

Deputy Pádraig Mac Lochlainn: I have seen multitudes of legislation in which the Government was able to amend a whole range of Acts at the same time when it wanted to bring forward reform. This makes it possible to consistently apply the new reform and I do not understand why the Minister cannot do everything now to amend the relevant Acts rather than make people wait for what will probably be a considerable length of time. I ask her to reconsider this. The Minister of State had offered to engage with NUI Galway but can she make that offer again to see if its significant concerns over mental health reform can be addressed by means of Report Stage amendments?

Deputy Kathleen Lynch: I am normally very open to these things and I always say I am no great expert on these things nor the holder of all knowledge. However, I genuinely believe that the best place to deal with this is within the Mental Health Act. I understand what the Deputy says about the amended piece of legislation but the recommendations that came from the review group on the Mental Health Act are not little recommendations - they will require substantial drafting. They change how we deal with mental health and how we look at capacity within mental health. With a mental health diagnosis one is automatically assumed not to have capacity but in the new legislation we are saying "No" to that. The amendments will not be simple and a substantial amount of legislation will need to be put in place. I genuinely believe that the Mental Health Act is the place to deal with this.

Deputy Pádraig Mac Lochlainn: Often, when we engage with legislation, it involves amending a range of different Acts rather than waiting for an Act to be comprehensively changed because that can take a long, long time. This is a very welcome and long overdue reform of this area but I do not understand why the Minister cannot deal with all the issues that are before her rather than wait for the comprehensive reform of the area of mental health which is coming down the line.

Deputy Kathleen Lynch: This Bill is about capacity and the ability to make decisions, sometimes in very limited circumstances and in very short windows of time. It is about constantly assessing capacity but it is not about mental health, even though it will apply to that. It is not about any one section of society. I would not say this if I did not mean it and I am sure the Deputy is as passionate about what he believes but this amendment is about dealing with the mental health sector in a better way. The Deputy may reserve his right to reintroduce the amendment on Report Stage but if he looks at what is recommended by the review group he may see that it satisfies what he wants. I found it difficult to imagine how we could do certain things regarding the review of the Mental Health Act but when the review group came up with the solution it was really inspirational.

Deputy Pádraig Mac Lochlainn: We are clearly not going to reach a meeting of minds on this but I will be monitoring the situation. The Minister will obviously not accept these amendments and the Bill will proceed but I will monitor closely how long it takes to deliver the reforms she proposes.

Deputy Kathleen Lynch: I will be doing that myself.

Amendment agreed to.

Amendment No. 18 not moved.

Deputy Kathleen Lynch: I move amendment No. 19:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 20:

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

Amendment agreed to.

Chairman: Amendments Nos. 21, 22, 32 and 33 are related drafting amendments and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 21:

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

These are minor drafting amendments.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 22:

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

Amendment agreed to.

Chairman: Amendments Nos. 23, 160 and 203 form a composite proposal and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 23:

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

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

This is a minor drafting amendment that moves the definition of “owner” which is already

found in sections 24 and 40 of the Bill into section 2, the general interpretation section. Amendments Nos. 160 and 203 are consequential amendments that delete the definition of “owner” from section 24 and 40 respectively.

Amendment agreed to.

Chairman: Amendments Nos. 24, 55 and 195 are related and will be discussed together

Deputy Kathleen Lynch: I move amendment No. 24:

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

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

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

Amendments Nos. 24, 55 and 195 propose a revision of the definition of personal welfare and the removal of the definition from section 25(a) to the general interpretations section, as these provisions extend beyond decisions made by decision-making representatives and include decisions on personal welfare made by co-decision makers, where authorised by a co-decision making agreement, and by attorneys under enduring powers of attorney.

Amendment No. 24 inserts a revised definition of personal welfare into section 2, the general interpretation section. The proposed definition of personal welfare has been significantly recast in the light of concerns raised by stakeholders, particularly in relation to the explicit inclusion of provisions enabling the intervener to decide the persons with whom the relevant person may have contact. The Department of Foreign Affairs and Trade has raised concerns regarding the provision that the intervener could decide whether or not the person may travel outside the State. This provision may also contravene Article 18 of the UN Convention on the Rights of Persons with Disabilities, which stipulates that the relevant person should be free to leave any country, including his or her own.

The recast definition adapts the provisions of the British Columbia Representation Agreement Act 1986, which is considered to constitute good practice in terms of compliance with the UN Convention, and the Ontario Substitute Decisions Act 1992. The definition focuses more on the likely decisions that an intervener would have to make, such as whether the relevant person might have to move to a nursing home or whether the person would participate in employment, training, education or social activities. The issues of diet and dress are encompassed within the general provision enabling the intervener to take decisions relating to the person’s well-being. It is considered preferable not to refer to these issues explicitly, as these

are issues on which the relevant person may continue to have the capacity to take his or her own decisions, even when the capacity to take other decisions is seriously diminished. Acceptance of this amendment will result in the deletion of section 25.

Amendments Nos. 55 and 195 are a consequence of the acceptance of amendment No. 24 which will result in the deletion of section 25. Amendment No. 55 proposes the deletion of the definition of personal welfare in section 9, under definitions in relation to co-decision-making, which refers to one or more of the matters referred to in section 25(a). Amendment No. 195 proposes the deletion of the definition of personal welfare in section 39, under definitions in relation to enduring powers of attorney, which also refers to section 25(a).

Amendment agreed to.

Chairman: Amendments Nos, 25, 56 and 196 are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 25:

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

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

(a) the custody, control and management of some or all of the relevant person’s property or property rights;

(b) the sale, exchange, mortgaging, charging, gift or other disposition of the relevant person’s property;

(c) the acquisition of property by the relevant person, or on his or her behalf;

(d) the carrying on, on behalf of the relevant person, of any profession, trade or business which may lawfully be carried on by a person other than the relevant person;

(e) the making of a decision which will have the effect of dissolving a partnership in which the relevant person is a partner;

(f) the carrying out of any contract entered into by the relevant person;

(g) the discharge of the relevant person’s debts or other obligations, whether or not any such debt or obligation is legally enforceable against the relevant person;

(h) the execution or exercise of any of the powers or discretions vested in the relevant person as a tenant for life;

(i) providing, to the extent that the relevant person might have been expected to do so, for the needs of a decision-making assistant, a co-decision-maker, an attorney, a designated healthcare representative or a decision-making representative, for the relevant person or of other persons;

(j) the conduct of proceedings before any court or tribunal, whether in the name of the relevant person or on his or her behalf;

(k) making an application for housing, social welfare or other benefits or other-

wise protecting or advancing the interests of the relevant person in relation to those matters;

(l) other matters relating to the relevant person's property and affairs;”.

I propose to discuss amendments Nos. 25, 56 and 196 together. The amendments propose to move the definition of property and affairs from section 26(1)(a) to the general interpretation section, as these provisions extend beyond decisions made by decision-making representatives and include decisions on property and affairs made by co-decision-makers, where authorised by a co-decision-making agreement, and by attorneys under enduring powers of attorney. Amendment No. 25 inserts a definition of personal welfare into section 2, the general interpretation section. No changes have been proposed to the matters encompassed by the definition of property and affairs as provided for in section 26(1)(a). Acceptance of this amendment will result in the deletion of section 26(1).

Amendments No. 56 and No. 196 are a consequence of the acceptance of amendment No. 25, which will result in the deletion of section 26(1). Amendment No. 56 proposes the deletion of the definition of property and affairs in section 9, which refers to one or more of the matters referred to in section 26(1)(a). Amendment No. 196 proposes the deletion of the definition of property and affairs in section 39, under definitions in relation to enduring powers of attorney, which also refers to section 26(1)(a).

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 26:

In page 12, to delete lines 26 to 28.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 27:

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

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

This is a technical amendment to add clarity and provides for a definition of registered medical practitioner.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 28:

In page 12, lines 44 and 45, to delete “, subject to *section 17(3)*,”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 29:

In page 13, line 4, to delete “decision-making representative order” and substitute “decision-making representation order”.

Amendment agreed to.

Chairman: Amendments Nos. 30, 31, 66 to 69, inclusive, 106, 114 to 117, inclusive, 232, 246 and 405 are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 30:

In page 13, line 8, to delete “and”.

These are, in the main, technical amendments. The purpose of amendment No. 106 is to expand the listing under section 14(3) to include designated health care representatives - that is, to provide that designated health care representatives do not need the consent of the court to make an application to the court in relation to a relevant person. The rest of the amendments in this grouping are technical in nature.

Deputy Colm Keaveney: Did the Minister refer to amendment No. 269?

Deputy Kathleen Lynch: No.

Deputy Colm Keaveney: I thought the Chairman mentioned amendment No. 269.

Chairman: No; it is not in this grouping.

Deputy Colm Keaveney: I apologise. I thought I heard the Chairman say No. 269.

Chairman: No. Does the Deputy have a copy of the grouping list?

Deputy Colm Keaveney: I have that list, yes, but I thought I heard the Chairman say No. 269.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 31:

In page 13, line 14, to delete “relevant person;” and substitute the following:

“relevant person, and

(e) in relation to a decision made, or to be made, by a designated healthcare representative on behalf of a relevant person, means a decision by the representative pursuant to the exercise or proposed exercise, as the case may be, of his or her relevant powers;”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 32:

In page 13, line 18, to delete “being called into” and substitute “in”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 33:

In page 13, line 19, to delete “called into” and substitute “in”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 34:

In page 13, between lines 29 and 30, to insert the following:

“ “relevant powers” has the meaning assigned to it by *section 55**”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 35:

In page 13, line 33, to delete “Public Guardian” and substitute “Director”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 36:

In page 13, line 37, to delete “*section 18(2)*” and substitute “*section 14(2)**”.

Amendment agreed to.

Chairman: Amendments Nos. 37, 124 to 127, inclusive, 129, 130, 132, 134 and 138 are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 37:

In page 13, line 40, to delete “*section 24(1)*” and substitute “*section 23(4)**”.

Amendment No. 37 is a technical amendment to correct a cross-reference. Amendment No. 124 proposes the first of the changes consequent on co-decision-making being moved out of the courts. As co-decision-making is now a voluntary option, a person cannot be forced to enter a co-decision-making agreement. The amendment sets out the provision that a decision-making representative can be appointed only where the court is satisfied that there is no co-decision-making agreement in place and that the court has made a declaration that the person lacks capacity to make a decision or a class of decisions. Consequently, it allows the feasibility of co-decision-making to be considered for the person with capacity difficulties before proceeding to a decision-making representation agreement in line with the ethos of the Bill that the least intrusive options should be considered before proceeding to more intrusive options.

Amendment No. 125 is intended to clarify that the court can make an order appointing a decision-making representative to take decisions on property and affairs, on personal welfare, or on both property and affairs and on personal welfare on behalf of a person with capacity difficulties.

Amendment No. 126 proposes the factors that should guide the court when determining whether a person is suitable to act as a decision-making representative for a person with capacity difficulties. The most important factor is that of the will and preferences of the person with capacity difficulties, in line with the ethos of the Bill that the mechanisms being put in place are primarily to express the person’s wishes when the person no longer has the capacity to do so.

As the support of family members can be important for many people in this situation, the next factor enables the court to prioritise a family member for appointment as a decision-making representative provided that the person is otherwise suitable. The person being selected has to be compatible with the person with capacity difficulties and a factor is proposed in this regard.

The final factors require the court to assess whether the proposed decision-making representative will be able to perform the functions to be vested in him or her. There is no point in appointing a decision-making representative who may be compatible with the person but unable

to perform what is a responsible and often onerous role. The final factor is that of assessing any potential conflict of interest.

Where a decision-making representative will have responsibility for decisions on the person's property and affairs, these decisions will often be more complex in nature than those relating to personal welfare. An additional set of factors are proposed requiring the court to assess whether the proposed decision-making representative will have the competence to perform the role, taking account of the size and complexity of the person's affairs. It allows the court to take account of potential supports available to the proposed decision-making representative when assessing that person's competence for the role. A family member, for instance, might not have extensive expertise in managing the business of a person with capacity difficulties. However, if the family member could show that she or he had access to accountants or business experts to support him or her in her role, that could be taken into account by the court.

Amendment No. 127 addresses the situation where there is no suitable person to perform the role of decision-making representative. As the definition of suitability includes whether the person has the capability to perform the role, it is not considered necessary to include the phrase "or able" in this provision.

Amendment No. 37 proposes to correct a cross-reference.

Amendment No. 130 proposes that the director of the decision support service must comply with the court's request to nominate two representatives from the panel of decision-making representatives maintained by the decision support service where the court seeks to appoint a decision-making representative from that panel.

Amendment No. 129 is a consequential amendment arising from the insertion of the new paragraph (b) into subsection (3).

Amendment No. 132 proposes to require the court, when appointing a decision-making representative, to decide also on the powers to be conferred on the decision-making representative, the duties and-or any conditions to be imposed. The existing provision leaves this at the court's discretion. The purpose of the amendment is to restrict the room for manoeuvre of decision-making representatives in order that the functions they exercise will be limited to those set out by the court. This is intended as a safeguard against a decision-making representative acting beyond his or her functions because duties and conditions were not clearly ordered in advance by the court.

Amendment No. 134 proposes that the court would require a potential decision-making representative to sign a statement indicating that he or she understands and agrees to act in accordance with the duties and powers conferred by the court and with the Bill's guiding principles. By requiring a decision-making representative to make a commitment to the court at the time of appointment to abide by the obligations arising both from the court's order and from the Bill, this is designed as a safeguard to prevent a decision-making representative from acting beyond the scope of his or her powers due to lack of knowledge of the obligations underpinning the role.

Amendment No. 138 is a safeguard which expands the circumstances in which a court can determine that a decision-making representative is acting outside the scope of the decision-making representation order. It allows the court to determine that the decision-making representative is acting outside the scope of the order if the representative is acting in a way that is

not in accordance with the Bill's guiding principles. The obligation on the decision-making representative is to act not only in accordance with the person's best interests but also in accordance with the range of obligations set out in the Bill's guiding principles.

Amendment agreed to.

Section 2, as amended, agreed to.

SECTION 3

Chairman: Amendments Nos. 38 to 47, inclusive, are related and may be discussed together, by agreement.

Deputy Kathleen Lynch: I move amendment No. 38:

In page 14, lines 21 and 22, to delete "decision-making assistance agreement,".

Amendment No. 38 proposes to remove the reference to "decision-making assistance agreement" as a person will not have to undergo a capacity test to enter a decision-making assistance agreement. If a person believes that his or her capacity is in question or will shortly be in question, he or she is free to decide to enter a decision-making assistance agreement.

Amendment No. 39 extends the provisions of this section to the creation of advance health care directives.

Amendments Nos. 40 and 42 propose to tighten the capacity test that will apply in the Bill. The Bill contains a presumption of capacity unless the contrary is shown. My objective in this section is to ensure the vast majority of persons will be able to meet the capacity test and be deemed to have capacity.

The aim of the capacity test is to ensure a person has the capacity to make a specific decision. It is not a mechanism for declaring a person to lack capacity for ever more. The first amendment is that the person needs to understand information relevant to a decision at the time a decision is to be made. This amendment is intended to ensure a person is not expected to understand and retain information for months in order to be deemed to have capacity. The test is directly linked to the type of decision and the time when it has to be made.

In a similar vein, amendment No. 41 seeks to make clear that the test relates to a particular decision rather than to decisions in general. A person may be found to need support to make a specific decision. That may not have implications for the person's ability to make other decisions.

Amendment No. 43 proposes that the person needs to have capacity to retain information long enough to make a voluntary choice. This is to ensure a person could not be deemed to lack capacity if he or she could not retain information relevant to the decision for a significant period. The aim is to tie the test directly to the demands of the decision needing to be made, in line with the functional approach being adopted.

Amendment No. 44 is to correct a typographical error.

Amendment No. 45 proposes a change of terminology recommended by disability stakeholders.

As members know, we have always proposed that the capacity test should be a functional

test whereby the person's capacity is assessed against the demands of the decision or decisions needing to be made. Amendment No. 46 seeks to make even clearer that this is a functional test which is not based on whether a person has a particular condition.

The new provisions make clear that the capacity test is time-limited and issue-specific. A person, even if found not to have the capacity to make a particular decision, will still have the possibility to make that decision or category of decisions at another time. Similarly, even if the person is found not to have the capacity to make a decision on a particular issue, such as on a complex financial matter, for instance, that person still retains the capacity to take other decisions, such as on personal welfare. These provisions illustrate the difference between the capacity test as proposed and the on-or-not regime in operation under the Lunacy Regulation (Ireland) Act 1871 which removes the person's capacity to take all decisions once declared a ward of court.

The purpose of amendment No. 47 is to remove the test in order that matters can be decided on the balance of probabilities. As there is a presumption of capacity in section 8(2), the starting point is that the person has capacity unless that is demonstrated otherwise. The test must, therefore, be that the person has been demonstrated not to have capacity on the issue on which a decision is needed.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 39:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 40:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 41:

In page 14, line 24, to delete "a" and substitute "the".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 42:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 43:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 44:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 45:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 46:

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 47:

In page 15, to delete lines 7 and 8.

Amendment agreed to.

Section 3, as amended, agreed to.

SECTION 4

Deputy Kathleen Lynch: I move amendment No. 48:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 49:

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

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

(a) in such office of, or attached to, the Circuit Court within the circuit concerned,

(b) in such combined court office (within the meaning of section 14 of the Courts and Court Officers Act 2009) within the circuit concerned, or

(c) in such office of the Courts Service, within the circuit concerned, designated by the Courts Service for the purpose of this Act,

as may be prescribed by rules of court.”.

This amendment provides that rules of court can designate the court offices within each circuit to which applications to the Circuit Court can be made. In moving this, I wish to notify the committee of my intention to table Report Stage amendments to section 4 on the manner in which the Bill addresses the issues of withdrawal of artificial life-sustaining treatment, non-therapeutic sterilisation and donation of an organ. I am awaiting legal advice on this section.

