

Assisted Decision-Making (Capacity) Act 2015



HSE Implementation Plan

August 2022



Foreword

The Assisted Decision-Making (Capacity) Act 2015 (herein the 2015 Act) is scheduled to be commenced in 2022. This reforming act will have considerable implications for staff working in health and social care. The HSE welcomes the 2015 Act and has undertaken a significant programme of work within our services to prepare staff for its commencement.

The purpose of this implementation plan is to set out what specific actions need to be undertaken across HSE and HSE funded health and social care services in order to prepare for commencement and to ensure compliance with the principles and provisions of the 2015 Act.

At the time of writing, the Assisted Decision-Making (Capacity) (Amendment) Bill 2022 which will amend some aspects of the 2015 Act is progressing through the Houses of the Oireachtas. In addition, there are a number of key documents that still need to be published, including the statutory codes of practice by the Decision Support Service (DSS), the court rules by the Courts Service and statutory regulations to support the 2015 Act. Therefore this plan is a dynamic document and will be revised to take account of any substantive amendments to the 2015 Act which will have implications for frontline health and social care practice.

To equip staff with the knowledge and skills in advance of commencement the HSE National Office of Human Rights and Equality Policy have developed a suite of information, education and training resources which can be accessed through www.assisteddecisionmaking.ie. These resources are under regular review and are frequently updated to provide staff with the most up to date advice and guidance. Specific services in the HSE will also produce tailored guidance in the coming months. All resources will be available through www.assisteddecisionmaking.ie

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7 Key Areas for Action



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1. Introduction

The Assisted Decision Making (Capacity) Act 2015 (referred to as the 2015 Act herein) was signed into law on 31 December 2015. The Assisted Decision-Making (Capacity) (Amendment) Bill 2022 is currently progressing through the Houses of the Oireachtas. The Government has committed to full commencement in 2022.

The purpose of this plan is to identify the steps the HSE needs to undertake to prepare for the commencement of the 2015 Act. It has been developed by the HSE National Assisted Decision-Making (ADM) Implementation Steering Group in consultation with the HSE ADM Implementation Working Group, Community Healthcare Organisations (CHOs), Hospital groups and Hospitals and other HSE and HSE funded services.

The 2015 Act provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future. The 2015 Act applies to everyone aged 18 years and over and will have wide-ranging implications for all health and social care providers.

As part of the HSE's preparation for the commencement of the 2015 Act, the HSE ADM Implementation Steering Group, chaired by Professor Mary Donnelly, School of Law, University College Cork (UCC), and Professor Shaun O'Keeffe, Consultant Geriatrician, University Hospital Galway (UCHG) was tasked with developing an implementation plan for the HSE. The development of this Implementation Plan has considered the implications of the 2015 Act for the HSE and collated feedback from wide ranging representations on the ADM Implementation Plan Working Group. In addition, consultation events were held with each CHO, Hospital Group and relevant National Functions to share information and receive feedback. Each CHO, Hospital Group and National Function were invited to submit written feedback on the draft Implementation Plan. All feedback was considered in the production of the final Implementation Plan.

The reforms and benefits provided in the 2015 Act will require **changes in practice** for staff and services to ensure successful implementation of these welcome reforms and to adequately deliver on the intended benefits.

The 2015 Act compels staff to presume decision-making capacity as a starting position and to exhaust all possibilities to support a person to make a decision. It requires staff to gain consent from the person or from those who have legal authority to act for the person.