Amendment agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

SECTION 6

Deputy Kathleen Lynch: I move amendment No. 50:

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

This amendment is to allow the Minister for Health’s expenses in the administration of the Act to be paid from the Exchequer. The Minister may have expenses arising from the provisions regarding advance health care directives, which is the only part of the Act under which the Department of Health comes into play.

Amendment agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

SECTION 8

Chairman: Amendments Nos. 51 to 54, inclusive, are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 51:

In page 16, to delete line 29.

Amendment No. 51 is a technical amendment to allow for new principles to be inserted into section 8. Amendment No. 52 proposes to expand the provisions of (6)(b) of this section to require that all interventions should have due regard to the need to respect the person’s control over his or her financial affairs and property. This is in line with the provisions in Article 12 of the UN Convention on the Rights of Persons with Disabilities concerning the equal rights of persons with disabilities in terms of ownership and control of property and financial affairs.

Amendment No. 53 proposes to insert two new subprinciples in subsection (6). The new principles require that any intervention potentially intruding on a person’s decision-making capacity should be proportionate to the significance and urgency of the matter needing to be decided. They also require any intervention to be as limited in duration as possible. This is in line with the ethos of the Bill, namely, that any intrusion should be as limited as possible.

Amendment No. 54 proposes to set the obligation that a person who takes a decision on behalf of another person, either formally or informally, should act in good faith and for the benefit of the person in addition to being subject to the other requirements and safeguards outlined in the Bill.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 52:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 53:

In page 16, between lines 32 and 33, to insert the following:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 54:

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

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

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Deputy Kathleen Lynch: I move amendment No. 55:

In page 18, to delete lines 9 and 10.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 56:

In page 18, to delete lines 11 and 12.

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10

Chairman: Amendments Nos. 57 and 77 are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 57:

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

These are technical amendments. The provision whereby a person must be over 18 years of age to be a decision-making assistant is proposed to be moved to section 12 to join the other factors that would disqualify a person from being appointed as a decision-making representative. The requirement remains that a decision-making assistant must be over 18 years of age and that an agreement involving a decision-making assistant under 18 years of age would be invalid.

Amendment agreed to.

Chairman: Amendments Nos. 58, 60 to 64, inclusive, and 70 to 76, inclusive, are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 58:

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

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

Amendment No. 58 provides that the person with capacity difficulties and the decision-making assistant can revoke the decision-making assistance agreement at any time. It also proposes that the person with capacity difficulties and the decision-making assistant would have the possibility of varying the agreement provided that both agreed. Both could, for instance, decide to extend or restrict the areas covered by the agreement.

The proposed amendment No. 60 would enable ministerial regulations to extend to procedures for varying or revoking agreements. This would put in place extra safeguards to protect a person with capacity difficulties in a decision-making assistance agreement.

Amendment No. 61 requires that the information on drawing up an agreement must be explained to the relevant person by someone other than the proposed decision-making assistant. This is to avoid any conflict of interest. It is an extra safeguard to ensure that the person could not be persuaded to enter into an agreement by the person wishing to become the decision-making assistant without being fully aware of the implications of the agreement or, indeed, of the safeguards underpinning it.

Amendment No. 62 is intended to add an extra requirement for a decision-making assistant, namely, that he or she agrees to act in accordance with the functions of a decision-making assistant. The aim is that the decision-making assistant would agree in advance of entering the decision-making assistant agreement that he or she was prepared to comply with all of the resulting obligations, including that of acting in accordance with the guiding principles that underpin this Bill.

Amendment No. 63 proposes that the signatures of the person with capacity difficulties and the potential decision-making assistant would be attested by a third party. This is an extra safeguard against undue influence or fraud and is aimed at ensuring that the person with capacity difficulties voluntarily enters into the agreement.

Amendment No. 64 is to require that ministerial regulations should govern the notice procedures for varying and revoking decision-making assistance agreements. This is an extra safeguard to protect the person with capacity difficulties and the decision-making assistant.

Amendment No. 70 proposes that a decision-making assistance agreement could be invalidated if it conflicted with the provisions of an advance health care directive, even if that directive did not result in the appointment of a designated health care representative. This is because the Bill proposes that the advance health care directive would always take precedence over a decision-making assistance agreement for a number of reasons.

First, an advance health care directive can only be drawn up when the person has capacity while the decision-making assistance agreement is operational when a person has capacity difficulties. As a result, the advance health care directive is an accurate reflection of the person's will and preferences when he or she has capacity. Second, it relates specifically to health care matters and is a more precise reflection of the person's will and preferences on health care than a decision-making assistance agreement which can be more general in scope. Third, the decision-making assistant is essentially an advisory role and should not extend to making decisions on the person's behalf.

Amendment No. 71 proposes to delete the provisions which restricted to the person with capacity difficulties the option of revoking or varying the decision-making assistance agreement. This is intended as a safeguard for the decision-making assistant that he or she would not be forced to remain in an agreement against his or her will or that the agreement could be varied by the person with capacity difficulties without the knowledge of the decision-making assistant or against his or her will.

Amendments Nos. 72, 74 and 75 propose to delete the phrase "or an appointer" as unnecessary. Amendment No. 73 proposes to re-order the functions of the decision-making assistant in the order of priority of the functions of the decision-making assistant. The amendment seeks to make clear that his or her primary function is to assist the person with capacity difficulties to obtain information. This is to avoid any potential confusion that a decision-making assistant is a substitute decision-maker. Instead, the role is as an information support and as an adviser.

The purpose of amendment No. 76 is to make clear that a decision-making assistance agreement does not give a decision-making assistant the right to take decisions on behalf of the person with capacity difficulties. The function of a decision-making assistant is to support a person with capacity difficulties when making decisions by sourcing information or by providing advice. The amendment seeks to reinforce the principle underpinning the Bill that everyone is presumed to have decision-making capacity unless the contrary is shown.

Amendment agreed to.

Chairman: Amendment Nos. 59 and 197 are cognitive and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 59:

In page 18, line 23, to delete "may" and substitute "shall".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 60:

In page 18, line 28, after "execution" to insert ", variation and revocation".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 61:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 62:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 63:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 64:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 65:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 66:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 67:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 68:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 69:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 70:

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

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

(a) an advance healthcare directive—

(i) made by the relevant person,

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

and

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

and

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 71

In page 20, to delete lines 24 to 27.

Amendment agreed to.

Section 10, as amended, agreed to.

SECTION 11

Deputy Kathleen Lynch: I move amendment No. 72:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 73:

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

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 74:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 75:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 76:

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

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

Amendment agreed to.

Section 11, as amended, agreed to.

SECTION 12

Deputy Kathleen Lynch: I move amendment No. 77:

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

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

Amendment agreed to.

Chairman: Amendments Nos. 78 to 85, inclusive, are related. Amendments Nos. 78, 79 and 81 are consequential on amendment No. 80. Amendments Nos. 82, 83 and 85 are consequential on amendment No. 84. Amendments Nos. 78 to 85, inclusive, will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 78:

In page 21, line 17, to delete “or”.

Amendments Nos. 78 and 79 are technical amendments to allow for an extra criterion for invalidating decision-making assistance agreements to be inserted in the section. Amendments Nos. 80 and 81 are safeguards to protect a person with capacity difficulties. They provide that a decision-making assistance agreement will be invalid if the potential decision-making assistant has been convicted of ill-treating or wilfully neglecting the person with capacity difficulties.

Amendment No. 84 proposes an additional safeguard whereby an existing decision-making assistance agreement would become invalid from the point at which a decision-making assistant was convicted of the offence of ill-treating or wilfully neglecting the person with capacity difficulties under section 113. Amendments Nos. 82, 83 and 85 are technical amendments to provide for this extra provision to be inserted in subsection (3) of section 12.

Amendment No. 145 proposes that a person cannot be appointed as a decision-making representative if convicted under section 113 of ill-treating or wilfully neglecting the person with capacity difficulties. Amendment No. 144 is a consequential amendment to allow for this extra prohibition to be inserted into subsection (2).

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 79:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 80:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 81:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 82:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 83:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 84:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 85:

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

Amendment agreed to.

Section 12, as amended, agreed to.

NEW SECTIONS

Deputy Kathleen Lynch: I move amendment No. 86:

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

“PART 4

CO-DECISION-MAKING AGREEMENTS

Definitions

13. In this Part—

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

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

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

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 87:

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

“Co-decision-making agreement

14. (1) Subject to the provisions of this section, a person who has attained the

age of 18 years and who considers that his or her capacity is in question or may shortly be in question may appoint a suitable person who has also attained that age to jointly make with the relevant person one or more than one decision on the first-mentioned person's personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27*.

(2) A person is suitable for appointment as a co-decision-maker if he or she—

(a) is a relative or friend of the appointer who has had such personal contact with the appointer over such period of time that a relationship of trust exists between them, and

(b) is capable of effectively performing the functions which he or she will have as a co-decision-maker.

(3) An appointment as a co-decision-maker shall be made in writing in a co-decision-making agreement which is in compliance with *subsection (4)* and regulations made under *section 27*.

(4) An appointer, in his or her co-decision-making agreement—

(a) shall not include a matter which is the subject of a decision-making order, decision-making representation order or enduring power of attorney (whether registered or not) in respect of him or her, or

(b) notwithstanding the definition of “property and affairs” in *section 2*, shall not include provision for the disposal of his or her property by way of gift.

(5) A co-decision-making agreement shall contain the following:

(a) the name, date of birth and contact details of the appointer;

(b) subject to *subsection (6)*, the signature of the appointer and the date that he or she signed the agreement;

(c) the name, date of birth and contact details of the co-decision-maker;

(d) the signature of the co-decision-maker and the date that he or she signed the agreement;

(e) the signatures of the 2 witnesses referred to in *subsection (7)*.

(6) A co-decision-making agreement may be signed on behalf of the appointer by a person who has attained the age of 18 years and who is not one of the witnesses referred to in *subsection (7)* if—

(a) the appointer is unable to sign the agreement,

(b) the appointer is present and directs that the agreement be signed on his or her behalf by that person, and

(c) the signature of the person is witnessed in accordance with *subsec-*

tion (7).

(7) (a) The appointer, or the person signing on his or her behalf in accordance with *subsection (6)*, and the co-decision-maker shall sign the co-decision-making agreement in the presence of each other and in the presence of 2 witnesses—

(i) each of whom has attained the age of 18 years, and

(ii) of whom at least one is not an immediate family member of the appointer or the co-decision-maker.

(b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the appointer (or the person signing on his or her behalf) and the signature of the co-decision-maker by applying his or her own signature to the co-decision-making agreement.

(8) An appointer may, in a co-decision-making agreement, appoint more than one person as a co-decision-maker but may not appoint more than one co-decision-maker in respect of the same relevant decision.

(9) An appointer may, in the co-decision-making agreement, appoint one or more than one person to act as a co-decision-maker if the co-decision-maker appointed in the agreement dies or becomes disqualified to be such co-decision-maker.

(10) Prior to entering into a co-decision-making agreement, the intending appointer and the proposed co-decision-maker may, individually or jointly, seek the assistance of the Director with regard to making and entering into the co-decision-making agreement.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 88:

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

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

15. (1) Subject to *subsection (3)*, a person shall not be suitable for appointment as a co-decision-maker if he or she—

(a) has been convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,

(b) has been the subject of a safety or barring order in relation to the relevant person or a child of the relevant person,

(c) is an undischarged bankrupt or currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,

(d) is a person in respect of whom a declaration has been made under section

819 of the Act of 2014,

(e) is a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,

(f) is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the relevant person,

(g) has been convicted of an offence under *section 113*, or

(h) has been found by the court to be unsuitable to perform the role of co-decision-maker or other intervener under this Act, whether in connection with the relevant person or another relevant person.

(2) Subject to *subsection (3)*, where, subsequent to the appointment of a co-decision-maker—

(a) the co-decision-maker is convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,

(b) a safety or barring order is made against the co-decision-maker in relation to the relevant person or a child of the relevant person,

(c) the co-decision-maker becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,

(d) the co-decision-maker becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014,

(e) the co-decision-maker becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,

(f) the co-decision-maker becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the relevant person,

(g) the co-decision-maker is convicted of an offence under *section 113*,

(h) the co-decision-maker—

(i) enters into a decision-making assistance agreement as a relevant person,

(ii) enters into a co-decision-making agreement as a relevant person,

(iii) has an enduring power of attorney registered in respect of himself or herself,

or

(iv) becomes the subject of an order under *Part 4*,

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 89:

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

“Functions of a co-decision-maker

16. (1) A co-decision-maker shall advise the appointer respecting matters the subject or to be the subject of relevant decisions, and shall share with the appointer the authority to make relevant decisions and may do all things necessary to give effect to the authority vested in him or her.

(2) In exercising his or her functions, a co-decision-maker shall—

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

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

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

(d) assist the appointer to make and express a relevant decision, and

(e) endeavour to ensure that the appointer’s relevant decisions are implemented.

(3) A co-decision-maker shall not—

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

(b) use relevant information for a purpose other than in relation to a relevant decision.

(4) A co-decision-maker shall take reasonable steps to ensure that relevant information—

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

(b) is safely disposed of when no longer required.

(5) A co-decision-maker shall be entitled to be reimbursed out of the assets of then appointer in respect of his or her fair and reasonable expenses which are—

(a) reasonably incurred in performing his or her functions as co-decision-maker,

(b) vouched in a manner acceptable to the Director, and

(c) included in any reports submitted by the co-decision-maker under *section 23*.

(6) A co-decision-maker is not entitled to remuneration for performing his or her functions as co-decision-maker.

(7) A co-decision-maker shall notify the Director if the appointer's capacity—

(a) improves to the extent that he or she has capacity in relation to the matters which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker, or

(b) deteriorates to the extent that he or she lacks capacity in relation to the matters which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker.

(8) A co-decision-maker—

(a) shall acquiesce in a relevant decision made by the appointer, and

(b) shall not refuse to sign a document referred to in *section 19(8)*,

unless it is reasonably foreseeable that the relevant decision will result in harm to the appointer or to another person.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 90:

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

“Restrictions on co-decision-makers

17. (1) Where there is both a co-decision-maker and a decision-making representa-

tive for a relevant person—

(a) the co-decision-maker shall not exercise any function granted to the decision-making representative and which is exercisable by the decision-making representative, and

(b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the functions of the decision-making representative which are exercisable by the decision-making representative.

(2) Where there is both a co-decision-maker and an attorney (under an enduring power of attorney registered under *section 46*) for a relevant person—

(a) the co-decision-maker shall not exercise any power granted to the attorney and which is exercisable by the attorney, and

(b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the powers of the attorney which are exercisable by the attorney.

(3) Where there is both a co-decision-maker and a designated healthcare representative for a relevant person—

(a) the co-decision-maker shall not exercise any relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative, and

(b) the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative.

(4) Where there is a co-decision-maker for a relevant person who has made an advance healthcare directive that is applicable and the directive—

(a) does not provide for a designated healthcare representative, or

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

the co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the terms of the advance healthcare directive.

(5) Where there is more than one co-decision-maker for a relevant person (whether in the same co-decision-making agreement or pursuant to different co-decision-making agreements), each co-decision-maker shall exercise any functions which the co-decision-maker is authorised to exercise in a manner which is not inconsistent with the functions exercisable by another co-decision-maker.

(6) A co-decision-maker for a relevant person shall not have authority to make

decisions jointly with a relevant person, other than in relation to those specified in respect of him or her in the co-decision-making agreement.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 91:

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

“Application for registration of co-decision-making agreement

18. (1) A co-decision-making agreement shall not enter into force until it has been registered in accordance with *section 19*.

(2) An application to register a co-decision-making agreement shall be made in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27* and shall be signed by both the appointer and the co-decision-maker (“the applicants”).

(3) The applicants shall, at the same time as making an application to register a co-decision-making agreement, jointly give notice, in such form as shall be prescribed by regulations made under *section 27*, of the application and a copy of the co-decision-making agreement to the following persons:

- (a) a spouse or civil partner of the appointer;
- (b) a cohabitant of the appointer;
- (c) any child of the appointer who has attained the age of 18 years;
- (d) any decision-making assistant for the appointer;
- (e) any decision-making representative for the appointer;
- (f) any attorney for the appointer;
- (g) any designated healthcare representative for the appointer.

(4) An application under subsection (2) shall be accompanied by the following:

- (a) the co-decision-making agreement;
- (b) a statement by the appointer that he or she—
 - (i) understands the implication of entering into the co-decision-making agreement and has read and understands the information contained therein, or has had such information explained to him or her,
 - (ii) wishes to enter into the co-decision-making agreement with the co-decision-maker,
 - (iii) is aware that he or she may, with the consent of the co-decision-maker, vary the co-decision-making agreement, and
 - (iv) is aware that he or she may revoke the co-decision-making agreement;

(c) a statement by the co-decision-maker that he or she—

(i) understands the implication of entering into the co-decision-making agreement and has read and understands the information contained therein,

(ii) understands and undertakes to act in accordance with the functions of a co-decision-maker,

(iii) understands and undertakes to act in accordance with the guiding principles,

(iv) understands and undertakes to comply with the reporting obligations,

(v) understands the provisions of this Part relating to variation, revocation and invalidation of co-decision-making agreements;

(d) a statement as to why the less intrusive measure of a decision-making assistance agreement was not chosen;

(e) details of any existing decision-making assistance agreement, co-decision-making agreement, decision-making order, decision-making representation order, power of attorney (whether an enduring power or otherwise and whether registered or not) or advance healthcare directive in respect of the appointer;

(f) a statement by a registered medical practitioner and such other healthcare professional of a class as may be prescribed by regulations made under *section 27* that in his or her opinion—

(i) the appointer has capacity to make a decision to enter into the co-decision-making agreement,

(ii) the appointer requires assistance in exercising his or her decision-making in respect of the matters contained in the co-decision-making agreement, and

(iii) the appointer has capacity to make the decision or decisions specified in the co-decision-making agreement with the assistance of the person who is proposed as co-decision-maker;

(g) references, in such form as shall be prescribed by regulations made under *section 27*, by two persons as to the personal character of the co-decision-maker;

(h) details of the notice given pursuant to *subsection (3)*; and

(i) the appropriate fee, as prescribed by regulations made under *section 27*.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 92:

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

“Registration of co-decision-making agreement

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

(a) the application is in accordance with *section 18* (or *section 24* in the case of an application to register a varied co-decision-making agreement),

(b) the co-decision-making agreement is in accordance with the will and preferences of the appointer,

(c) the appointer understands the effect of having entered into the agreement,

(d) the co-decision-maker is a suitable person within the meaning of *section 14(2)*, and

(e) the co-decision-maker is not a person who falls under *section 15(1)*.

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

(a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or

(b) where he or she is of the view that one or more of the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* is not satisfied, notify the applicants of that view and provide reasons for that view and give the applicants an opportunity, within a reasonable timeframe specified by the Director, to respond.

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

(a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or

(b) where he or she remains of the view that one or more of the criteria set out in *paragraphs (a) to (e)* of *subsection (1)* is not satisfied, refuse to register the co-decision-making agreement concerned and notify the applicants of that fact.

(4) Following registration of a co-decision-making agreement, the Director shall send an authenticated copy of the agreement to the applicants.

(5) A document purporting to be a copy of a co-decision-making agreement which has been authenticated by the Director shall be evidence of the contents of the agreement and the date upon which it was registered.

(6) A relevant decision which is made within the scope of a registered co-decision-making agreement shall not be challengeable on the grounds that the appointer did not have the capacity to make the decision.

(7) Where a co-decision-making agreement is registered, a relevant decision

made otherwise than jointly by the appointer and the co-decision-maker is void.

(8) (a) Subject to *paragraph (b)*, where a relevant decision requires the signing of any document, the document is void unless both the appointer and the co-decision-maker sign the document.

(b) Where the appointer is unable to make his or her signature, a document may be signed on the appointer's behalf by a person who has attained the age of 18 years if the appointer is present and directs that the document be signed on his or her behalf by that person.

(9) In this section "authenticated" means bearing the signature of the Director, the date of his or her signature and the date of registration of the co-decision-making agreement concerned."

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 93:

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

"Objections to registration

20. (1) Any one of the persons referred to in section 18(3) may, within 5 weeks of the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed registration.

(2) An objection under subsection (1) shall be made in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section 27* and may be made on one of the following grounds:

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

(b) the appointer has capacity in respect of the matters which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;

(c) the appointer lacks capacity in respect of the matters which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker;

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

(e) the co-decision-maker is not a suitable person within the meaning of *section 14(2)*;

(f) the co-decision-maker falls within *section 15(1)*;

(g) fraud or undue influence was employed to induce the appointer to enter into the co-decision-making agreement.

(3) Where the Director receives an objection in accordance with *subsection (2)*,

he or she shall review the objection and consult with the appointer and co-decision-maker and such other persons as he or she considers relevant and shall—

(a) where he or she is of the view that the objection is not well founded, proceed, subject to *section 19(2)*, to register the co-decision-making agreement concerned, or

(b) where he or she is of the view that the objection is well founded, make an application to the court for a declaration as to whether or not the co-decision-making agreement concerned should be registered.

(4) The court, pursuant to an application to it under *subsection (3)(b)*, may—

(a) declare that the co-decision-making agreement concerned should be registered,

(b) declare that the co-decision-making agreement concerned should not be registered, or

(c) make such other declaration or order as it considers appropriate.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 94:

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

“Register of co-decision-making agreements

21. (1) The Director shall establish and maintain a register (“the Register”) of co-decision-making agreements which have been registered.

(2) The Register shall be in such form as the Director deems appropriate.

(3) The Director shall make the Register available for inspection by—

(a) a body or class of persons prescribed by regulations made under *section 27* for this purpose, and

(b) a person who satisfies the Director that he or she has a legitimate interest in inspecting the Register.

(4) The Director may issue an authenticated copy of a co-decision-making agreement, or part thereof, on the Register on payment of the prescribed fee to—

(a) a body or class of persons prescribed by regulations made under *section 27* for this purpose, and

(b) a person who satisfies the Director that he or she has a legitimate interest in obtaining a copy.

(5) The Director shall keep a record of any body or person who has inspected the Register or received an authenticated copy from him or her.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 95:

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

“Review of co-decision-making agreements

22. (1) The Director shall conduct a review of each co-decision-making agreement on the Register not earlier than 3 months before and not later than 3 months after the first anniversary of the date of registration of the agreement and thereafter at intervals not exceeding one year.

(2) In conducting a review under this section, the Director shall carry out such enquiries, including, in particular, consulting with the appointer and co-decision-maker as well as any special visitor or general visitor who has had contact with the appointer or co-decision-maker, as are necessary to determine whether—

(a) *paragraphs (b), (c) and (d) of section 19(1)* continue to apply,

(b) the co-decision-maker is not a person who falls under *section 15(2)*,

(c) the co-decision-maker has effectively performed and continues to be likely to effectively perform his or her functions as co-decision-maker,

(d) the co-decision-maker has complied with the requirements under this Act that are relevant to him or her, and

(e) the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)* continue to apply.

(3) In order to determine whether the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)* continue to apply, the Director shall require statements to that effect to be submitted to him or her by—

(a) the same registered medical practitioner who provided the original statement under *section 18(4)(f)* or, where that practitioner is not available, another registered medical practitioner, and

(b) the same healthcare professional who provided the original statement under *section 18(4)(f)* or, where that practitioner is not available, another healthcare professional of the class prescribed by regulations made under *section 27*.

(4) Where, following a review under *subsection (1)*, the Director is of the view that one or more of the criteria in *paragraphs (a) to (e) of subsection (2)* is not, or is no longer satisfied, he or she shall notify the co-decision-maker and appointer of that view and provide reasons and give the appointer and the co-decision-maker an opportunity to respond within a time period specified by the Director.

(5) Where, at the expiry of the period specified under *subsection (4)* and following a review of any response submitted by the appointer or the co-decision-maker or both pursuant to that subsection, the Director remains of the view that one or more of the criteria set out in *paragraphs (a) to (e) of subsection (2)* is not

satisfied, he or she shall notify the appointer and the co-decision-maker of that view and make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 96:

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

“Reports by co-decision-maker

23 (1) A co-decision-maker shall, within 12 months after the co-decision-making agreement appointing him or her as co-decision-maker has been registered, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such co-decision-maker during the relevant period.

(2) Every such report submitted to the Director shall be in such form as shall be prescribed by regulations made under *section 27* and shall include details of all transactions relating to the appointer’s finances which are within the scope of the co-decision-making agreement and details of all expenses paid to and claimed by the co-decision-maker in the relevant period.

(3) Every such report shall be approved by the appointer in such a manner as shall be prescribed by regulations made under *section 27*.

(4) Where a co-decision-maker fails to submit a report in accordance with this section or submits an incomplete report, the Director shall notify the co-decision-maker concerned of his or her failure and give him or her such period of time as is specified in the notice to submit a complete report.

(5) Where a co-decision-maker fails to comply with *subsection (4)*, the Director shall make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.

(6) In this section “relevant period” means the period of time to which the report relates which shall be the period between the date of registration of the co-decision-making agreement or the date of submission of the previous report, as the case may be, and the date immediately preceding the date of submission of the report concerned.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 97:

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

“Variation of co-decision-making agreement

24 (1) The terms of a co-decision-making agreement which has been registered may be varied by agreement between the appointer and the co-decision-maker.

(2) Subject to *section 14(6)*, a varied co-decision-making agreement shall include the signature of the appointer and the co-decision-maker (“the applicants”) and shall be

witnessed in accordance with *section 14(7)*.

(3) An application to register a varied co-decision-making agreement shall be made in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27*.

(4) The applicants shall, at the same time as making an application to register a varied co-decision-making agreement, give notice, in such form as shall be prescribed by regulations made under *section 27*, to the persons specified in *section 18(3)* and the application shall be accompanied by the following:

(a) the varied co-decision-making agreement;

(b) a statement outlining the variation and why it was considered necessary;

(c) a statement by a registered medical practitioner and such other healthcare professional as shall be prescribed by regulations made under *section 27* that in his or her opinion—

(i) the appointer has capacity to vary the co-decision-making agreement, and

(ii) the appointer requires assistance in exercising his or her decision-making in respect of the matters contained in the varied co-decision-making agreement, and

(iii) the appointer has capacity to make the decision or decisions specified in the varied co-decision-making agreement with the assistance of the co-decision-maker concerned;

(d) details of the notice given;

(e) any change to the information provided pursuant to *section 18(4)(e)* on the application to register the co-decision-making agreement,

(f) the appropriate fee, as prescribed by regulations made under *section 27*.

(5) *Sections 19 to 23* shall apply to a varied co-decision-making agreement as they apply to a co-decision-making agreement and, accordingly, in the case of their application to a varied co-decision-making agreement, a reference to “co-decision-making agreement” in those sections shall be read as if ‘varied co-decision-making agreement’ were substituted for “co-decision-making agreement”.

(6) An application to register a varied co-decision-making agreement shall not be made less than 6 months from the date of registration of the co-decision-making agreement which it varies, unless a shorter period is agreed by the Director.

(7) Upon registration of a varied co-decision-making agreement, the Director shall remove from the Register the co-decision-making agreement which it varies.

(8) A varied co-decision-making agreement shall not enter into force until it has been registered.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 98:

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

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

25. (1) A co-decision-making agreement may be revoked at any time by the appointer or the co-decision-maker or both.

(2) The revocation of a co-decision-making agreement shall be in writing and shall be in such form as shall be prescribed by regulations made under *section 27*.

(3) Subject to *section 14(6)*, the revocation of a co-decision-making agreement shall be signed by the person or persons making the revocation and, in the case of a revocation by the appointer, his or her signature shall be acknowledged by 2 witnesses and *sections 14(6) and (7)* shall apply with the necessary modifications.

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 99:

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

“Complaints

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

(a) the conduct or proposed conduct of a co-decision-maker, including whether he or she has acted, is acting, or is proposing to act outside the scope of his or her functions;

(b) the suitability of a co-decision-maker in relation to an appointer;

(c) a co-decision-making agreement not being in accordance with the will and preferences of an appointer;

(d) that the appointer did not, at the time of entry into the co-decision-making agreement, have capacity to make a decision to enter the agreement;

(e) that fraud or undue pressure was used to induce the appointer to enter into the co-decision-making agreement;

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

(g) that the appointer no longer has capacity in respect of one or more than one of the decisions which are the subject of the co-decision-making agreement even with the assistance of the co-decision-maker.

(2) Following the receipt of a complaint, the Director shall carry out an investigation and, where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to any matter specified in the complaint.

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

(4) In addition to making a determination pursuant to an application under *subsection (2) or (3)*, the court may—

(a) either of its own motion or pursuant to an application by the Director, order that a co-decision-making agreement be removed from the register, and

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 100:

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

“Regulations

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

(a) prescribing the form of a co-decision-making agreement,

(b) prescribing the form of an application to register a co-decision-making agreement and varied co-decision-making agreement,

(c) prescribing the form of notice of an application to register a co-decision-making agreement and varied co-decision-making agreement,

(d) prescribing the form of an objection to the registration of a co-decision-making agreement and varied co-decision-making agreement,

(e) prescribing the form of a report to be submitted by a co-decision-maker to the Director,

(f) prescribing the form of revocation of a co-decision-making agreement,

(g) prescribing the form of references as to the personal character of a co-decision-maker,

(h) prescribing the bodies or classes of persons who may inspect the Register and receive an authenticated copy of a co-decision-making agreement,

(i) prescribing the fees to be paid in connection with—

(i) an application to register a co-decision-making agreement or varied co-decision-making agreement,

(ii) an objection to an application to register a co-decision-making agreement

or varied co-decision-making agreement, and

(iii) the issue of an authenticated copy of a co-decision-making agreement,

and

(j) prescribing the class of healthcare professionals under *section 18(4)(f)*.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 101:

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

“Applications to Court

28. Where, pursuant to an application to it under *section 22* or *23*, the court must determine whether a co-decision-maker should continue as co-decision-maker for an appointer, the court shall have regard to all of the circumstances of the case, including in particular—

(a) the capacity of the appointer,

(b) the appointer’s willingness to continue to participate in the co-decision-making agreement concerned,

(c) the suitability of the co-decision-maker,

(d) the performance by the co-decision-maker of his or her functions, and

(e) the views of the Director.”.

Amendment agreed to.

Section 13 agreed to.

SECTION 14

Deputy Kathleen Lynch: I move amendment No. 102:

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

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

This amendment sets out the categories of persons, including a person with capacity difficulties, who can make an application to the court on a matter relating to a decision-making capacity.

Amendment agreed to.

Chairman: Amendment No. 103 is out of order and, therefore, there can be no discussion of it.

Deputy Pádraig Mac Lochlainn: I wish to refer to it when speaking on the section.

Chairman: Certainly, but not at this point.

Amendment No. 103 not moved.

Deputy Kathleen Lynch: I move amendment No. 104:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 105:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 106:

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

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

Amendment agreed to.

Chairman: Amendments Nos. 107 and 108 are cognate and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 107:

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

These amendments Nos. 107 and 108 propose that those making a court application on behalf of a person with capacity difficulties would have to include in his or her statement why a less intrusive option was not and could not be possible. This is to ensure a court application is made only when other less intrusive options have been considered and preferably pursued. This is in line with the Bill’s ethos to ensure the least possible intrusion on the decision-making autonomy of a person with capacity difficulties.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 108:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 109:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 110:

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

Amendment agreed to.

Amendments Nos. 111 and 112 not moved.

Deputy Kathleen Lynch: I move amendment No. 113:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 114:

In page 24, line 25, to delete “or attorney” and substitute “, attorney or designated health-care representative”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 115:

In page 24, line 27, to delete “or attorney” and substitute “, attorney or designated health-care representative”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 116:

In page 24, line 39, to delete “or attorney” and substitute “, attorney or designated health-care representative”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 117:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 118:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 119:

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

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

Amendment No. 119 is to ensure court proceedings are as informal as possible so as not to intimidate potential vulnerable people having to come to court.

Amendment agreed to.

Question proposed: “That section 14, as amended, stand part of the Bill.”

Deputy Pádraig Mac Lochlainn: I cannot discuss specifically the two amendments submitted because they have been ruled out of order. This is deeply frustrating. May I discuss them at this point?

Chairman: The Deputy can discuss the section.

Deputy Pádraig Mac Lochlainn: I thank the Chairman and I appreciate his assistance. Will the Minister of State consider addressing the two amendments on Report Stage? Amendment No. 103 relates to legal aid.

Deputy Kathleen Lynch: I am listening to the Deputy.

Deputy Pádraig Mac Lochlainn: There would be a real challenge for the relevant person or those representing such persons. On the matter of one-to-one, this was a standard criterion for capacity. I will resubmit the two amendments on Report Stage and they will be refused again. I am hoping the Minister of State will adopt them. The standard criterion would consider a medical practitioner and a clinical psychologist applying that criterion with regard to capacity. I ask the Minister of State to consider addressing those issues on Report Stage.

Deputy Kathleen Lynch: We have the same concerns as Deputy Mac Lochlainn with regard to the legal aid issue. We are working on some further provisions for legal representation which we intend to bring forward on Report Stage.

Deputy Pádraig Mac Lochlainn: Will the Minister of State comment on the other issue of standard criteria?

Deputy Kathleen Lynch: We can discuss it again on Report Stage. However, the Deputy can see that the Bill is now a different Bill from what was originally published. We will take another look at it but I do not wish to raise hopes here that we will concede everything. We have very firm views on some issues. However, we will look at it on Report Stage.

Deputy Pádraig Mac Lochlainn: It reads to me as an entirely reasonable and sensible suggestion. I acknowledge the really substantial number of amendments at more than 400, which shows there has been a serious engagement with the NGOs. However, there is always room for improvement, especially in a Bill of this scale. I appreciate the Minister of State cannot give any assurances now but I ask her to have a look at it as it seems to be sensible and reasonable, unless I am missing something.

Deputy Finian McGrath: I strongly support Deputy Mac Lochlainn’s comments on this particular issue. As he has said, it is very reasonable and sensible. I welcome the Minister of State to the meeting and I hope she makes some progress on the particular issue.

Question put and agreed to.

SECTION 15

Deputy Kathleen Lynch: I move amendment No. 120:

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

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

Amendment agreed to.

Amendment No. 121 not moved.

Section 15, as amended, agreed to.

Sections 16 to 19, inclusive, deleted.

SECTION 20

Deputy Pádraig Mac Lochlainn: I move amendment No. 122:

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

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

Amendment put and declared lost.

Deputy Pádraig Mac Lochlainn: I move amendment No. 123:

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

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

Amendment put and declared lost.

Section 20 deleted.

Sections 21 and 22 deleted.

Sitting suspended at 11.20 a.m. and resumed at 11.40 a.m.

SECTION 23

Deputy Kathleen Lynch: I move amendment No. 124:

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

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

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

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

person, or

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

or

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 125:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 126:

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

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

(4) When considering the suitability of a person to be a decision-making representative for a relevant person, the court shall have regard to the following:

(a) the known will and preferences of the relevant person;

(b) the desirability of preserving existing relationships within the family of the relevant person;

(c) the relationship (if any) between the relevant person and the proposed representative;

(d) the compatibility of the proposed representative and the relevant person;

(e) whether the proposed representative will be able to perform the functions to be vested in him or her;

(f) any conflict of interest.

(5) Where the court appoints a decision-making representative to make decisions on the relevant person's property and affairs, it shall have regard to the following:

(a) the size, nature and complexity of the relevant person's financial affairs;

(b) any professional expertise, qualification or experience required to manage the relevant person's financial affairs;

(c) the capability of the proposed representative to manage the relevant person's property and affairs;

(d) the financial expertise and support available to the proposed representative.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 127:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 128:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 129:

In page 35, line 2, to delete “and”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 130:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 131:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 132:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 133:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 134:

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

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 135:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 136:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 137:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 138:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 139:

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

Amendment agreed to.