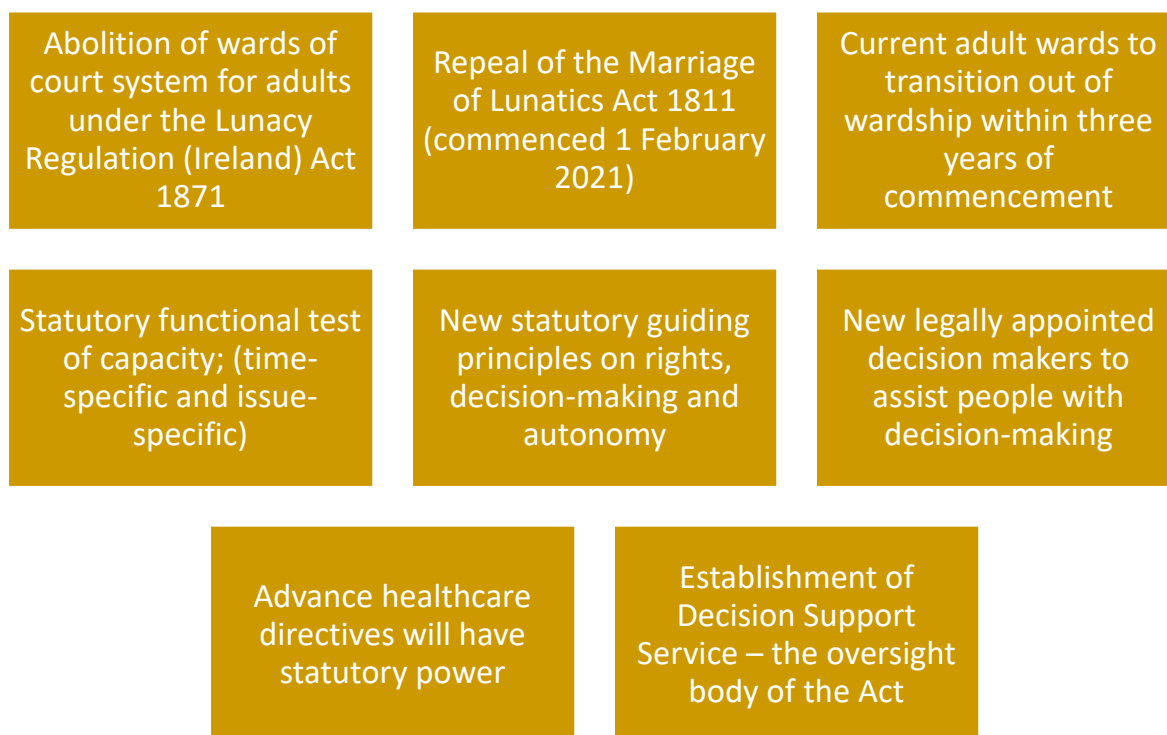
The 2015 Act will assist in complying with human-rights obligations contained in the Constitution of Ireland, the European Convention on Human Rights, and the United Nations Convention on the Rights of Persons with Disabilities.

There is a general recognition that the change in legislation will have a direct impact on services. However, many of the anticipated impacts are also current issues and are not created by the 2015 Act. It is acknowledged that many aspects of the legislative requirements are currently set out in HSE policy e.g. HSE National Consent Policy.

2. Key Reforms of the Legislation

The 2015 Act provides for reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future. It applies to everyone aged 18 years and over and has relevance for all health and social care settings.

Key reforms



3. Key Benefits of the 2015 Act

The Importance of the 2015 cannot be underestimated, and greatly outweighs any challenges it may present for services. The legislation is building on a rights-based approach and modernising our duties as to how we work alongside adults that require care and/or support. It replaces Victorian legislation and places duties on services to demonstrate person-centred approaches, based on will and preference.

It provides a human rights compliant legal framework for decision-making where a person lacks capacity

The Act provides legal clarity as to who can make legally compliant decisions for a person who lacks capacity which is critical where matters of consent are at issue

It provides for legally recognised decision-makers to support a person to maximise their decision-making powers

It provides for the individual's right of autonomy and self-determination to be respected

It moves to a flexible functional approach to the assessment of capacity; moving away from "all or nothing" status approach

It puts the person at the centre of their healthcare treatment and mandates supporting a person to make decisions as far as possible

It provides a statutory framework for advance healthcare directives

It provides improved oversight of Enduring Powers of Attorney process

4. Key Implications for HSE Services Arising from Commencement of the 2015 Act

The legislation will have wide-ranging implications for all health and social care providers as the provisions of the 2015 Act apply to all decisions including those related to health and social care. The 2015 Act compels staff to presume that a person has capacity to make decisions from the outset and to exhaust all possibilities to support a person to make a decision. It requires staff to gain consent from the person or those who have legal authority to act for the person. While this is already required through the **HSE National Consent Policy 2022**, there is evidence to indicate that the practice of third party (next of kin) consent prevails in some services. There are a number of specific implications of the 2015 Act for consideration to all health and social care services:

Interaction with decision supporters appointed under the 2015 Act

There are five different categories of legally appointed decision supporters provided for in the 2015 Act. Staff will be required to engage with a person's legally appointed decision supporter under the 2015 Act. This may involve allowing more time for consultations and working in different ways. When appropriate, staff may be required to check a national register to enquire whether a person has a decision support arrangement in place and to consider the detail of such an arrangement. Staff will be required to advise people using services about creating a decision support arrangement and may be involved in supporting applications for registration, review and / or variation or revocation of co-decision-making agreements or Enduring Powers of Attorney. This will require staff to be informed as to the requirements of the 2015 Act and their duties.

HSE services will need to consider how new decision support arrangements are effectively integrated into service approaches.

Practicable steps to support decision-making

If a person needs to make a decision in relation to their care or treatment, they are entitled to be supported to make that decision, e.g. through the provision of accessible information. This will mean that consultations may take more time, and there may be an increase in

demand on the skills of certain healthcare workers e.g. speech and language therapists if the person has communication difficulties or a social care worker who may know the person and their communications style very well. Fundamentally, the emphasis in the 2015 Act is on how people are supported to make decisions which give effect to their will and preferences. This relates to will and preference, communication approaches, supported decision-making tools and time. The requirement for HSE services is to ensure that the person is supported fully to exercise their rights to make decisions.