Section 23, as amended, agreed to.

SECTION 24

Deputy Kathleen Lynch: I move amendment No. 140:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 141:

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

Amendment agreed to.

Amendment No. 142 not moved.

Deputy Pádraig Mac Lochlainn: I move amendment No. 143:

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

“relevant person, or

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

I will withdraw the amendment on the basis that the Minister of State will reconsider this issue.

Amendment, by leave, withdrawn.

Deputy Kathleen Lynch: I move amendment No. 144:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 145:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 146:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 147:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 148:

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

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

(h) the decision-making representative—

(i) enters into a decision-making assistance agreement,

(ii) enters into a co-decision-making agreement,

(iii) has an enduring power of attorney registered in respect of him or her, or

(iv) becomes the subject of an order under *Part 4*,”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 149:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 150:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 151:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 152:

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

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

This amendment will require that a decision-making representative gives details of any restraint against a person lacking capacity. This is a safeguard reflecting the seriousness of the use of restraint. The aim is that the use of restraint be subject to oversight.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 153:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 154:

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

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

(a) within 3 months of his or her appointment as decision-making representative for the relevant person, submit to the Director a statement of facts, to include a schedule of assets and liabilities and a projected statement of income and expenditure,

(b) keep proper accounts and financial records in respect of all income and expenditure in connection with the property and assets of the relevant person,

(c) submit the accounts and records referred to in *paragraph (b)* to the Director at least once every 12 months or within such shorter period as the Director may decide,

(d) make available for inspection by the Director or by a special visitor, at any reasonable time, the accounts and records referred to in *paragraph (b)*.”.

This amendment is intended as an additional safeguard against abuse of the assets or income of a person with capacity difficulties by the decision-making representative. It proposes to impose extra obligations on the decision-making representatives where that person is appointed to take decisions regarding the property and affairs of a person with capacity difficulties. The decision-making representative will be required to submit a statement of the assets, liabilities, income and expenditure of the person with capacity difficulties. He or she will also be required to submit accounts and financial reports when submitting the annual report to the director of decision support services. It is also proposed that he or she would be required to make the accounts and records available for inspection by the director as necessary. These amendments are intended both to safeguard against potential financial abuse and to ensure that decisions involving the management of the assets or income of another person are subject to external oversight.

Chairman: I know I am not supposed to say much here, but it is an outstanding amendment.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 155:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 156:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 157:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 158:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 159:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 160:

In page 39, to delete lines 9 to 14.

Amendment agreed to.

Section 24, as amended, agreed to.

Section 25 deleted.

SECTION 26

Deputy Kathleen Lynch: I move amendment No. 161:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 162:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 163:

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 164:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 165:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 166:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 167:

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

“(b) An order under *paragraph (a)*—

(i) shall not be made unless there is no person who is suitable and willing to act as decision-making representative in relation to the property and affairs of the relevant person, and

(ii) may require some or all of the property of the relevant person which is money to be lodged into court.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 168:

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

Amendment agreed to.

Section 26, as amended, agreed to.

SECTION 27

Chairman: Amendments Nos. 169 to 180, inclusive, and 204 to 208, inclusive, are related and will be discussed together. Amendments Nos. 174 and 175 are physical alternatives to amendment No. 173.

Deputy Kathleen Lynch: I move amendment No. 169:

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

This amendment would prevent a decision-making representative from having the power to prohibit a particular person from having contact with a person lacking capacity. This is to ensure that the person with capacity difficulties is not prevented from seeing friends or family or potentially isolated from friends or family by a decision-making representative.

Amendment No. 170 is an additional safeguard to prevent unnecessary intrusion by a decision-making representatives into the decision-making autonomy of a person with capacity difficulties. This is in line with the Bill’s ethos to minimise any intrusion into the decision-making autonomy of a person. The amendment would prevent a decision-making representative from taking decisions other than those conferred by the court, as specified in the decision-making representation order. A decision-making representative authorised to make decisions in regard to the personal welfare of a person lacking capacity would not, due to this provision, be able to take decisions on that person’s property and affairs. For example, amendment No. 171 sets out the hierarchy of decision-making that would apply in situations where a person had made an advance health care directive. An advance health care directive would take precedence on decisions relating to health care. Amendment No. 172 prohibits a decision-making representative from being able to consent to the withdrawal of life-sustaining treatment for a person lacking capacity.

Amendments Nos. 174, 175 and 179 propose to limit the circumstances in which a decision-making representative can use restraints or authorise the use of a restraint. This is in order to align the Bill with Government policy that restraint should not be used where possible, or if necessary, only in very limited circumstances. The amendments propose that restraints can be used only where there are exceptional emergency circumstances and where the decision-making representative believes there is an imminent risk of serious harm to the person lacking capacity or to another person. They require that the restraint be immediately ceased when no longer necessary to prevent the imminent risk of serious harm to the person lacking capacity or to another person.

Amendments Nos. 176 and 177 distinguish between restraint and an action which may restrict a person’s movement but which is intended to help the person, such as where a support is used to prevent the person from falling out of a chair, for instance. Restraint is therefore defined as an action that is intentional and designed to restrict voluntary movement rather than to restrict involuntary tremors or spasms.

I believe my proposed amendments Nos. 174 and 175 limit the use of restraint further than is proposed in Deputy Mac Lochlainn’s amendment No. 173. I ask the Deputy not to press that amendment and to support our amendments.

I am prepared to accept Deputy Mac Lochlainn’s amendment No. 178, as it would enable chemical restraint to be added to the definition of restraint and I may bring an amendment forward in this regard on Report Stage.

Amendment No. 180 is technical and proposes to move the provision requiring the director of the decision support service to establish a register of decision-making representation orders from section 56 to this Part as it is more appropriate that the provision be included with other provisions relating to decision-making representation.

I propose to discuss amendments Nos 204 to 208, inclusive, together as the new provisions proposed for attorneys in regard to the use of restraint are the same as those to apply to decision-making representatives. The intention, as for decision-making representatives, is to restrict the use of restraint in line with Government policy. As a result, it is proposed that restraint could be used or authorised by an attorney only in exceptional emergency circumstances to prevent an imminent risk of serious harm to the person lacking capacity or to another person. Amendment No. 208 requires that the restraint be ceased immediately on being no longer necessary to prevent an imminent risk of serious harm to the person with capacity difficulties, or to another person. Amendments Nos. 206 and 207 distinguish the term “restraint” from actions taken to support a person affected by involuntary movement. Restraint is defined as an intentional action intended to restrict a person’s voluntary movement.

Deputy Colm Keaveney: Can I have clarification in respect of Government policy in this regard? Is there a Government policy on restraint?

Deputy Kathleen Lynch: There is a Government policy in respect of vulnerable persons and restraint. It applies in both the health and the mental health areas.

Deputy Colm Keaveney: Would that apply to intellectual disability?

Deputy Kathleen Lynch: The Government policy applies to everyone, but it is a specific inclusion in this Bill.

Deputy Colm Keaveney: Is a code of practice issued to the service provider in respect of the use of restraints?

Deputy Kathleen Lynch: With every Government policy - this one is a well developed policy - training protocols must be gone through and certain regulations must be complied with. This policy is certainly embedded at this stage. I understand where the Deputy is coming from with this question and do not say the policy is always adhered to. However, we must ensure within this legislation that those who lack capacity are not more vulnerable to this type of practice.

Deputy Colm Keaveney: I welcome the fact the Minister of State is very firm on the code of practice and how it applies across all Government agencies. I am aware of a case where a young child was restrained face down 600 times in one year, approximately 13 or 14 times a day and because of the difficulties in terms of resources in that facility, the child was expelled because the parent would not consent to a face down restraint. Therefore, I warmly welcome the progress in this respect and am delighted to hear, despite previous parliamentary replies, that there is a code of practice in this area.

Deputy Kathleen Lynch: I will not respond in respect of an individual case, as that would be inappropriate. I would not like anybody to get the wrong impression and must point out that this legislation only applies to those over 18 years of age. It is about adult situations.

Deputy Pádraig Mac Lochlainn: I submitted amendments Nos. 173 and 178. The issue of restraint of relevant persons is addressed by reference to restrictions on decision-making representatives in section 27 of the Bill. Following representations from Mental Health Reform, I understand it considers it is imperative that the provisions permitting restraint of a person by a decision-making representative should be strictly construed and should explicitly require that the decision-making representative acts in a manner consistent with the principles of the Bill. The provision should only allow restraint where this is the least restrictive measure to prevent

harm.

Mental Health Reform considers the definition of “restraint”, as provided for in section 27(6), should be extended to include the use of chemical restraints and considers it necessary to ensure that a specific provision be included in section 54, dealing with informal decision-making to specifically prohibit an informal decision-maker from doing an act that is intended to restrain the relevant person. My amendments deal with these issues.

Deputy Kathleen Lynch: Somehow or other, when we talk about restraint, we always seem to think about someone being tied up or the use of belts or chemicals. In fact, what we propose here is so wide-ranging that it covers everything. It mentions the exclusion of people from their friends and families, which I believe is a form of restraint. What we propose is comprehensive and imposes obligations on the person assisting rather than the person with capacity issues.

The proposed amendments Nos. 181 to 183 remove the requirement that a person with capacity difficulties must have the consent of the court to seek a review of a declaration of incapacity. In regard to restraint, we must accept that most of the people we are talking about here would be in a community setting. However, what we seem to be talking about here is involuntary admission into a psychiatric unit. This does not apply to them. This applies to voluntary admissions or people in the community. We have a much greater safeguard in terms of how people will be treated in this respect, but it is important we enshrine this in our legislation and make it clear there are consequences for people who engage in this type of activity. I am not saying restraint does not happen or will not happen in the future. It would be impossible to give that kind of guarantee. There are robust restrictions in this legislation and there will be a specific office with a director to which not only the person who lacks capacity in certain instances or the assisted decision-maker but families, friends and community-based people can make complaints about treatment of individuals. To be honest, it is about as good as one could get. It is very robust and comprehensive.

Deputy Pádraig Mac Lochlainn: Would you not agree that these amendments-----

Chairman: Deputy Mac Lochlainn-----

Deputy Pádraig Mac Lochlainn: Sorry, it should be through the Chair. Does the Minister of State go through the Chair on every occasion?

Deputy Kathleen Lynch: Yes.

Deputy Pádraig Mac Lochlainn: I will review the proceedings later.

Chairman: I do want to interfere but it does help the debate if people do that.

Deputy Pádraig Mac Lochlainn: I do not see the Minister of State looking at you when she is speaking. I just want consistency in the application.

Chairman: Absolutely.

Deputy Pádraig Mac Lochlainn: I have been corrected three or four times. The Minister is looking at me when she responds and not at you.

Chairman: We will carry on as we should.

Deputy Pádraig Mac Lochlainn: I will address the Chairman and I ask the Minister of State, in responding, to also look at the Chairman.

Chairman: Sure. That is all right.

Deputy Pádraig Mac Lochlainn: Does the Minister of State not see these amendments as complementing what is there? They are complementary amendments and strengthen what the Minister of State is trying to achieve. Why not agree to them?

Deputy Kathleen Lynch: We believe this is a very robust section and, of course, we could keep adding to it. We could come up with another 400 amendments. Of course, we can keep adding to it but we really need to get this legislation through. The Chairman and I have been working on this for 20 years and we need to get this through. Of course, people may have amendments that would be beneficial but we cannot just keep adding to it. If I thought for one minute that we did not have a robust section, I would be very open on the issue but it is very robust. That is not to say the Deputy's comments will not be considered once we conclude this part of the Bill. We have been open about this process and we will continue to be. However, we cannot continue to amend it; we really need to get it on the Statute Book.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 170:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 171:

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

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

(a) the decision-making representative shall not exercise any relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative, and

(b) the decision-making representative shall exercise any powers which the decision-making representative is authorised to exercise in a manner which is not inconsistent with the relevant powers of the designated healthcare representative which are exercisable by the designated healthcare representative.

(5) Where there is a decision-making representative for a relevant person who has made an advance healthcare directive that—

(a) does not provide for a designated healthcare representative, or

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 172:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 173:

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

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

(a) the relevant person lacks capacity in relation to the matter in question or the decision-making representative reasonably believes that the relevant person lacks such capacity,

(b) the decision-making representative reasonably believes that it is necessary to do the act in order to prevent harm to the relevant person or to another person,

(c) the decision-making representative reasonably believes that the act is the least restrictive measure that may be taken in order to prevent harm to the relevant person or to another person, and

(d) the act is a proportionate response to the likelihood of the harm referred to in *paragraph (b) and (c)* and to the seriousness of such harm.”.

Amendment put and declared lost.

Deputy Kathleen Lynch: I move amendment No. 174:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 175:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 176:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 177:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 178:

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

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

Amendment put and declared lost.

Deputy Kathleen Lynch: I move amendment No. 179:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 180:

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

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

Amendment agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

SECTION 29

Chairman: Amendments Nos. 181 to 184, inclusive, are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 181:

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

The proposed amendments remove the requirement that the person with capacity difficulties must have the consent of the court to seek a review of a declaration of incapacity. Instead, the amendment would allow the person with capacity difficulties to seek the review at any time, in line with the Bill’s ethos to ensure that any intrusion on to the presumption of the person’s capacity is to be kept to a minimum. All other categories of person would continue to require the court’s consent to seek the review of the person’s capacity. Amendment No. 184 is a

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technical amendment to ensure that the timelines for the court's review of a person's capacity should run from the time the court made a declaration of incapacity, as well as from the last review by the court of that declaration.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 182:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 183:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 184:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 185:

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

Amendment agreed to.

Section 29, as amended, agreed to.

SECTION 30

Deputy Kathleen Lynch: I move amendment No. 186:

In page 44, line 31, after "professionals" to insert ", or other relevant experts,".

This amendment would broaden the categories of a person from whom a court would seek expert reports on a person with capacity difficulties so the assessment of a person's capacity would not be based exclusively on a medical model. The expert could be a social worker, social care professional or other relevant expert.

Amendment agreed to.

Section 30, as amended, agreed to.

SECTION 31

Deputy Kathleen Lynch: I move amendment No. 187:

In page 44, line 39, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Section 31, as amended, agreed to.

SECTION 32

Chairman: Amendment No. 188 is out of order.

Amendment No. 188 not moved.

Question proposed: “That section 32 stand part of the Bill.”

Deputy Pádraig Mac Lochlainn: This again deals with the issue of legal aid. I thank the Minister of State for agreeing to re-examine the issue and I ask her again to do so. I will probably resubmit the amendment on Report Stage.

Deputy Kathleen Lynch: That is something on which we are working. It is our intention to bring in amendments on Report Stage for legal aid.

Deputy Alan Farrell: I echo the sentiments of Deputy Mac Lochlainn on the issue as it is of concern to advocacy groups and me. I would welcome the Minister of State’s reconsideration of the issue at a later stage in the debate.

Question put and agreed to.

NEW SECTION

Chairman: Acceptance of amendment No. 189 would involve the deletion of section 33 of the Bill. Amendments Nos. 189 to 191, inclusive, 193 and 194 form a composite proposal. Amendment No. 192 is a physical alternative to amendment No. 191. Amendments Nos. 189 to 194, inclusive, will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 189:

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

“PART 5*

WARDS

Definitions — *Part 5*

33. In this Part—

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

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

I have been advised that Part 5 needs to be expanded to set out transitional arrangements for the abolition of wardship for persons under 18. The proposed amendments set out these arrangements. As they involve significant re-ordering of this Part, I consider it more appropriate to propose the deletion of the existing Part 5 and its substitution with these provisions. No change is proposed in amendment No. 189 to section 33 as set out in the Bill as published.

Amendment No. 190 proposes to amend section 35(1) to clarify that a ward or a person with sufficient interest in the ward’s welfare can apply to the wardship court, that is the High Court or Circuit Court as appropriate, to have the ward’s capacity reviewed. This provision is to al-

low for applications to be made by wards and their families, with the court's consent, at any time following commencement of this Part. The proposed amendment to subsection (2) of that section clarifies that even if an application is not made by a ward or by another person on the ward's behalf, the court will review the capacity of all wards over 18 within three years of the commencement of this Part.

Where an existing ward is still under 18 years, three years following the commencement of this Part, the court is being required to review that person's capacity within six months of reaching 18. This is to ensure wardship is abolished for all persons over 18 years.

Amendment No. 191 sets out the proposed transitional arrangements to apply in respect of wards. They provide that where a wardship court finds that the ward no longer lacks capacity, he or she will be immediately discharged from wardship and have his or her property restored to him or her.

It is anticipated that some current wards will have some capacity difficulties which will require the appointment of a co-decision-maker to make decisions jointly with the former ward but that these wards will not require the more intensive support of a decision-making representative. It is important that the less intrusive option be available to the court. However, as co-decision-making is a voluntary process, rather than something which can be required by the court, the provisions in subsection (1)(b)(i) and (3) are designed to enable a court to advise the ward that he or she has the capacity to enter a co-decision-making agreement. They provide that once a co-decision-making agreement has been registered, the ward's property can be returned to the former ward.

Many existing wards will not have the capacity either to be discharged from wardship immediately or to enter a co-decision-making agreement. Provision is made for the appointment of a decision-making representative where the ward is declared by the court to lack capacity, even if a co-decision-maker were available to him or her. The provisions allow for the ward's property to be returned to him or her once a decision-making representative has been appointed. Once a decision-making representative has been appointed, the provisions of Part 4 and the additional safeguards just agreed to in respect of decision-making representatives will apply to former wards as to other persons lacking capacity for whom decisions are made by a decision-making representative.

Subsection (6) provides that the Lunacy Regulation (Ireland) Act 1871 will be repealed, with the proviso in subsection (7) that neither its repeal nor these provisions will affect the validity of any court order in force prior to commencement of this Part. The amendment is to ensure the system of wardship for adults provided by the 1871 Act is abolished.

Amendment No. 193 mirrors the existing section 36 of the Bill, other than the change of reference from the Public Guardian to the Director of the Decision Support Service. It provides that the director may be assigned functions by the court in respect of individual wards or a class of wards.

The proposed amendment No. 194 mirrors section 37 of the Bill except for the change of reference from the Public Guardian to the director. It provides that the court may assign the director's functions in respect of wards who are under 18 years at the time of commencement of the Bill.

The Bill sets out an ambitious timetable for abolition of the system of wardship that has

been in place in Ireland since 1871. It proposes that the system be abolished within three years following commencement of the Bill. By then, every single ward over 18 years will have been reviewed by the court and either discharged from wardship or moved to the new support options. This will take time within the courts system.

Deputy Pádraig Mac Lochlainn seeks in his amendment No. 192 to have the process completed within six months of the Bill's commencement. That is completely unrealistic. There are some wards who are anxious to be discharged from wardship or who have family members or friends ready to act as co-decision-makers or decision-making representatives. They will be free to apply for reviews by the court as soon as the Bill has been commenced. However, there is a requirement to make arrangements to take over management of often large sums of money. They will want to be properly prepared before making the application. Six months would be much too early for these wards. They could end up being pressed into arrangements, particularly financial arrangements, that might not be to their benefit. For this reason, I cannot accept the amendment. I, therefore, ask the Deputy not to press it because our solution is sensible.

I notify the committee that I plan to bring forward amendments to Part 6 on Report Stage to align the provisions on enduring powers of attorney with those proposed for co-decision-making and decision-making representation and to change the jurisdiction from the High Court to the Circuit Court.

Deputy Pádraig Mac Lochlainn: This is one of the issues the interest groups brought to our attention. We debated the best way to negotiate on the timeframe involved and decided that six months should be the starting point of the negotiations. The Minister of State argues that six months is too short, while we argue that three years is too long. We tabled amendment No. 192 to ask the Minister of State to reconsider before Report Stage a way of improving on that time period.

Deputy Kathleen Lynch: We are looking at a process. There may well be wards who are ready to have themselves discharged as soon as the Bill is enacted. We are making it a three year period because there will be others who will need a longer timeframe. I would hate to think we would be back here in a year's time with the Courts Service telling us that we had introduced a measure that was completely unrealistic and that had overloaded the system. We need to do this well and right. A three year period is reasonable, particularly as it relates to those under 18 years and the need for a review of their wardship as soon as they reach 18. I will not, therefore, be able to accept Deputy Pádraig Mac Lochlainn's amendment. I understand how he arrived at his position. Equally, I understand how the Opposition has to continuously press the Government, but this is a sensible provision.

Amendment agreed to.

Section 33 deleted.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 190:

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

“Review of capacity of wards who are adults

34. (1) An application for the review of the capacity of a ward who has attained

the age of 18 years by the date of commencement of this Part may, with the consent of the wardship court, be made to the wardship court at any time by—

(a) the ward, or

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

(2) Notwithstanding *subsection (1)*, the wardship court shall, within 3 years from the date of commencement of this Part, review the capacity of a ward who—

(a) reaches the age of 18 years by that date, or

(b) reaches the age of 18 years within 2 years and 6 months from that date.

(3) Where a ward reaches the age of 18 years after the period specified in *subsection (2)(b)*, he or she shall have his or her capacity reviewed by the wardship court within 6 months of reaching that age.”

Amendment agreed to.

Section 34 deleted.

NEW SECTION

Chairman: If amendment No. 191 is agreed to, amendment No. 192 cannot be moved.

Deputy Kathleen Lynch: I move amendment No. 191:

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

“Declarations following review and discharge from wardship

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

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

(b) make one or more than one of the following declarations:

(i) that the ward lacks capacity, unless the assistance of a suitable person as a co-decision-maker is made available to him or her, to make one or more than one decision;

(ii) that the ward lacks capacity, even if the assistance of a suitable person as a co-decision-maker were made available to him or her.

(2) Where the wardship court makes a declaration pursuant to *subsection (1)(a)*, it shall immediately discharge the ward from wardship and shall order that the property of the former ward be returned to him or her and give such directions as it thinks appropriate having regard both to the discharge and the circumstances of the former ward.

(3) Where the wardship court makes a declaration pursuant to *subsection (1)(b)(i)*, it shall, on registration of a co-decision-making agreement, discharge the ward from wardship and shall order that the property of the former ward be returned to

him or her and give such directions as it thinks appropriate having regard both to the discharge and the circumstances of the former ward.

(4) Where the court makes a declaration pursuant to *subsection (1)(b)(i)* but—

(a) there is no suitable person to act as co-decision-maker for the former ward,
or

(b) a co-decision-making agreement in respect of the former ward is not registered in accordance with *Part 4** within a period set down by the wardship court,

the wardship court shall (subject to it allowing for any extension of the period set

down by it pursuant to *paragraph (b)*)—

(i) as if it had made a declaration under *section 35(1)(b)(ii)*, make such orders under *Part 4* as it considers appropriate as if the wardship court were the court under *Part 4*, and

(ii) order that the property of the former ward be returned to him or her upon the appointment of a decision-making representative in respect of the former ward.

(5) Where, following the review of the capacity of a ward, the wardship court makes a declaration pursuant to *section 35(1)(c)*, it shall—

(a) make such orders as it considers appropriate under *Part 4* as if the wardship court were the court under *Part 4*, and

(b) order that the property of the former ward be returned to him or her upon the appointment of a decision-making representative in respect of the former ward.

(6) Subject to *subsection (7)* and this Part, the Lunacy Regulation (Ireland) Act 1871 is repealed.

(7) Subject to this Part, nothing in *subsection (6)* shall affect the validity of any order—

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

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

Amendment agreed to.

Amendment No. 192 not moved.

Section 35 deleted.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 193:

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

“Director and wards who are adults

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

(a) a ward—

(i) who was a ward immediately before the commencement of this section,
and

(ii) who has attained the age of 18 years,

or

(b) a class of wards—

(i) who were wards immediately before the commencement of this section,
and

(ii) each member of which has attained the age of 18 years,

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

Amendment agreed to

Section 36 deleted.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 194:

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

“Director and wards who are minors

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

(a) who was a ward immediately before the commencement of this section,
and

(b) who has not attained the age of 18 years,

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

I indicate that we intend to bring forward amendments on the wardship of minors on Report Stage.

Amendment agreed to.

Section 37 deleted.

SECTION 38

Deputy Kathleen Lynch: I move amendment No. 195:

In page 48, to delete line 20.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 196:

In page 48, to delete lines 21 to 22.

Amendment agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

SECTION 40

Deputy Kathleen Lynch: I move amendment No. 197:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 198:

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

The provision is intended as an extra safeguard to ensure that the attorney makes a commitment, in advance of being appointed as attorney, to act in accordance with the functions of the attorney, which includes the obligations arising under this Bill. This is to ensure that there is no ambiguity as to the attorney’s agreement and willingness to abide by the obligations arising for the attorney under this Bill.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 199:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 200:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 201:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 202:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 203:

In page 53, to delete lines 41 to 46.

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41

Deputy Kathleen Lynch: I move amendment No. 204:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 205:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 206:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 207:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 208:

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

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

Amendment agreed to.

Section 41, as amended, agreed to.

Sections 42 and 43 agreed to.

SECTION 44

Deputy Kathleen Lynch: I move amendment No. 209:

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

Amendment agreed to.

Section 44, as amended, agreed to.

SECTION 45

Deputy Kathleen Lynch: I move amendment No. 210:

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

Amendment agreed to.

Section 45, as amended, agreed to.

SECTION 46

Deputy Kathleen Lynch: I move amendment No. 211:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 212:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 213:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 214:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 215:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 216:

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

Amendment agreed to.

Section 46, as amended, agreed to.

SECTION 47

Deputy Kathleen Lynch: I move amendment No. 217:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 218:

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

Amendment agreed to.

Section 47, as amended, agreed to.

SECTION 48

Deputy Kathleen Lynch: I move amendment No. 219:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 220:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 221:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 222:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 223:

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

Amendment agreed to.

Section 48, as amended, agreed to.

SECTION 49

Deputy Kathleen Lynch: I move amendment No. 224:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 225:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 226:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 227:

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

Amendment agreed to.

Question proposed: “That section 49, as amended, stand part of the Bill.”

Deputy Colm Keaveney: I wish to raise a point of information, and please forgive my ignorance.

Chairman: Yes.

Deputy Colm Keaveney: What if one were to take the section in its entirety? Is there a protocol that requires the Chairman to go through each amendment individually? Can the Chairman propose that we deal with, for example, the entirety of section 49 at once?

Chairman: I must deal with each one separately. We have been through this a few times. We must put each amendment as it comes and get agreement on same.

Deputy Colm Keaveney: My apologies for the query.

Chairman: No problem. It would be helpful if we did not have to go through each one individually when they are like this, but that is the way it is.

Deputy Kathleen Lynch: I apologise for tabling so many amendments, but Members know where they came from.

Deputy Pádraig Mac Lochlainn: I can assure the Minister that the amendments are a very good reason to sit here. The legislation is very welcome so it is no problem for us to attend.

Chairman: There is always the possibility that somebody might want to oppose an amendment or pose a question, so that is why we propose each amendment individually.

Deputy Colm Keaveney: As part of democratic reform, I looked at how we could make this process more efficient.

Question put and agreed to.

Sections 50 and 51 agreed to.

SECTION 52

Deputy Kathleen Lynch: I move amendment No. 228:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 229:

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

Amendment agreed to.

Section 52, as amended, agreed to.

SECTION 53

Deputy Kathleen Lynch: I move amendment No. 230:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 231:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 232:

In page 64, line 6, to delete “or attorney” and substitute “, attorney or designated health-care representative”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 233:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 234:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 235:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 236:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 237:

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

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

Amendment put and declared lost.

Deputy Kathleen Lynch: I move amendment No. 238:

In page 64, to delete lines 20 to 33.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 239:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 240:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 241:

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

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

(b) The will and preferences will be assumed to be known to the informal decisionmaker where—

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

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

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

Amendment put and declared lost.

Section 53, as amended, agreed to.

SECTION 54

Deputy Kathleen Lynch: I move amendment No. 242:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 243:

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

Amendment put and declared lost.

Deputy Kathleen Lynch: I move amendment No. 244:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 245:

In page 65, line 15, to delete “or”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 246:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 247:

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

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

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

(ii) the relevant person lacks capacity.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 248:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 249:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 250:

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

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

Amendment put and declared lost.

Deputy Kathleen Lynch: I move amendment No. 251:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 252:

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

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

Amendment put and declared lost.

Section 54, as amended, agreed to.

NEW SECTIONS

Deputy Kathleen Lynch: I move amendment No. 253:

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

“PART 8

ADVANCE HEALTHCARE DIRECTIVES

Definitions (*Part 8*)

55. In this Part—

“advance healthcare directive”—

(a) in relation to a person who has capacity, means an advance expression made by the person, in accordance with *sections 57 and 58*, of his or her will and preferences concerning treatment decisions that may arise in respect of him or her if he or she subsequently lacks capacity, and

(b) in relation to a designated healthcare representative, means the advance expression referred to in *paragraph (a)* under which the representative was designated as such representative,

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

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

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

“directive-maker”—

(a) in relation to an advance healthcare directive, means the person who made the directive, and

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

“Minister” means the Minister for Health;

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

(a) the power conferred on the representative under *section 61(1)(a)*, and

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

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

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 254:

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

“Purpose of this Part

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

(a) enable persons to be treated according to their will and preferences, and

(b) provide healthcare professionals with important information about persons in relation to their treatment choices.

(2) A relevant person who has attained the age of 18 years and who has capacity is entitled to refuse treatment within the meaning of *section 55* for any reason (including a reason based on his or her religious beliefs) notwithstanding that the refusal—

(a) appears to be an unwise decision,

(b) appears not to be based on sound medical principles, or

(c) may result in his or her death.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 255:

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

“Making of advance healthcare directives, etc.

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

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

(a) at the time in question the directive-maker lacks capacity to give consent to the treatment;

(b) the treatment to be refused is clearly identified in the directive;

(c) the circumstances in which the refusal of treatment is intended to apply are clearly identified in the directive.

(3) (a) A request for a specific treatment set out in an advance healthcare directive is not legally binding but shall be taken into consideration during any decision-making

process which relates to treatment for the directive-maker if that specific treatment is relevant to the medical condition for which the directive-maker may require treatment.

(b) Where a request for a specific treatment set out in an advance healthcare directive is not complied with in a decision-making process referred to in *paragraph (a)*, the healthcare professional concerned, involved in that decision-making process, shall—

(i) record the reasons for not complying with the request in the directive-maker's healthcare record, and

(ii) give a copy of those reasons as so recorded to the person's designated healthcare representative (if any) as soon as is practicable after they have been recorded but, in any case, not later than 7 working days after they have been recorded.

(4) An advance healthcare directive shall be in writing.

(5) (a) An advance healthcare directive shall contain the following:

(i) the name, date of birth and contact details of the directive-maker;

(ii) subject to *paragraph (b)*, the signature of the directive-maker, and the date that the directive-maker signed the directive;

(iii) the name, date of birth and contact details of the designated healthcare representative (if any);

(iv) the signature of the designated healthcare representative (if any), the date that the representative signed the directive and the acknowledgement of the directive-maker;

(v) the signatures of the 2 witnesses in accordance with *subsection (6)*.

(b) An advance healthcare directive may be signed on behalf of the directive-maker by a person who has attained the age of 18 years and who is not one of the witnesses referred to in *subsection (6)(a)* if—

(i) the directive-maker is unable to sign the directive,

(ii) the directive-maker is present and directs that the directive be signed on his or her behalf by that person, and

(iii) the signature of the person is witnessed in accordance with *subsection (6)*.

(6) (a) The directive-maker, or the person signing on his or her behalf in accordance with *subsection (5)*, and the designated healthcare representative (if any) shall sign the advance healthcare directive in the presence of each other (where applicable) and in the presence of 2 witnesses—

(i) each of whom has attained the age of 18 years, and

(ii) of whom at least one is not an immediate family member of the directive-

maker.

(b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the directive-maker (or the person signing on his or her behalf) and the signature of the designated healthcare representative (if any) by applying his or her own signature to the advance healthcare directive.

(7) (a) A directive-maker who has capacity may revoke his or her advance healthcare directive in writing.

(b) Subject to *paragraph (c)*, a directive-maker who has capacity may, in writing, alter his or her advance healthcare directive.

(c) An alteration referred to in *paragraph (b)* of an advance healthcare directive is of no effect unless it is signed and witnessed in accordance with *subsections (5) and (6)* as if the alteration itself were an advance healthcare directive.

(8) An advance healthcare directive made outside the State but which substantially complies with the requirements of this Part applicable to an advance healthcare directive shall have the same force and effect in the State as if it were made in the State.

(9) The Minister may, for the guidance of persons wishing to make advance healthcare directives, specify forms of such directives, not inconsistent with this Part, that such persons may use or adapt in making their respective advance healthcare directives.

(10) The Minister's power under *subsection (9)* may be exercised in such a way as to specify forms of advance healthcare directives to provide for particular circumstances or particular cases, as the Minister thinks appropriate.

(11) The Minister may publish any forms of advance healthcare directives that he or she has specified under *subsection (9)* in such manner that he or she thinks appropriate, including by the use of a website on the internet.

(12) The Minister may make regulations as respects advance healthcare directives, including regulations relating to—

(a) requiring the directive-maker to give notice of the making of an advance healthcare directive—

(i) to the Director, and

(ii) to other specified persons, and whether or not by reference to persons who, under this Act, are required to be notified of an application made under this Act,

and

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 256:

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

“Validity and applicability of advance healthcare directive

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

(a) did not make the directive voluntarily, or

(b) while he or she had capacity to do so, has done anything clearly inconsistent with the directive remaining as his or her fixed decision.

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

(a) at the time in question the directive-maker still has capacity to give or refuse consent to the treatment in question,

(b) the treatment in question is not broadly recognisable as the specific treatment set out in the directive that is requested or refused, or

(c) in the case of any specific treatment set out in the directive that is requested or refused, the circumstances set out in the directive as to when such specific treatment is to be requested or refused, as the case may be, are materially absent or different.

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

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

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

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

(a) the healthcare professional concerned shall, in an effort to address the ambiguity—

(i) consult with the directive-maker’s designated healthcare representative (if any) or, if there is no designated healthcare representative, the directive-maker’s family and friends, and

(ii) seek the opinion of a second healthcare professional, and

(b) if, after the healthcare professional has complied with *paragraph (a)*, the ambiguity still has not been addressed, the healthcare professional shall address the ambiguity in favour of the preservation of the directive-maker’s life.

(6) (a) Where a directive-maker lacks capacity and is pregnant, but her advance healthcare directive does not specifically state whether or not she intended a specific refusal of treatment set out in the directive to apply if she were pregnant, and it is

considered by the healthcare professional concerned that complying with the refusal of treatment would have a deleterious effect on the unborn, there shall be a presumption that treatment shall be provided or continued.

(b) Where a directive-maker lacks capacity and is pregnant and her advance healthcare directive sets out a specific refusal of treatment that is to apply even if she were pregnant, and it is considered by the healthcare professional concerned that the refusal of treatment would have a deleterious effect on the unborn, an application shall be made to the High Court to determine whether or not the refusal of treatment should apply.

(c) In determining an application under *paragraph (b)*, the High Court shall have regard to the following:

(i) the potential impact of the refusal of treatment on the unborn;

(ii) if the treatment that is refused were given to the directive-maker, the invasiveness and duration of the treatment and the risk of harm to the directive-maker;

(iii) any other matter which the High Court considers relevant to the application.