'Next of kin' decision-making

Since 2013 the HSE National Consent Policy has stated that no other adult can consent for another adult unless they have legal authority to do so. However, in practice we know that family members are often asked, or expect to consent on behalf of their loved one who lacks decision-making capacity, when no legal arrangement is in place to give them authority to do so. The 2015 Act recognises the important role that family members and trusted friends play in a person's life - that they are often well placed to represent the person's will and preference due to their close ongoing relationship. This role is also recognised in the HSE National Consent Policy. However, it is important that the involvement of family members and others in decision-making is done so based on the will and preference of the person in question.

Assessment of decision-making capacity

The need for the presumption of capacity to be substantiated in practice may be a key operational challenge and it is critical that staff understand that the 2015 Act does not require capacity assessments as a starting point. Nor does it encourage widespread or routine assessments of capacity. Assessments of decision-making capacity are time and decision specific. Capacity assessments must not be routinely undertaken without any basis or without an appropriate, evidence based trigger.

The presumption of capacity is a guiding principle of the 2015 Act. Where an assessment of capacity is required the functional assessment of capacity, which has a statutory basis, should be used.

The making of a **Co-Decision Making Agreement** and an **Enduring Power of Attorney** requires a statement of capacity from a registered medical practitioner or a member of the prescribed class of professionals, as defined in regulations.

The Court will require **assessments of capacity** for applications for a **Decision Making Representative**, the highest tier of support under the 2015 Act.

Advance Healthcare Directives (AHD)

The purpose of an Advance Healthcare Directive (AHD) is to provide healthcare workers with important information about a person's healthcare treatment wishes and to enable a person to be treated according to his or her own 'will and preferences' when he or she no longer has the capacity to make these decisions. Staff and services will require training to be able to determine when an AHD is valid and applicable, support to access expert advice on how to respond to particular scenarios and when to access legal support in more complex cases, where applicable.

Wards of Court

The abolition of the Ward of Court system will have implications for services. It will be important that clear, up-to-date information is routinely disseminated to ensure services can adapt to the new legal requirements and procedures.

'Unwise' decision-making and risk

The 2015 Act states that someone cannot be considered as unable to make a decision because they have made, are thinking of making, or may make a decision that is seen to be 'unwise'. Consideration will have to be given as to the organisation's current assessments of risk for decisions considered to be 'unwise' and liability arising from such decisions. How complex cases are considered locally is an important component for risk consideration, positive risk-taking and decision ownership.

Policies, Procedures, Practices and Guidelines (PPPG's)

PPPG's will need to be aligned with the provisions of the 2015 Act.

Training & Development

Training for services and staff is critical. Key training and education resources have been developed. Mechanisms will be needed to identify how to ensure staff complete appropriate training and to support access to training.

Interaction with key external services

HSE services interact with other organisations in the provision of supports for people who use our services. This includes private nursing homes, community welfare supports, Citizens Information Services, financial institutions, legal services and others. It is unclear what level of preparedness is being undertaken in these organisations for the commencement of the 2015 Act. This will have implications on HSE and HSE funded services trying to support a person using the provisions of the 2015 Act.

Legal queries and costs

There is a risk that there may be an inadvertent rise in the numbers of staff seeking legal advice on before or on commencement.

Deprivation of Liberty Matters

The 2015 Act does not address matters relating to deprivation of liberty which raises significant practice implications for the HSE. These matters have been flagged in recent submissions on the draft heads of the amending legislation and have been escalated by the HSE Executive Management Team to the Department of Health and the Department of Children, Equality, Disability, Integration and Youth Affairs.

Operational Resources

Resources will be required to help support the implementation, compliance and governance of the requirements of the 2015 Act at local and national level. As part of the development of this Implementation Plan, significant feedback has been received regarding concerns about the realisation of legal requirements within existing resources.

In identifying and clarifying the implications of the 2015 Act for the HSE services, the Implementation Plan sets out the supports and actions required to achieve effective compliance.

5. HSE preparations for commencement to date

Substantial work and preparation has taken place to date within the HSE. This work has been led by the HSE Office for Human Rights and Equality Policy, Strategy and Research with the support of key internal and external stakeholders. Work to date includes:

- The establishment of www.assisteddecisionmaking.ie to provide information on the 2015 Act and to host all of the resources that are developed.
- The establishment of the **ADM Implementation Steering Group** co-chaired by Professor Mary Donnelly, School of Law, UCC and Professor Shaun O’Keeffe, Consultant Geriatrician, UCHG.
- Oversight and management of the **Advance Healthcare Directives (AHD) Multi-Disciplinary Working Group** on behalf of the Minister for Health.
- Development of the **Draft Advance Healthcare Directives Codes of Practice** on behalf of the Minister for Health.
- Development of the **Draft Code of Practice for Health and Social Care Professionals** on behalf of the Decision Support Service.
- Development of **Wardship applications- Guidance for Healthcare workers**
- The development of the revised **HSE National Consent Policy and supporting e-learning programme.**
- The development of an e-learning programme on **‘Supporting decision making in health and social care’.**
- **Explainer Video** on the Assisted Decision Making (Capacity) Act 2015
- Short video presentation on the 2015 Act.
- **Information and briefing sessions** delivered to thousands of staff across HSE and HSE funded services.
- **Three Webinar series** on Supporting Decision-Making, Consent and preparations for commencement of the Assisted Decision Making (Capacity) Act.
- **Collection of essays:** The Assisted Decision-Making (Capacity) Act 2015: Personal and Professional Reflections was launched by Paul Reid, CEO and Anne Rabbitte T.D. Minister for State in November 2021. This was publicised to staff via HSE Broadcast.

- Three-weekly meetings with the **Inter-Departmental Steering Group** who oversee the implementation of the 2015 Act, chaired by the Department of Children, Equality, Disability, Integration and Youth. Membership of the group includes the HSE, Department of Children, Equality, Disability, Integration and Youth (DCEDIY), the Department of Health (DoH), Department of Justice (DoJ), Courts Service, the Office of the Wards of Court, Mental Health Commission (MHC) and the DSS.
- Strong links built with **key government departments, agencies and stakeholders** central to the implementation of the 2015 Act e.g. Department of Health, Mental Health Commission, National Disability Authority, Health Information and Quality authority (HIQA), Department of Justice, Office of the Wards of Court, Department of Children, Equality, Disability, Integration and Youth.
- Publication of quarterly newsletters on preparatory work on commencement and revisions to the HSE National Consent Policy. These newsletters are also available online.
- Specific services in the HSE have established working or reference groups to progress effective implementation within services.
- The HSE has undertaken significant preparatory work for commencement and as such other agencies are seeking our advice and guidance including access to our resources.

6. HSE National Consent Policy

The HSE National Consent Policy has been revised and was launched in March 2022. Four support guides will also be available:

- A short guide on the policy for staff
- A short guide on the policy for the public
- A short guide on the policy for children and young people
- An easy read version of the policy.

A comprehensive e-learning programme on the general principles of consent and consent as it applies to children and young people was also launched with the policy. The revised policy has been extensively reviewed by frontline practitioners, subject matter experts and the Office of Legal Services and reflects the most up to date legal guidance on consent with adults, young people and children. The research section of the policy is being revised and will be a stand-alone policy governed through Strategy and Research. The Do Not Attempt Resuscitation (DNAR) policy will be revised in 2022 and will be a stand-alone policy governed through Strategy and Research.

The consistent application of the HSE National Consent Policy is an important enabler to assist compliance with many requirements of the 2015 Act.

7. Assisted Decision-Making (Capacity) Act 2015 Principles

There are nine guiding principles which are set out in Part 2 of the 2015 Act. These are *'principles that apply before and during an intervention in respect of Relevant Persons'*.

These principles are fundamental to the 2015 Act. The challenge for HSE services will be to ensure a consistent application of the guiding principles to health and social care practice.

The details of the guiding principles are set out in Appendix 1.



8. Consultation Process and Feedback on HSE Draft Implementation Plan

The HSE National Office for Human Rights and Equality Policy based in HSE Strategy and Research facilitated a consultation process on the draft Implementation Plan in April 2022. The activities included in this consultation process included;

- Circulation of the Draft Implementation Plan to each CHO, Hospital Group and National Scheme for feedback on content and actions
- Facilitated meetings with senior management teams and staff in each CHO, Hospital Group and National Schemes, where discussions on impact and implementation were captured to influence the final plan content
- Addressed questions and queries arising from consultation meetings
- Provided an opportunity for each CHO, Hospital Group and National Scheme to provide additional written feedback on the Draft implementation Plan for consideration.
- Sixteen consultation sessions were held over the month of April 2022 which included:
 - Nine CHOs attended - 116 participants
 - Six Hospital Groups attended - 95 participants
 - HSE National Functions - 28 participants

These sessions facilitated a robust input from staff into the plan. In addition to the sessions, parties were invited to submit written feedback by the end of April 2022.

Ten entities submitted written feedback, with representation from CHOs, hospital groups and HSE National Functions.

This plan reflects the feedback from the consultation meetings and subsequent written feedback.

9. HSE Implementation Plan & Actions

The HSE Implementation Plan is based on seven key themes that require actions. Necessary governance and oversight will be introduced to ensure compliance with the plan and the actions set out in this plan.



Each theme sets out the requirements for the HSE services and necessary activities for:

- The HSE Office for Human Rights and Equality Policy, Strategy and Research
- Acute and Community Operational Services
- Other HSE National Functions

An implementation action plan is included for each theme, setting out Key Deliverables, “HOW” these will be met – Necessary Activities, Supports and an Action Plan with Responsibilities & Timeframe.

Theme 1: Operational Implementation

Context:

The 2015 Act was signed into law on 31 December 2015. The Government has committed to full commencement in 2022.

The 2015 Act provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future. The 2015 Act applies to everyone aged 18 years and over and will have wide-ranging implications for all health and social care providers.

Key Deliverables for HSE:

1. Implement the requirements of the 2015 Act
2. Use existing HSE governance and accountability structures for operational implementation of the 2015 Act in **HSE Services**
3. Use existing HSE governance and accountability structures to be assured of operational implementation of the 2015 Act in **HSE Funded Services**

How the key deliverables will be met - Necessary Activities:

The HSE National Office for Human Rights and Equality Policy will continue to support operational services and other HSE functions with up-to-date advice and guidance to help support the implementation of the 2015 Act in HSE and HSE funded services. CHO areas, hospital groups and national functions can use these resources to support the implementation of the Act in local services.

Acute and Community Operational Services, National Schemes and National Functions will support the operational implementation of the Act with clear leadership and governance across the operational functions within the HSE, ensuring that the current governance and

accountability framework in the HSE is the mechanism used for operational implementation of the Act in HSE Services.

Specific implementation plans for services will be developed across CHO areas, Hospital Groups and National Functions, using this framework and each will assign a lead with responsibility to support compliance with the 2015 Act at a senior management level.

Supports to Assist Implementation:

1. www.assisteddecisionmaking.ie
2. www.decisionsupportservice.ie
3. Statutory Codes of Practice (awaiting publication)
4. HSE Guides to support implementation to include practical guidance and decision-trees where applicable for HSE staff (awaiting publication)
5. HSE National Consent Policy 2022 and supporting materials
6. HSE FAQs on www.assisteddecisionmaking.ie
7. E-learning modules on HSELand

Action Plan with Responsibilities and Timeframe:

Theme 1: Operational Implementation

#	Action	Responsibility	Timeframe
1	<i>Support operational services and other HSE functions by providing up-to-date advice and guidance on the implications of the 2015 Act for healthcare workers to help support the implementation of the 2015 Act in HSE Services</i>	<i>HSE NATIONAL OFFICE</i>	<i>Ongoing</i>
2	<i>Represent the HSE on the ADM inter-departmental steering group, chaired by DCEIDY, on matters arising from the implementation of the 2015 Act</i>	<i>HSE NATIONAL OFFICE</i>	<i>Ongoing</i>
3	<i>Escalate matters relating to the 2015 Act as required with the HSE Executive Management</i>	<i>HSE NATIONAL OFFICE</i>	<i>Ongoing</i>

	<i>Team, the Department of Health, DCEDIY and other government departments</i>		
4	<i>Monitor, review and update HSE ADM Implementation Plan every 3 months</i>	<i>HSE NATIONAL OFFICE, HSE ADM Implementation Steering Group</i>	<i>End of Q4 2022</i>
5	<i>Ensure that the current governance and accountability framework in the HSE is the mechanism used for operational implementation of the 2015 Act in HSE Services</i>	<i>OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>End of Q3 2022</i>
6	<i>Assign a lead within the service / service area at a senior management level with responsibility to support compliance with the 2015 Act</i>	<i>OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>End of Q3 2022</i>
7	<i>Develop an implementation plan for specific service areas e.g. hospital groups, CHO areas, other HSE functions etc.</i>	<i>OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>End of Q3 2022</i>
8	<i>Ensure service level agreements and contracts with service providers, are updated to reflect compliance with the 2015 Act</i>	<i>OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS,</i>	<i>End of Q3 2022</i>

Theme 2: Communication and Engagement Strategy

Context:

The 2015 Act makes changes to the law regarding who can make decisions when the person is unable to make the specific decision at the time it is required. The 2015 Act compels staff to presume each person has capacity to make decisions, as a starting position and to exhaust all supports to enable a person to make a decision. It requires staff to gain consent from the person or if the person lack capacity to do so, to only seek consent from those who have those who have legal authority to act for the person. In addition, the ward of court process will cease and each person currently in wardship will be reviewed and new arrangements will be put in place.

This change in the legal framework with modernise the system and incorporate a human rights based approach, but may also cause some uncertainty or concerns for those who access services, their families and staff within health and social services. It is essential that accurate information in an accessible format is made available to help everyone to understand the implication of the act in preparation for and following commencement.

Key Deliverables for HSE:

1. Communication and engagement across HSE services on the developments, implications and requirements of the 2015 Act
2. Communication and engagement with HSE Funded Services on the developments, implications and requirements of the 2015 Act
3. Communication and engagement with those who access services and key persons in their lives on information about the 2015 Act

How the key deliverables will be met - Necessary Activities:

A strategic communications plan will be developed by the HSE National Office for Human Rights and Equality Policy. This will include communications on the implications of the 2015 Act for services, monthly updates on the 2015 Act, and promotion and sharing of resources developed by the Office.