(7) (a) Subject to *subsections (1) to (6)* and *paragraph (b)*, an advance healthcare directive shall be complied with unless, at the time when it is proposed to treat the directive-maker, his or her treatment is regulated by Part 4 of the Mental Health Act 2001 or he or she is the subject of a conditional discharge order under section 13A (inserted by section 8 of the Criminal Law (Insanity) Act 2010) of the Criminal Law (Insanity) Act 2006.

(b) Notwithstanding *paragraph (a)*, where a refusal of treatment set out in an advance healthcare directive by a directive-maker relates to the treatment of a physical illness not related to the amelioration of a mental disorder of the directive-maker, the refusal shall be complied with.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 257:

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

“Effect of advance healthcare directive

59. (1) A specific refusal of treatment set out in an advance healthcare directive is as effective as if made contemporaneously by the directive-maker when he or she had capacity to make that decision.

(2) (a) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has complied, or purportedly complied, with a specific refusal of treatment set out in an advance healthcare directive and who, at the time in question, had reasonable grounds to believe, and did believe, that the refusal was valid and applicable.

(b) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has not complied with a specific refusal of treatment set out in an advance healthcare directive who, at the time in question, had reasonable grounds to believe, and did believe, that the refusal was not valid or applicable, or both.

(3) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has, at the time in question, not acted in compliance with an advance healthcare directive if—

(a) he or she had, at that time, no grounds to believe that the directive existed, or

(b) if he or she had, at that time, grounds to believe that the directive existed but—

(i) had no immediate access to the directive or its contents, and

(ii) the urgency of the medical condition of the directive-maker was such that the healthcare professional could not reasonably delay taking appropriate medical action until he or she did have such access.

(4) Nothing in this Part shall be construed as affecting any civil or criminal liability of a person that might otherwise arise under the common law or an enactment (other than this Act) as a result of a failure to comply with a valid and applicable advance healthcare directive.

(5) Nothing in this Part shall to be taken to affect—

(a) the law relating to murder or manslaughter, or

(b) the operation of section 2 of the Criminal Law (Suicide) Act 1993.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 258:

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

“Designated healthcare representative

60. (1) (a) Subject to *subsection (2)*, a directive-maker may designate, in his or her advance healthcare directive, a named individual to exercise the relevant powers.

(b) If the designated individual agrees to exercise the relevant powers, he or she shall sign the advance healthcare directive to confirm his or her willingness to do so in accordance with the known will and preferences of the directive-maker as determined by reference to the directive.

(2) Subject to *subsection (3)*, an individual shall not be designated in an advance healthcare directive to exercise the relevant powers if—

(a) the individual has not attained the age of 18 years,

(b) the individual has been convicted of an offence in relation to the person

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

(c) a safety or barring order has been made against the individual in relation to the directive-maker or a child of the directive-maker,

(d) the individual is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the directive-maker resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or

(e) the individual provides personal care or healthcare services to the directive-maker for compensation unless the individual is—

(i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or

(ii) the primary carer of the directive-maker.

(3) Where, subsequent to the designation in an advance healthcare directive of an individual to exercise the relevant powers—

(a) the individual is convicted of an offence in relation to the person or property of the directive-maker or the person or property of a child of the directive-maker,

(b) a safety or barring order is made against the individual in relation to the directive-maker or a child of the directive-maker,

(c) the individual becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the directive-maker resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, where the individual is not a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or

(d) the individual provides personal care or healthcare services to the directive-maker for compensation where the individual is not—

(i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or

(ii) the primary carer of the directive-maker,

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

(4) A designated healthcare representative for a directive-maker acts as the agent

of the directive-maker when he or she exercises the relevant powers.

(5) An advance healthcare directive shall, unless it provides otherwise, be invalidated to the extent that it relates to a designated healthcare representative who is the spouse of the directive-maker and subsequently—

(a) the marriage is annulled or dissolved either—

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,

(b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

(c) a written agreement to separate is entered into between the spouses, or

(d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.

(6) An advance healthcare directive shall, unless it provides otherwise, be invalidated to the extent that it relates to a designated healthcare representative who is the civil partner of the directive-maker and subsequently—

(a) the civil partnership is dissolved,

(b) a written agreement to separate is entered into between the civil partners,
or

(c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.

(7) Subject to *section 2(2)*, an advance healthcare directive shall, unless it provides otherwise, be invalidated to the extent that it relates to a designated healthcare representative who is the cohabitant of the directive-maker and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.

(8) The invalidation of part of an advance healthcare directive under *subsections (3), (5), (6) or (7)* shall not of itself affect a relevant decision made prior to the occurrence of the event which caused such invalidation.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 259:

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

“Functions and scope of authority of designated healthcare representatives

61. (1) (a) A designated healthcare representative has, by virtue of this paragraph, the power to ensure that the terms of the advance healthcare directive are complied with.

(b) A directive-maker may, in his or her advance healthcare directive, confer on his or her designated healthcare representative one or both of the following 2 powers:

(i) the power to advise and interpret what the directive-maker's will and preferences are regarding treatment as determined by the representative by reference to the relevant advance healthcare directive;

(ii) the power to consent to or refuse treatment, up to and including life-sustaining treatment, based on the known will and preferences of the directive-maker as determined by the representative by reference to the relevant advance healthcare directive.

(2) Nothing in this Part shall be construed as imposing any civil or criminal liability on a designated healthcare representative who, in exercising his or her relevant powers, acted in good faith and in accordance with what, at the time in question, he or she reasonably believed to be the will and preferences of the relevant directive-maker by reference to the relevant advance healthcare directive.

(3) A designated healthcare representative shall—

(a) as soon as is practicable after making a relevant decision but, in any case, not later than 7 working days after making the decision, make and keep a record in writing of the decision, and

(b) produce that record for inspection at the request of—

(i) the directive-maker if he or she has regained capacity, or

(ii) the Director.

(4) (a) The Director shall receive and consider complaints and allegations in relation to the way in which a designated healthcare representative is exercising his or her relevant powers.

(b) The Director shall review any complaint referred to in *paragraph (a)* and, if satisfied that the complaint has substance, shall conduct an investigation into the matter.

(c) The Director may, following the completion of an investigation under *paragraph (b)*, decide to, as appropriate—

(i) take no further action, or

(ii) make an application to the court.

(5) The court may determine an application under *subsection (4)(c)* by—

(a) if it is satisfied that the designated healthcare representative has behaved, is behaving or is proposing to behave in a manner outside the scope of his or her relevant powers, making an order invalidating the advance healthcare directive to the extent that it relates to the representative exercising those powers with effect from the date, or the occurrence of the event, specified in the order for the purpose, or

(b) if it is not so satisfied, declining to make any such order.

(6) (a) A designated healthcare representative may only exercise the relevant powers when and for so long as the directive-maker lacks capacity.

(b) A designated healthcare representative shall not delegate any of the relevant powers and, accordingly, any instrument purporting to effect such a delegation is void.

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 260:

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

“Role of courts

62. (1) On an application (being an application that does not involve considerations relating to life-sustaining treatment) made to it by any interested party, the court may make a declaration as to whether—

(a) an advance healthcare directive is valid,

(b) an advance healthcare directive is applicable, or

(c) a designated healthcare representative is acting in accordance with the relevant powers.

(2) On an application (being an application that involves considerations relating to life-sustaining treatment) made to it by any interested party, the High Court may make a declaration as to whether—

(a) an advance healthcare directive is valid,

(b) an advance healthcare directive is applicable, or

(c) a designated healthcare representative is acting in accordance with the relevant powers.

(3) Whilst awaiting a decision of the High Court relating to an application under *subsection (2)*, nothing in the advance healthcare directive concerned shall be construed to prevent a person from—

(a) providing life-sustaining treatment to the directive-maker, or

(b) doing any act which he or she reasonably believes to be necessary to prevent—

(i) a serious deterioration in the health of the directive-maker, or

(ii) if the directive-maker is a pregnant woman, a deleterious effect on the unborn.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 261:

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

“Offences

63. (1) A person who uses fraud, coercion or undue influence to force another person to make, alter or revoke an advance healthcare directive shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

(2) A person who knowingly creates, falsifies or alters, or purports to revoke, an advance healthcare directive on behalf of another person without that other person’s consent in writing when the other person has the capacity to do so shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

(3) The reference in *subsection (1)* to coercion or undue influence includes any case where a person’s access to, or continued stay in, a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, is contingent (whether in whole or in part) on the person having to make, alter or revoke an advance healthcare directive.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 262:

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

“Codes of practice

64. (1) In this section—

“body concerned”, in relation to a person concerned, means the body responsible for hearing complaints about failures to maintain professional standards in respect of the profession practised by the person concerned;

“code of practice” includes part of a code of practice and, in relation to a code of practice published under *subsection (3)*, means such code as in force from time to

time under this section;

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

“working group” means the working group established under *subsection (2)*.

(2) The Minister shall establish a multidisciplinary working group of suitable persons willing and able to make recommendations to the Director in relation to codes of practice.

(3) The Director may prepare and publish a code of practice, based (whether in whole or in part) on recommendations made to him or her by the working group as to the contents of the code, for the purposes of the guidance of designated healthcare representatives or healthcare professionals, or both, or with respect to such other matters concerned with this Part as the Director thinks appropriate.

(4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (3)*—

(a) make available, to the persons whom the Director considers appropriate having regard to the matters to which the code relates, in such manner as the Director considers appropriate, a draft of the code,

(b) invite the persons to whom he or she has made the draft available to make representations in writing on it to the Director within a period determined by the Director, being a period of not less than 30 days from the date of making the draft available to those persons,

(c) consider, jointly with the working group, the representations (if any) received, and

(d) make, after consultation with the working group, any modifications that he or she considers appropriate to the draft.

(5) The Director shall not publish a code of practice under *subsection (3)* except with the consent of the Minister.

(6) Where the Director publishes a code of practice under *subsection (3)*, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* and such notice shall specify—

(a) the persons or classes of persons for whom the code is providing guidance,

(b) the date from which the code has effect, and

(c) the place where a copy of the code may be viewed, inspected or purchased.

(7) The Director shall publish, on the website on the internet or by the other electronic means referred to in *section 56(2)(p)*, a copy of each code of practice published under *subsection (3)*, as each such code is in force from time to time, on and from the date on which each such code has effect.

(8) The Director shall arrange for that part of the website on the internet or other

electronic means referred to in section 56(2)(p), of the Act which contains a code of practice pursuant to *subsection (7)* to ordinarily be accessible by members of the public.

(9) Subject to *subsection (10)*, the Director may, after consultation with the working group, amend or revoke a code of practice published under *subsection (3)*.

(10) *Subsections (4) and (5)* shall, with all necessary modifications, apply to a code of practice that the Director proposes to amend or revoke under *subsection (9)* as *subsections (4) and (5)* apply to a code of practice that the Director proposes to publish under *subsection (3)*.

(11) Where the Director amends or revokes a code of practice published under *subsection (3)*, the Director shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—

(a) the code to which the amendment or revocation, as the case may be, relates and, if applicable, particulars of the amendment,

(b) the persons or classes of persons in respect of whom the code is so amended or revoked, as the case may be, and

(c) the date from which the amendment or revocation, as the case may be, shall have effect.

(12) A document bearing the seal of the Courts Service and purporting to be a code of practice published under *subsection (3)* or, where such a code has been amended under this section, the code as so amended, shall be admissible in any legal proceedings.

(13) A person concerned shall have regard to a code of practice published under *subsection (3)* when performing any function under this Act in respect of which the code provides guidance.

(14) Where it appears to a court, tribunal, or body concerned, conducting any proceedings that—

(a) a provision of a code of practice published under *subsection (3)*, or

(b) a failure to comply with a code of practice published under *subsection (3)*,

is relevant to a question arising in the proceedings, the provision or failure, as the case may be, shall be taken into account in deciding the question.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 263:

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

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

65. (1) An application to the relevant court under this Part (other than an application by the directive-maker concerned) shall be made on notice to—

(a) the directive-maker,

(b) the persons referred to in *paragraphs (c) to (i) of subsection (3)* (other than any such person who is the applicant), and

(c) such other persons as may be specified in rules of court.

(2) Subject to *subsection (3)*, an application to the relevant court under this Part shall not be made unless the person making the application has received the consent of the court to the making of the application, which consent may be sought by way of an *ex parte* application.

(3) *Subsection (2)* shall not apply to an application to the relevant court under this Part made by—

(a) the directive-maker,

(b) the Director,

(c) a spouse or civil partner of the directive-maker,

(d) the cohabitant of the directive-maker,

(e) a decision-making assistant for the directive-maker,

(f) a co-decision-maker for the directive-maker,

(g) a decision-making representative for the directive-maker,

(h) an attorney for the directive-maker,

(i) a designated healthcare representative for the directive-maker, or

(j) a person specified for that purpose in an existing order of the court under this Part where the application relates to that order.

(4) An application to the relevant court under this Part (including an *ex parte* application under *subsection (2)*) shall state—

(a) the applicant's connection with the directive-maker,

(b) the benefit to the directive-maker sought to be achieved by the application, and

(c) the reasons why the application is being made, in particular—

(i) the reason why the benefit to the directive-maker sought to be achieved has failed to be achieved in any other appropriate and practicable manner taken prior to the making of the application, and

(ii) the reason why, in the opinion of the applicant, no other appropriate and practicable manner to achieve that benefit remains to be taken prior to the making of the application.

(5) In every application to the relevant court under this Part, the applicant shall

inform the court of the existence of—

(a) any decision-making assistance agreement, co-decision-making agreement, power of attorney (whether an enduring power or otherwise and whether or not the power is registered under *section 46*) or advance healthcare directive created by the directive-maker, and

(b) any decision-making order made in respect of the directive-maker,

which, to the applicant's knowledge, still has any force or effect.

(6) (a) Subject to *paragraph (c)*, a party to proceedings under this Part before the relevant court who retains legal representation for the purposes of the proceedings shall be liable for the costs of the legal representation.

(b) Section 28 of the Act of 1995 shall apply to proceedings or proposed proceedings under this section which relate to *section 62(1)* or *(2)*.

(c) Where—

(i) an application to the relevant court is made under this Part, and

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

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

(7) Rules of court shall make provision—

(a) as to the manner and form in which proceedings under this Part are to be commenced,

(b) as to the persons entitled to be notified of, and be made parties to, such proceedings, and

(c) as to what may be received as evidence in such proceedings and the manner in which it is to be presented.

(8) Hearings of applications under this Part shall—

(a) be conducted with the least amount of formality consistent with the proper administration of justice, and

(b) be heard and determined otherwise than in public.

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 264:

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

“Review of this Part

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

Amendment agreed to.

SECTION 55

Deputy Kathleen Lynch: I move amendment No. 265:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 266:

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

“(2) The Director shall—

(a) be appointed by the Courts Service on the recommendation of the Public Appointments Service after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held, and

(b) have the appropriate experience, qualifications, training and expertise to enable him or her to efficiently and effectively perform the functions conferred on him or her.”.

Amendment No. 266 proposes that the director of the decision support service would be appointed following a public competition and on the recommendation of the Public Appointments Service.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 267:

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

Amendment agreed to.

Section 55, as amended, agreed to.

SECTION 56

Chairman: If amendment No. 268 is agreed to, amendments Nos. 269 to 271, inclusive, cannot be moved. Amendments Nos. 268 to 271, inclusive, and 273 to 276, inclusive, are

related. Amendments Nos. 269 to 271, inclusive, are physical alternatives to amendment No. 268. Amendments Nos. 268 to 271, inclusive, and amendments Nos. 273 to 276, inclusive, may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 268:

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

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

(a) to promote public awareness of this Act and matters (including the United Nations Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006) relating to the exercise of their capacity by persons who require or may shortly require assistance in exercising their capacity;

(b) to promote public confidence in the process of dealing with matters which affect persons who require or may shortly require assistance in exercising their capacity;

(c) to provide information and guidance to relevant persons in relation to their options under this Act for exercising their capacity;

(d) to provide information and guidance to decision-making assistants, co-decision-makers, decision-making representatives, designated healthcare representatives and attorneys in relation to the performance of their functions under this Act;

(e) to supervise, in accordance with the provisions of this Act, compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions under this Act;

(f) to provide information and guidance in relation to the management of property and financial affairs to relevant persons and to decision-making assistants, co-decision-makers, decision-making representatives and attorneys;

(g) to provide information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons;

(h) to identify and make recommendations for change of practices in organisations and bodies in which the practices may prevent a relevant person from exercising his or her capacity under this Act;

(i) to establish a website on the internet or provide, or arrange for the provision of, other electronic means by which to disseminate information to members of the public relevant to the performance of the Director’s functions and which will, in the opinion of the Director, assist members of the public to understand the operation of this Act and the Director’s role in relation thereto;

(j) to make recommendations to the Minister on any matter relating to the operation of this Act.

(2) The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of his or her functions.”.

Amendment 268 is intended to restructure the proposed functions of the director to emphasise the director’s primary role, which will be to provide information and guidance to persons with capacity difficulties, those who will be acting as interveners under the Bill and to organisations dealing with people with capacity difficulties. Separate provisions have been included in a specific section giving the director specific powers to undertake investigations.

Amendments Nos. 273 to 276 are technical in nature. The provisions have been moved to section 57.

Amendment No. 269 is from Deputy Niall Collins, who will be aware that a new Part has been inserted into the Bill, Part 8, which sets out a legislative framework for advance health care directives. The primary objective of these provisions is to promote personal autonomy by enabling an adult with capacity to make a legally binding advance health care directive. The directive then serves as an expression of the person’s will and preference regarding medical treatment in the event of their future incapacity. Advance health care directives also serve to provide health care professionals with important information about the kind of treatment people would or would not wish to receive. The addition of this new part means that Ireland is complying with the Council of Europe’s recommendations 2009-2011 and 2014. I thank the Deputy for drawing attention to these important international texts. I will not be accepting the amendment on the basis that the principal issues raised have been addressed with the insertion of Part 8 in the Bill.