These communications should be circulated by senior management in CHO areas, hospital groups and national functions to support understanding of the 2015 Act with staff and to signpost to resources that have been developed.

Supports to Assist Implementation:

1. www.hse.ie
2. www.assisteddecisionmaking.ie
3. www.decisionsupportservice.ie
4. HSE All Staff Update email circulation
5. HSE Guides to support implementation to include decision trees to guide staff
6. HSE FAQ's on www.assisteddecisionmaking.ie
7. E-learning modules on HSEland and other learning formats on classroom management system

Action Plan with Responsibilities and Timeframe:

Theme 2: Communication Strategy

#	Action	Responsibility	Timeframe
1	<i>Develop a strategic communications plan, which includes both public and internal communications, to promote the 2015 Act and highlight its implications for HSE services</i>	<i>HSE NATIONAL OFFICE, HSE Communications</i>	<i>End of Q3</i>
2	<i>Issue a monthly update across the sector (using different communications channels) to ensure services and staff are aware of developments and plans in relation to the 2015 Act</i>	<i>HSE NATIONAL OFFICE</i>	<i>Ongoing</i>
3	<i>Develop accessible materials, such as short guides and practical decision-trees about the 2015 Act for those accessing HSE services</i>	<i>HSE NATIONAL OFFICE, HSE National Disabilities</i>	<i>End of Q3 2022</i>

4	<i>Develop and implement communications campaigns on key messages in the 2015 Act, using appropriate communication approaches and different communication channels to enable understanding</i>	HSE NATIONAL OFFICE, HSE Communications	As required
5	<i>Develop www.assisteddecisionmaking.ie as a trusted and comprehensive information portal on the 2015 Act for people who access services, their staff, families and supporters, & members of the public</i>	HSE NATIONAL OFFICE, HSE Communications	End of Q3 2022
6	<i>Develop local communications plans for CHOs, hospital groups and national functions to ensure communications in respect of the 2015 Act are circulated appropriately within services to support understanding and effective implementation</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	Ongoing
7	<i>Disseminate accessible and easy to understand information such as easy-reads, short guides, FAQs and other formats to support people who access services understand what the 2015 Act means to them</i>	OPERATIONAL SERVICES AND SCHEMES	Ongoing
8	<i>Signpost the General Public to information sources and resources to help their understanding of the 2015 Act via the Decision Support Service and www.assisteddecisionmaking.ie</i>	OPERATIONAL SERVICES AND SCHEMES	Ongoing

Theme 3: Learning Strategy

Context:

The importance of providing learning support and development opportunities is essential for the operational implementation of the requirements of the 2015 Act. Since 2016 information sessions have been provided to significant numbers of staff across HSE services and HSE funded services. Amendments to the 2015 Act are currently underway and the publication of the codes of practice by the Decision Support Service is anticipated once the 2015 Act has been finalised. The HSE has developed and will further develop additional necessary supports, as required.

Key Deliverables for HSE:

1. Staff awareness of the 2015 Act and the implications for their practice
2. Staff learning support system
3. Learning & development support and resources on key operational themes

How the key deliverables will be met - Necessary Activities:

The HSE National Office for Human Rights and Equality Policy will continue to develop training and education on key areas of the 2015 Act for staff and services, including webinars, e-learning and information sessions. These resources should be promoted by senior management in CHO areas, hospital groups and national functions to ensure that staff can access the training materials as required.

Supports to Assist Implementation:

1. Webinars available on www.assisteddecisionmaking.ie
2. E Learning modules on Supported Decision-making x 3 available on HSELand
3. E Learning modules on the HSE National Consent Policy x 2 available on HSELand
4. Forthcoming HSE Guides to support implementation
5. HSE FAQ's on www.assisteddecisionmaking.ie

6. Three forthcoming modules on HSELand on the Assisted Decision-Making (Capacity) Act 2015

Action Plan with Responsibilities and Timeframe:

Theme 3: Learning Strategy			
#	Action	Responsibility	Timeframe
1	<i>Provide a suite of awareness training for staff via e.g. webinars, e-learning, live interactive clinics and information sessions</i>	<i>HSE NATIONAL OFFICE in collaboration with all HSE and HSE funded services</i>	<i>Ongoing</i>
2	<i>Develop training solutions on the essential themes including the functional approach to assessing capacity, managing risk and supporting decision-making</i>	<i>HSE NATIONAL OFFICE in collaboration with all HSE and HSE funded services</i>	<i>End of Q4 2022</i>
3	<i>Develop and disseminate guidance materials for services and staff to include guidance to support the Codes of Practice on the 2015 Act</i>	<i>HSE NATIONAL OFFICE in collaboration with all HSE and HSE funded services</i>	<i>Ongoing</i>
4	<i>Develop www.assisteddecisionmaking.ie to be a central repository of information and guidance for staff and people who use our services</i>	<i>HSE NATIONAL OFFICE in collaboration with HSE Communications</i>	<i>Ongoing</i>
5	<i>Develop service specific training plans with necessary measures to ensure staff can access relevant training for their role and function</i>	<i>ALL OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>End of Q3 2022</i>
6	<i>Develop a mechanism for identifying and enabling staff to access appropriate training and monitoring uptake</i>	<i>ALL OPERATIONAL SERVICES AND SCHEMES,</i>	<i>End of Q3 2022</i>

		<i>OTHER HSE FUNCTIONS</i>	
<i>7</i>	<i>Develop a strategy to ensure the dissemination and uptake of learning and support guidance to services and staff groups</i>	<i>ALL OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>Ongoing</i>
<i>8</i>	<i>Identify and share unmet learning needs for effective implementation of the requirements of the 2015 Act via staff surveys and consultation with healthcare workers</i>	<i>ALL OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS</i>	<i>Ongoing</i>

Theme 4: Alignment of Current Operational Approaches

Context:

It is necessary for HSE services to align practices and approaches to the requirements of the 2015 Act as a matter of priority. This will involve the identification of potential conflicts and alignment of existing policy and practice with the provisions of the 2015 Act.

Key Deliverables for HSE:

1. Identification of practices which are at odds with with the provisions of the 2015 Act
e.g. seeking consent for treatment from next of kin
2. Supporting changes in operational practices to ensure legally compliant approaches
3. Identification of potentially non-compliant approaches in policies, procedures, practices and guidelines (PPPG's)PPGs and operational services and national schemes

How the key deliverables will be met - Necessary Activities:

The HSE National Office for Human Rights and Equality Policy will develop practice guides to support compliant practice approaches with the 2015 Act. Acute and community operational services and national functions should ensure PPPGs are compliant with the 2015 Act, using the developed guidance to support this.

Supports to Assist Implementation:

1. HSE National Consent Policy 2022 and supporting materials
2. www.assisteddecisionmaking.ie
3. Statutory Codes of Practice (awaiting publication)
4. HSE Guides to support implementation (forthcoming)
5. HSE FAQ's on www.assisteddecisionmaking.ie

Action Plan with Responsibilities and Timeframe:**Theme 4: Alignment of Current Operational Approaches**

#	Action	Responsibility	Timeframe
1	<i>Promote the HSE National Consent Policy 2022 to support compliance with the 2015 Act through a variety of communications channels</i>	HSE NATIONAL OFFICE	Ongoing
2	<i>Develop practice guides for healthcare workers on key operational themes to support compliant practice approaches</i>	HSE NATIONAL OFFICE	End of Q3 2022
3	<i>Produce guidance for updating and aligning existing PPPGs and forms with the 2015 Act</i>	HSE NATIONAL OFFICE	End of Q3 2022
4	<i>Support the updating of national PPPGs to be compliant with the provisions and requirements of the 2015 Act</i>	HSE NATIONAL OFFICE	Ongoing
5	<i>Update local PPPGs including associated documentation/forms to be compliant with the provisions and requirements of the 2015 Act</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022
6	<i>Promote and monitor the implementation of the HSE National Consent Policy 2022 to support compliance with the 2015 Act via Key Performance Indicators such as compliance with HSEland training</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	Immediate
7	<i>Review local policies, procedures, custom and practice with consideration of the provisions and requirements of the 2015 Act using the guidance developed</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022
8	<i>Identify practice and operational approaches not in compliance with the provisions and requirements of the 2015 Act and address these practice changes via e-</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	Ongoing

	<i>learning, training and development, awareness raising and producing short guides for healthcare workers.</i>		
10	<i>Identify and address necessary changes to approaches to practice and policy within national schemes to ensure compliance with the provision and requirements of the 2015 Act</i>	OPERATIONAL SERVICES AND SCHEMES	Ongoing

Theme 5: Quality and Compliance

Context:

HSE services will require mechanisms to demonstrate and evidence quality and compliance with the provisions and requirements of the Act. The identification of measures and indicators to be integrated into existing approaches for quality assurance for HSE and HSE funded services will be a necessary development as a result of the commencement of the 2015 Act.

Key Deliverables for HSE:

1. Evidence compliance with legal requirements of the 2015 Act

How the key deliverables will be met - Necessary Activities:

The HSE Office for Human Rights and Equality Policy, Strategy and Research will provide guidance and support materials, with the identification of Key Performance Indicators on the requirements of the 2015 Act to support HSE services measure and evidence compliance. Audit tools and metrics will also be developed for community and acute services to implement locally.