In respect of amendment No. 270, also in the name of Deputy Collins, Government amendment No. 255 states that the Minister for Health may make regulations requiring the director of decision support services to establish and maintain a register of advance health care directives. There are, however, a number of practical and technical challenges which need to be overcome before such a register would be established and become operational. The roll-out of the individual health care identifier by the HSE is scheduled for the end of this year. This development would facilitate the establishment of a register for advance health care directives, at which point regulations would be prepared. Therefore I will not be accepting this amendment.

Deputy Colm Keaveney: I am tempted to withdraw the amendments. I would like to receive assurances, particularly with respect to amendment No. 270. The Law Reform Commission reported on advance care and recommended the establishment of the register. I note the complexity in terms of the difficulties surrounding that. Your assurance around the provision - what section of the legislation is provided?

Chairman: Through the chair, please, Deputy Keaveney. I am not being picky. In order to get the record right and because we are recording, I ask members to address remarks to the Chairman.

Deputy Colm Keaveney: I appreciate that. Before I either withdraw or press the amendment, I am trying to establish the assurances the Minister of State has given with respect to the register of advance care directives. This is very important. I know the Minister of State is sharing the information in good faith. I am concerned about the time delay surrounding the advancement of the register.

Deputy Kathleen Lynch: The delay is around the unique health identifier. We have to be very careful. Each and every one of us wants to be assured that when something is registered,

it is truly on our behalf rather than people making decisions about us. The unique health identifier, which will be rolled out at the end of this year, will make life an awful lot easier in respect of the register. The key point is that we are not opposed to what the Deputy is suggesting. We think it is a good idea and I know that others have been making that recommendation as well. It will be done. That is the key point.

Deputy Colm Keaveney: I have spoken on both amendments. I will withdraw them. It gives me an opportunity to come back on the next Stage. I want to suppress the amendments.

Chairman: On a point of information, if the question on amendment No. 268 is agreed, those amendments cannot even be moved, so the issue does not arise.

Deputy Colm Keaveney: I will not be objecting to amendment No. 268, not that I would suggest that I have the authority to do so. The Chairman keeps consenting that the Minister of State can just do the vote on it.

Chairman: You can vote any time you want. There is no problem there, you can call a vote any time. It is completely the Deputy's right to do so if he does not agree with something.

Deputy Colm Keaveney: I admire the efficiency with which the Chairman is going through the agenda.

Chairman: Thank you. I thank all members for their co-operation. So far, so good. Would anyone else like to speak on these amendments? Are we all done? Okay. I note again that if amendment No. 268 is agreed, amendments Nos. 269 and 270 cannot be moved as they are physical alternatives.

Amendment agreed to.

Amendments Nos. 269 to 271, inclusive, not moved.

Deputy Kathleen Lynch: I move amendment No. 272:

In page 68, line 9, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 273:

In page 68, to delete lines 11 to 16.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 274:

In page 68, to delete lines 17 to 21.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 275:

In page 68, to delete lines 22 to 39.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 276:

In page 68, to delete lines 40 to 43.

Amendment agreed to.

Section 56, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 277:

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

“Investigations by Director

“57. (1) The Director may investigate, either on his or her own initiative or in response to a complaint made to him or her by any person, complaints in relation to any action of a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person which may involve a breach of his or her functions as decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney, as the case may be, or a breach of a provision of this Act.

(2) The Director may, to enable him or her to perform his or her functions under *subsection (1)*—

(a) summon witnesses to attend before him or her,

(b) examine on oath the witnesses attending before him or her,

(c) require any such witness to produce to him or her any document in the power or control of the witness,

(d) by notice in writing, require any person to provide him or her with such written information as the Director considers necessary to enable him or her to carry out his or her functions.

(3) The Director may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.

(4) The Director may seek resolution of complaints in such manner (including by any informal means) as the Director considers appropriate and reasonable.

(5) The Director shall draw up procedures in relation to the making and investigation of complaints as he or she considers appropriate and shall cause the procedures to be published.

(6) An investigation by the Director under this Act shall be conducted otherwise than in public.

(7) A person who—

(a) fails to comply with a requirement under this section,

(b) hinders or obstructs—

(i) the Director in the performance of his or her functions, or

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

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

This new section will give the director the power of investigation. It establishes that the director can take an investigative role in the event of any person - not necessarily the person lacking capacity, the co-decision-maker or the assisted decision-maker - making a complaint to the office.

Chairman: It is a pretty powerful section.

Deputy Kathleen Lynch: Yes.

Amendment agreed to.

SECTION 57

Deputy Kathleen Lynch: I move amendment No. 278:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 279:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 280:

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

Amendment agreed to.

Section 57, as amended, agreed to.

SECTION 58

Deputy Kathleen Lynch: I move amendment No. 281:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 282:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 283:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 284:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 285:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 286:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 287:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 288:

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

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

There is very little to discuss here. It is easy to understand this amendment, which proposes that the “numbers and grades of staff” will be “determined by the Courts Service with the approval of the Minister [and] the consent of the Minister for Public Expenditure and Reform”.

Deputy Colm Keaveney: I would like further clarification on this section. Perhaps this will help the Chairman out. To which Minister does this amendment refer?

Deputy Kathleen Lynch: I understand it refers to the Minister for Justice and Equality.

Chairman: That was mentioned at the very start.

Deputy Kathleen Lynch: Yes.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 289:

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

“Director”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 290:

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

Amendment agreed to.

Section 58, as amended, agreed to.

SECTION 59

Deputy Kathleen Lynch: I move amendment No. 291:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 292:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 293:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 294:

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

Amendment agreed to.

Chairman: As amendment No. 295 and amendments Nos. 297 to 300, inclusive, are related, they may be discussed together

Deputy Kathleen Lynch: I move amendment No. 295:

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

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

(a) a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person, or

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

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

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

(a) at any reasonable time, examine and take copies of—

(i) any health record,

(ii) any record of, or held by, the Health Service Executive and compiled in connection with its social services function, and

(iii) any record held by an institution responsible for the care or treatment of persons, including any hospital or other institution for the care or treatment of mentally ill or intellectually disabled persons and any public or private institution for the care of elderly or infirm persons,

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

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

(7) *Subsection (6)* shall not entitle the Director to direct a general visitor to examine and take copies of any health record of a relevant person unless the general visitor is a registered medical practitioner.”.

These amendments propose further provisions with regard to special visitors, general visitors and court friends who will have formal roles to support the director or the person with capacity difficulties. Amendment No. 296 provides further detail on the intended role of the special visitor and general visitor. Their purpose will be to assist the director of the decision support service by visiting people with capacity difficulties and those holding-----

Chairman: Amendment No. 296 is not included with this group. We will come to it under section 60. We are dealing with amendment No. 295 and amendments Nos. 297 to 300, inclusive.

Deputy Kathleen Lynch: Okay. Amendment No. 297 proposes to amend a typographical error in the Bill. The intention has always been that the court friend could interview the person with capacity difficulties in private and would not have to subject that person to a public interview process. The amendment clarifies that intention. Amendments Nos. 298 and 299 make clear that the primary role of a court friend would be to communicate to the court the will and preferences of the person with capacity difficulties. This is in line with the Bill’s ethos to ensure the person’s wishes are brought centre stage. Amendment No. 300 clarifies that the director of the decision support service will establish panels of decision-making representatives who can be appointed to take decisions on behalf of a person lacking capacity where there is no suitable person available to take on that role. It will also be the director’s role to establish panels of special visitors and general visitors who will be used by the director to investigate complaints, etc. The director will also have to establish a panel of court friends to support a person with capacity difficulties through court proceedings.

Amendment agreed to.

Section 59, as amended, agreed to.

SECTION 60

Deputy Kathleen Lynch: I move amendment No. 296:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 297:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 298:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 299:

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

Amendment agreed to.

Section 60, as amended, agreed to.

NEW SECTION

Chairman: The acceptance of amendment No. 300 involves the deletion of section 61 of the current Bill.

Deputy Kathleen Lynch: I move amendment No. 300:

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

“Panels to be established by the Director

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

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

Amendment agreed to.

Section 61 deleted.

SECTION 62

Deputy Kathleen Lynch: I move amendment No. 301:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 302:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 303:

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

Amendment agreed to.

Chairman: Amendments Nos. 304, 308 and 309 are related and may be discussed together.

Deputy Kathleen Lynch: I move amendment No. 304:

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

Amendments Nos. 304 and 309 are technical amendments. As the director of decision support service and his or her staff will be located within the Courts Service, a separate office is not being established. As a result, it is more appropriate to specify that the director’s first report will be required two years from the commencement of this Part. It is also more appropriate to specify that the director’s subsequent five-yearly reports will also date from the commencement of this Part. Amendment No. 308 is a technical amendment. As the office of director of the decision support service is being located in the Courts Service rather than as an independent office, it is more appropriate that his or her report should focus on the adequacy of the functions assigned to him or her rather than to the effectiveness of his or her office.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 305:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 306:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 307:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 308:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 309:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 310:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 311:

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

Amendment agreed to.

Section 62, as amended, agreed to.

SECTION 63

Deputy Kathleen Lynch: I move amendment No. 312:

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

Amendment agreed to.

Chairman: Continuing with section 63, we now move to amendment No. 313 in the name of the Minister of State. If the question on amendment No. 313 is agreed, amendment No. 314 cannot be moved. Amendments Nos. 313 to 315, inclusive, 317, 320, 335 and 336 are related and may be discussed together. Amendment No. 314 is a logical alternative to amendment No. 313. I call on the Minister of State to move amendment No. 313.

Deputy Kathleen Lynch: I move amendment No. 313:

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

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

This amendment indicates that guidance would be prepared for all persons who might be in a position of taking a decision either formally or informally on personal welfare matters on behalf of a person with capacity difficulties. This would include health care professionals, social care workers, community workers, neighbours, families and friends. The categories of persons for whom guidance is to be prepared has been kept deliberately broad to ensure that the widest possible range of potential decision-makers is included within the amendment.

On amendment No. 314, tabled by Deputy Anne Ferris, I think we are both broadly in agreement as to the need for guidance for people undertaking roles, either formally or informally, in relation to persons with capacity difficulties. I consider that amendment No. 313 addresses Deputy Ferris’s concerns. There are some issues with Deputy Ferris’s formulation. I do not

think that health care professionals can be described as informal carers. Furthermore, Deputy Ferris's amendment is restricted to family members or informal carers. My amendment goes further to encompass any person who undertakes a role under section 53(1). For this reason I cannot accept Deputy Ferris's amendment.

Amendment No. 315 proposes to provide for codes of practice to be produced for further categories of people who are likely to be involved with people with capacity issues. We are proposing that codes of practice would be produced to guide advocates when acting on behalf of a person with capacity difficulties. This amendment would cover advocates acting either in a formal or informal capacity, and would encompass advocacy organisations, family members or friends.

The following amendment would provide for codes of practice to be prepared for social care, legal and financial professionals, as well as for health care professionals. The actions of professionals in these sectors can all have a major influence on a person's decision-making autonomy. It is crucial that these sectors develop guidelines as guidance for members so that their practices can serve to support a person to exercise autonomy as much as possible in terms of decision making.

The manner in which a bank engages with a person with intellectual disability can determine whether that person is able to manage his or her own affairs. Equally, we need to ensure that these sectors have safeguards in place to guard against abuse of a vulnerable person by family members, friends or neighbours. Codes of practice will be a crucial mechanism to provide guidance for these sectors and to build up their expertise about engaging with persons with capacity issues.

Amendment No. 320 provides for the National Disability Authority and the Citizens Information Board to be consulted when codes of practice are being devised. The intention is that the National Disability Authority will provide assistance in the development of codes of practice generally. The Citizens Information Board will provide advice on the development of the code of practice on advocates. The other amendments are to ensure that professional bodies in the social care, legal and financial sectors are consulted when the codes of practice for those sectors are being developed. This is to ensure that the codes of practice are grounded in an understanding of practice within those sectors.

Amendment No. 335 is to enable codes of practice to be published on the website of the director of the decision support service, or to be available electronically, so that they can be more easily available to people needing to use or to be aware of such codes of practice.

Amendment No. 336 is to provide that a code of practice will not be developed for advance health care directives under this section, as the code of practice on advance health care directive will be developed in accordance with the provisions of Part 8.

Amendment No. 317, as provided for by amendment No. 262, provides that the Minister for Health will establish a multidisciplinary working group to assist in the development and preparation of codes of practice with the Director of the Decision Support Service. The codes of practice will provide advice and guidance on how the legislation will operate on a day-to-day basis, including providing examples of best practice for people interested in preparing their own advance care directive, but also for health care professionals, designated health care representatives and others who will have to deal with a person's advanced health care directive. On that basis, it will not be possible to accept the Deputies' amendments.

Chairman: Does Deputy Keaveney wish to comment on Deputy Niall Collins's amendment No. 317?

Deputy Colm Keaveney: Yes, a Chathaoirligh. The Department stated it envisaged that the code of practice would be formulated to give guidelines to some of the detailed provisions of the legislation, yet from the draft heads I cannot establish who has the function of formulating that policy. In going through the legislation it is important to detail the origin, source and point of contact. I stand to be corrected, but I see that amendment No. 335 states:

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

I am therefore seeking that section 63(2) be amended to take into account the guidance required for the code of practice with respect to the draft general scheme for making advances on health care directives and the insertions as laid out in amendment No. 317.

Deputy Kathleen Lynch: Those who will be charged with developing the codes of practice will be the multidisciplinary working team, which the Minister has to establish as soon as the Bill is enacted, to assist in the development and preparation of the codes of practice with the director of the decision support service. The Minister will ultimately be responsible, which is the triple-lock in terms of democracy and how we operate here. We therefore have a fairly robust system in place. It will be a multidisciplinary group which will not only look at people in terms of mental health, disabilities, acquired brain injury or any such issues, but will also ensure that organisations dealing with people who have a difficulty with capacity are well trained and understand the difficulties that people at the counter or sitting at a desk may have.

I assume that all relevant groups will be represented on the multidisciplinary group when it is established. I believe that it will produce a code of practice and standards on which we can rely.

Deputy Colm Keaveney: Will the Minister of State establish from the Minister whether there is provision for the multidisciplinary team within the legislation? While I accept in good faith the triple-lock assurances and the democratic process, the legislation belongs to the people so I want to see where the team is provided for.

Deputy Kathleen Lynch: It is in amendment No. 262.

Deputy Colm Keaveney: In light of the fact that I have said yes to everything so far, it would be a contradiction on my behalf to press the amendment.

Chairman: When we get to that amendment, the Deputy can decide whether he wants to press it.

Deputy Colm Keaveney: I am glad I have contributed because it gives me an opportunity to speak in the next debate. In the interests of accelerating towards the end, I am withdrawing the amendment.

Chairman: When we get to it, the Deputy can withdraw it.

Deputy Colm Keaveney: It is just to help out the Chairman.

Chairman: That is fine, thank you.

Amendment agreed to.

Amendment No. 314 not moved.

Chairman: Amendment No. 315 has already been discussed with amendment No. 313. I call the Minister of State to move the amendment.

Deputy Kathleen Lynch: I move amendment No. 315:

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

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

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

Amendment agreed to.

Chairman: Amendment No. 316 has already been discussed with amendment No. 11. I call the Minister of State to move the amendment.

Deputy Kathleen Lynch: I move amendment No. 316:

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

Amendment agreed to.

Amendment No. 317 not moved.

Deputy Kathleen Lynch: I move amendment No. 318:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 319:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 320:

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

“(d) the National Disability Authority;

(e) the Citizens Information Board;

(f) representatives of professional bodies in the healthcare, social care, legal and financial sectors;

(g) representatives of healthcare, social care, legal and financial professionals.”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 321:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 322:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 323:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 324:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 325:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 326:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 327:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 328:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 329:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 330:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 331:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 332:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 333:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 334:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 335:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 336:

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

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

Amendment agreed to.

Section 63, as amended, agreed to.

SECTION 64

Deputy Kathleen Lynch: I move amendment No. 337:

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

Amendment agreed to.

Section 64, as amended, agreed to.

Sections 65 and 66 agreed to.

SECTION 67

Deputy Kathleen Lynch: I move amendment No. 338:

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

Amendment agreed to.

Section 67, as amended, agreed to.

SECTION 68

Deputy Kathleen Lynch: I move amendment No. 339:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 340:

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

Amendment put and declared lost.

Section 68, as amended, agreed to.

SECTION 69

Deputy Kathleen Lynch: I move amendment No. 341:

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

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 342:

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

Amendment put and declared lost.

Section 69, as amended, agreed to.

SECTION 70

Chairman: Amendments Nos. 343 to 393, inclusive, are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 343:

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

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

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

Amendments Nos. 343 to 393, inclusive, are technical in nature and are intended to make clearer the provisions transposing the Hague Convention on the International Protection of Adults into Irish law. The convention will apply where there is a transnational dimension to a case, such as if a person lacking capacity has property or affairs in another convention country or where a person living in another country has property and affairs to be managed here. A definition has been proposed in amendment No. 343 of the “central authority in the State”. This will be the decision support service and will be as set out in section 74. A definition is also proposed of “central authority in another convention country”. That will be the authority designated by that country under the convention.

Amendments Nos. 344, 346, 347, 361, 368, 375 and 390 propose to replace all references to “protective measures” by a reference to “measures”. The Bill does not seek to establish a system of protection but instead a decision-making system which takes the person’s will and preferences into account, where possible. The “measures” to be taken will not always be protective but may, for example, be intended to enable a person to exercise decision-making autonomy. As a result, it is more appropriate to refer to “measures” than to “protective measures”.

Amendment No. 345 provides that actions under this Part may be taken by the Circuit Court or by the director of the decision support service. The amendment is to ensure that the Circuit Court or the director will have regard to the explanatory report on the convention by Paul Lagarde when taking action under this Part.

Amendment No. 348 is technical in nature arising from the change of name of the public guardian to that of the director of the decision support service. It proposes that the director of the decision support service will be designated as the central authority and will have the responsibility to carry out the functions assigned to a central authority under the convention.

Amendments Nos. 349, 354, 356, 360, 364 to 366, inclusive, 374, 377, 380, 382, 388 and 389 are to enable the Circuit Court to have jurisdiction concurrently with the High Court in this area. The option of giving the Circuit Court jurisdiction on these matters is intended for two reasons. First, legal costs are likely to be lower for Circuit Court applications. Second, the specialist judges who will handle these cases in the Circuit Court will have the necessary expertise, given that they will be dealing with similar cases regularly.

Amendments Nos. 350 to 353, inclusive, are technical in nature and are intended to ensure that section 75 directly transposes the relevant articles of the Hague Convention, namely, Articles 5 to 8, inclusive, and 10 and 11. Amendments Nos. 355 and 358 are technical amendments to make the meaning of these provisions in section 76 clearer. Amendment No. 357 is intended to give the court the jurisdiction to make a request of authorities in another convention country, such as in relation to a person or to the person’s property if located in this other convention country.

Amendment No. 359 is a technical amendment which is intended to make the meaning of section 77 clearer. It is intended to ensure that there is no break in continuity between measures put in place in Ireland for a particular person and those in operation in another convention country. The amendment specifies that any measures taken by the High Court or the Circuit Court, as the case may be, will remain in effect until they have been modified, replaced or terminated by countervailing measures taken by the authorities in the convention country dealing with the particular case. If a French person were to have an accident while on holiday in Ireland, for

example, which left the person in a coma, the measures put in place by the court here would continue to apply until countervailing measures had been ordered by the French courts, such as to enable the person to return home.

Given that the amendment to section 77 now sets out that the jurisdiction of the Irish courts will apply until countervailing orders have been issued by the courts in the other convention country, no further provisions are needed in section 78 to supplement this provision. Given that section 78 is now unnecessary, it is proposed that it should be deleted.

Amendments Nos. 362 and 363 have been proposed in the interests of clarity. The reference to “contracting state” has been replaced by that of “Convention country” so that it is clear that the reference is to a country that has ratified the Hague Convention. Similarly, the reference to “the law of the convention country in which implementation occurs” is intended to make clear that the law that will apply when a measure has to be implemented in a particular country is the law of the country in which the measure is implemented.

Amendments Nos. 369 to 371, inclusive, are technical in nature. They are intended to give greater clarity given that the intent is to provide for the court to be able to refuse recognition of a specific measure. Amendments Nos. 367, 372 and 373 are technical in nature. They are intended to make the intent of the provisions clearer. Amendment No. 372 provides that a person can apply to the court for a declaration as to whether a measure taken in another Hague Convention country is recognised here. Amendment No. 373 provides that any finding of fact by a court or similar competent authority in another Hague Convention country is conclusive for proceedings here.

Amendment No. 376 is a technical amendment in the interests of clarity. Section 90 enables a person to apply to the court for a declaration as to whether a measure taken in another country is enforceable here. The amendment specifies that the measure must be taken in a Hague Convention country. Amendment No. 378 is a technical amendment changing a cross-reference to reflect the changes made to section 87. Amendment No. 379 is a technical amendment to make clearer that the court can make a declaration recognising a measure taken in another Hague Convention country provided that the court has not refused to recognise the measure under the provisions of section 87.

Amendment No. 381 is a technical amendment to make it clearer that Part 10 applies to persons over 18 years where measures are taken before a person turns 18. The protection applies from the point at which the person turns 18 years.

Amendments Nos. 383 to 386, inclusive, are technical amendments which clarify that the communication is to be undertaken between Ireland and countries that are party to the Hague Convention. These amendments and amendment No. 392 propose to amend the reference to “central authority” in lower case rather than upper case as there will not be an office called the “Central Authority”. Instead, the director of decision-support services and his or her staff will assume this function in Ireland.

Amendment No. 391 proposes that communications under section 96 will be undertaken between relevant central authorities, rather than as ordered by the High Court, while amendment No. 393 outlines the circumstances in which such communications should not be undertaken.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 344:

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

Amendment agreed to

Deputy Kathleen Lynch: I move amendment No. 345:

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

Amendment agreed to.

Section 70, as amended, agreed to.

Sections 71 and 72 agreed to.

SECTION 73

Deputy Kathleen Lynch: I move amendment No. 346:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 347:

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

Amendment agreed to.

Section 73, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 348:

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

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

Amendment agreed to.

Section 74 deleted.

SECTION 75

Deputy Kathleen Lynch: I move amendment No. 349:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 350:

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

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

Convention,”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 351:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 352:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 353:

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

Amendment agreed to.

Section 75, as amended, agreed to.

SECTION 76

Deputy Kathleen Lynch: I move amendment No. 354:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 355:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 356:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 357:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 358:

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

Amendment agreed to.

Section 76, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 359:

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

“Exercise of jurisdiction

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

Amendment agreed to.

Sections 77 and 78 deleted.

SECTION 79

Deputy Kathleen Lynch: I move amendment No. 360:

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

Amendment agreed to.

Section 79, as amended, agreed to.

SECTION 80

Deputy Kathleen Lynch: I move amendment No. 361:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 362:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 363:

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

Amendment agreed to.

Section 80, as amended, agreed to.

Section 81 agreed to.

SECTION 82

Deputy Kathleen Lynch: I move amendment No. 364:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 365:

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

Amendment agreed to.

Section 82, as amended, agreed to.

Section 83 deleted.

Section 84 agreed to.

SECTION 85

Deputy Kathleen Lynch: I move amendment No. 366:

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

Amendment agreed to.

Section 85, as amended, agreed to.

Section 86 agreed to.

SECTION 87

Deputy Kathleen Lynch: I move amendment No. 367:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 368:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 369:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 370:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 371:

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

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

Amendment agreed to.

Section 87, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 372:

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

“Application to High Court or court for declaration on measure

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

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

Amendment agreed to.

Section 88 deleted.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 373:

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

“Provisions supplementary to sections 87 and 88*

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

Amendment agreed to.

Section 89 deleted.

SECTION 90

Deputy Kathleen Lynch: I move amendment No. 374:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 375:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 376:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 377:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 378:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 379:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 380:

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

Amendment agreed to.

Section 90, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 381:

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

“Measures taken in relation to those aged under 18

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

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

Amendment agreed to.

Section 91 deleted.

SECTION 92

Deputy Kathleen Lynch: I move amendment No. 382:

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

Amendment agreed to.

Section 92, as amended, agreed to.

Sections 93 agreed to.

SECTION 94

Deputy Kathleen Lynch: I move amendment No. 383:

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

“The central authority in the State shall consult the central authority in another Convention country or other competent authority in the Convention country concerned”.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 384:

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

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

Amendment agreed to.

Section, 94, as amended, agreed to.

SECTION 95

Deputy Kathleen Lynch: I move amendment No. 385:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 386:

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

Amendment agreed to.

Section 95, as amended, agreed to.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 387:

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

“Requests to be communicated through Central Authority

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

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

Amendment agreed to.

SECTION 96

Deputy Kathleen Lynch: I move amendment No. 388:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 389:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 390:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 391:

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

“The central authority in the State shall inform the central authority in another Convention country or other competent authority in that Convention country regarding”.

Amendment agreed to.

Section 96, as amended, agreed to.

SECTION 97

Deputy Kathleen Lynch: I move amendment No. 392:

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

I interrupt to indicate that the Government will bring in an amendment on Report Stage in relation to clinical trials. We are awaiting legal advice on that, which is why it is not here now. I acknowledge that we might be adding to the Bill on Report State, but it is important to be as comprehensive as possible. We will be introducing that in relation to section 103. While that is a bit later, I indicate now that we will be doing it.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 393:

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

Amendment agreed to.

Section 97, as amended, agreed to.

Sections 98 to 102, inclusive, deleted.

Section 103 agreed to.

SECTION 104

Deputy Pádraig Mac Lochlainn: I move amendment No. 394:

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

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

Section 104 addresses the position of patients whose treatment is regulated by Part 4 of the Mental Health Act. The section provides that nothing in the Bill authorises a person to give a patient treatment for mental disorder or to consent to a patient being given treatment for mental disorder if, at the time when it is proposed to treat the patient, his or her treatment is regulated by Part 4 of the Mental Health Act.

There is nothing in the Bill that specifically enables patients in approved centres to avail of the assisted decision-making provisions of the Bill. We consider that patients in approved centres should have the same right as others to avail of assisted decision-making in respect of day-to-day decisions. We consider that the Bill should contain a clear statement that it applies in full to all patients in approved centres, save in so far as section 104 applies to any such patient. The inclusion of an express statement to this effect will ensure that the benefits of the legislation are available to people in approved centres. These recommendations and this amendment are not intended to be taken as an endorsement of the current provisions in Part 4. Previous submissions from interested parties to the Department of Health regarding the review of the Mental Health Act should be read in conjunction with this amendment. This amendment addresses these concerns by ensuring that the Bill applies to all patients in approved centres.

Deputy Kathleen Lynch: I am not accepting the amendment for the same reasons that I

have not accepted the other amendment relating to mental health. I believe strongly that this issue would be better dealt with in the review of the Mental Health Act. In this legislation, we have been very careful not to define any group of people. We refer to people who find themselves in certain circumstances but we do not say that it necessarily has to apply to people as they age, people with disabilities or people with acquired brain injury or mental health issues. It would be wrong to give this kind of clear indication in legislation to a particular group of people. People who have a difficulty with mental health, in particular those in approved or acute units, should have the ultimate protection but such protection is best expressed in the Mental Health Act.

Deputy Pádraig Mac Lochlainn: Has the Department engaged with Mental Health Reform in respect of this Bill? There seems to be significant differences between what that group and what the Minister of State is putting forward. If the Minister of State has engaged with representatives from the group, has she conveyed to them that all of the issues they are raising with our committee will be addressed in the Mental Health Act? Is there room for more dialogue with the group before Report Stage? They maintain this is a missed opportunity for a significant group affected by the legislation and I would argue they are absolutely right. Why should they have to wait for a long period of time for reform of the Mental Health Act?

In fairness, the Minister of State has offered to engage with NUI Galway on some issues raised earlier. Will she consider engaging with Mental Health Reform to see if she can offer any assurances to the group? The group has been in dialogue with our committee and parliamentarians around its concerns right up to recent days. Will the Minister of State consider if there is any give in this area, or is she firm in her view that there is no more room for negotiation?

Deputy Kathleen Lynch: Mental Health Reform and Mental Health Ireland are two groups, along with other groups which are perhaps not as well known or as national, with which we are constantly in contact about a range of issues. I accept that Deputy Mac Lochlainn has to make the argument to the effect that he believes this to be a good amendment. I accept that this is his job. I would be doing the same if I was sitting where he is sitting. However, I am firm in my view that I am not going to pick any group of people. As much as I would have a particular leaning towards one group rather than another, I am not going to pick any group and include them as named groups within this legislation. I believe the necessary protection would be better placed in the new mental health legislation.

Amendment put and declared lost.

Section 104 agreed to.

Section 105 agreed to.

SECTION 106

Deputy Kathleen Lynch: I move amendment No. 395:

In page 86, to delete line 26.

Section 106 lists the issues to which this Bill does not apply. The amendment proposes to remove the issue of voting from this list as voters are entitled to vote, regardless of their capacity. Again, this is a significant element to be highlighted within the Bill. This relates to voting and people having the right to vote, regardless of their capacity. As politicians, we know that only too well.

Amendment agreed to.

Section 106, as amended, agreed to.

SECTION 107

Deputy Kathleen Lynch: I move amendment No. 396:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 397:

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

Amendment agreed to.

Section 107, as amended, agreed to.

SECTION 108

Deputy Kathleen Lynch: I move amendment No. 398:

In page 87, to delete lines 10 to 17.

Amendment No. 398 proposes to delete the provision which would have allowed the High Court to alter the will of a person who has lost testamentary capacity. While this would have happened only in exceptional circumstances and where the interests of justice so demanded and while this had been recommended by the Law Reform Commission, the amendment would go against existing case law. The courts have been careful to respect the wishes of a person as expressed in a will. In this context, it is not considered appropriate that the court would have the power to alter a will, which is the expression at the time that it is drafted of the will and preferences of a person.

Amendment agreed to.

Section 108, as amended, agreed to.

Chairman: It is now 1.30 p.m. We said we would stop at 1.30 p.m. but is it agreed to keep going for a further five or ten minutes?

Deputy Pádraig Mac Lochlainn: We are nearly finished.

Chairman: Is that okay with you, Minister of State?

Deputy Kathleen Lynch: Yes.

NEW SECTION

Deputy Kathleen Lynch: I move amendment No. 399:

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

“**Appeals**

109. An appeal lies—

(a) to the High Court from a decision of the Circuit Court exercising any jurisdiction under this Act, and

(b) to the—

(i) Court of Appeal from a decision of the High Court, or

(ii) to the Supreme Court from the High Court in the circumstances laid down in Article 34.5.4 of the Constitution,

on a point of law only.”.

Amendment No. 399 is technical in nature and provides for appeals to the Court of Appeal on a point of law. The Court of Appeal had not been established when the Bill was originally published. We are simply taking account of the establishment of the Court of Appeal.

Amendment agreed to.

Sections 109 and 110 deleted.

Sections 111 and 112 agreed to.

SECTION 113

Deputy Kathleen Lynch: I move amendment No. 400:

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

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

Amendment agreed to.

Amendment No. 401 not moved.

Section 113, as amended, agreed to.

SECTION 114

Chairman: Amendments Nos. 402 and 403 are related and will be discussed together.

Deputy Kathleen Lynch: I move amendment No. 402:

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

Amendment No. 402 proposes to exempt Part 8 dealing with advance health care directives from the review of the Act which the Minister for Justice and Equality will carry out before the Act’s fifth anniversary as the review of Part 8 is separately provided for within that Part.

Deputy Mac Lochlainn proposes in amendment No. 403 that the Act would be reviewed before its second anniversary. This Bill proposes a highly ambitious reform programme which will require time to be implemented properly. It will involve cultural change for individuals and families and for organisations engaging with people with capacity difficulties. It will take time for the effectiveness of the new support options to be ascertained properly. It would be premature to review the Act within two years of enactment as that would not give an accurate

picture as to its long-term effectiveness. Five years is the normal review period for legislation of this nature which will allow time for the provisions to be bedded down. I think that it would disrupt the focus, which must be on implementing the legislation, to embark on a review soon after its enactment. For that reason, I will not accept the Deputy's amendment.

Deputy Pádraig Mac Lochlainn: This is similar to the discussion we had earlier. The Minister of State may argue that two years is too short but we argue that five years is too long, considering the serious implications of these changes. We will not reach agreement now but I ask the Minister of State to reconsider this. Maybe there is a mid-point on which we can agree, arguably three years. I will resubmit this amendment on Report Stage and we can discuss it again.

Amendment agreed to.

Deputy Pádraig Mac Lochlainn: I move amendment No. 403:

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

Amendment put and declared lost.

Section 114, as amended, agreed to.

SCHEDULE 1

Deputy Kathleen Lynch: I move amendment No. 404:

In page 91, line 28, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 405:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 406:

In page 92, line 32, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 407:

In page 92, lines 33 and 34, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 408:

In page 93, line 2, to delete "Public Guardian" and substitute "Director".

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 409:

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

Amendment agreed to.

Schedule 1, as amended, agreed to.

Schedules 2 and 3 agreed to.

TITLE

Deputy Kathleen Lynch: I move amendment No. 410:

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

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

Amendments Nos. 410 to 412, inclusive, and 414 to 417, inclusive, propose changes to the Title to reflect the changes proposed for the Bill. The changes result from co-decision making being taken out of the court, from informal decision-making being removed as an apparent category of intervener and from the inclusion of provisions for advance health care directives. The other change arises from the change of title from public guardian to director of the decision support service. A small change is to clarify that decision-making assistants can take decisions informally. As my proposal in amendment No. 414 to remove informal decision-making addresses the change sought by Deputy Ferris in amendment No. 413, I would ask the Deputy not to press her amendment and I do not believe she will.

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 411:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 412:

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

Amendment agreed to.

Amendment No. 413 not moved.

Deputy Kathleen Lynch: I move amendment No. 414:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 415:

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 416:

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

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

Amendment agreed to.

Deputy Kathleen Lynch: I move amendment No. 417:

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

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Chairman: I thank the Minister of State and her officials for attending and thank everybody for their co-operation. We covered and discussed 417 amendments. I am sure our colleagues recognise the huge amount of work the Minister of State, her officials and others have put into this Bill. This is probably one of the first Bills at which the committee looked when it was formed a number of years ago and I am delighted to see it reach this Stage. I congratulate everybody on the work done. There is more work to be done on Report Stage and maybe in the Seanad, but the work done to date has been tremendous.

Deputy Kathleen Lynch: I thank the Chairman, in particular. The Chairman and I, along with a few people in the Visitors Gallery, started on this journey approximately 20 years ago. We were constantly told that this would never be done. As the Chairman rightly did, I sincerely thank the Opposition for its interest and the members of the committee who have supported this engagement. That has been important. Above all else, I thank those from the non-governmental bodies who will get no reward from any of this other than to ensure that as we age, we are treated in society in a better and more respectful way in whatever circumstances we find ourselves.

The officials have been working on this legislation for two years. It is an entirely different Bill from the one that was originally produced. This is down to the fact that the officials were prepared to be open with, and to listen to, those outside the Houses who had a view on this. I thank the Chairman for his efficiency.

MESSAGE TO DÁIL

Chairman: It is easy to be efficient when one has co-operation and everyone works together. The Bill turns the area in question on its head. The committee held many hearings on this matter a number of years ago and published a report on it, which I hope was helpful. We look forward to the Bill becoming an Act.

The joint committee will meet at 2.30 p.m., but the select committee will now adjourn.

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Justice, Defence and Equality has completed its consideration of the Assisted Decision-Making (Capacity) Bill 2013 and has made amendments thereto.

The select committee adjourned at 1.45 p.m. *sine die*.