Supports to Assist Implementation:

1. HSE National Consent Policy 2022 and supporting materials including an operational audit checklist on the application and implementation of the HSE Consent Policy 2022 (to be developed)
2. Statutory Codes of Practice (awaiting publication)
3. HSE Guides to support implementation (forthcoming)

Action Plan with Responsibilities and Timeframe:

Theme 5: Quality and Compliance

#	Action	Responsibility	Timeframe
1	<i>Provide guidance and support materials on requirements of the 2015 Act to support HSE services measure and evidence compliance with the 2015 Act, including metrics, audit tools, toolkits</i>	HSE NATIONAL OFFICE	Ongoing
2	<i>Develop a suite of Key Performance Indicators to monitor implementation of the requirements of the 2015 Act and monitor delivery of the Implementation Plan</i>	HSE NATIONAL OFFICE	End of Q3 2022
3	<i>Develop an operational audit checklist on the application and implementation of the HSE National Consent Policy 2022</i>	HSE NATIONAL OFFICE	End of Q3 2022
4	<i>Identify and develop quality audit and governance measures to evidence compliance with the 2015 Act</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022
4	<i>Integrate quality audit and governance measures to evidence compliance with the 2015 Act into existing quality initiatives and approaches in operational services</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022
5	<i>Ensure Service Level Agreements and contracts for HSE funded services include measures to evidence compliance with the 2015 Act</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022
6	<i>Ensure services implement the operational audit checklist on the application and implementation of the HSE National Consent Policy 2022</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	End of Q3 2022

Theme 6: Risk Consideration

Context:

HSE services manage complex cases that can involve significant risk. The commencement of the 2015 Act may impact on approaches to manage those complex operational matters. The abolition of wardship and other provisions the 2015 Act makes to the ward of court process will necessitate consideration of how such complex risks are responded to and managed.

Key Deliverables for HSE:

1. Identification and tracking of risks arising from commencement of the 2015 Act
2. Pathway for escalation of risks arising from commencement of the 2015 Act
3. Guidance on transitional arrangements from the existing wardship regime to the 2015 Act

How the key deliverables will be met - Necessary Activities:

The HSE National Office for Human Rights and Equality Policy will produce guidance materials in relation to risk and positive risk taking to complement the statutory Codes of Practice for the 2015 Act. These guides should be disseminated locally to staff and services.

Any unintended operational and policy consequences arising from the commencement of the 2015 Act will be tracked and escalated to the HSE EMT and the Department of Health.

Supports to Assist Implementation:

1. www.assisteddecisionmaking.ie
2. Statutory Codes of Practice (awaiting publication)
3. HSE Guides to support implementation to include decision trees (awaiting publication)
4. HSE Consent Policy 2022 and supporting materials
5. HSE FAQ's on www.assisteddecisionmaking.ie

6. HIQA e-learning module on positive risk-taking

Action Plan with Responsibilities and Timeframe:

Theme 6: Risk Consideration

#	Action	Responsibility	Timeframe
1	Produce guidance materials for services and staff to include guidance on the transitional arrangements of wards of court to new arrangements, guidance on positive risk taking and when to access legal advice on complex case matters in the context of the 2015 Act	HSE NATIONAL OFFICE	End of Q3 2022
2	Develop mechanism to escalate gaps in legislation (for example Deprivation of Liberty) to the HSE EMT, the Department of Health, DCEDIY and other relevant departments	HSE NATIONAL OFFICE, Office of Legal Services, Operational Services	Ongoing
3	Track and escalate any unintended policy consequences arising from the commencement of the 2015 Act, ensuring it is included on the HSE risk register	HSE NATIONAL OFFICE, HSE Office of Legal Services, OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	Ongoing
4	Provide learning support on risk consideration that is compliant with the provisions and requirements of the 2015 Act	HSE NATIONAL OFFICE	Ongoing
5	Provide guidance on the transitional arrangements of wards of court to new arrangements	HSE NATIONAL OFFICE	Ongoing
6	Ensure risk assessments of decision-making processes undertaken by healthcare workers follow the requirements of the 2015 Act	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	Ongoing
7	Use existing management and governance structures in operational services to address risk situations to	OPERATIONAL SERVICES AND	Ongoing

	<i>include supporting case decision making that is in compliance with the provisions and requirements of the 2015 Act</i>	<i>SCHEMES OTHER HSE FUNCTIONS</i>	
<i>8</i>	<i>Develop or use existing local complex case forums to have a multi-disciplinary perspective on the risk consideration.</i>	<i>OPERATIONAL SERVICES AND SCHEMES</i>	<i>End of Q3 2022</i>
<i>9</i>	<i>Develop local champions within services to promote the 2015 Act in services and to support decision making on complex cases</i>	<i>OPERATIONAL SERVICES AND SCHEMES</i>	<i>End of Q3 2022</i>

Theme 7: Human Resources

Context:

Commencement of the 2015 Act will require changes in policy and practice for front line services. This may result in additional demands on key services. Some of these demands will become apparent once commencement of the 2015 Act is underway. However it is critical to identify key human resource gaps in advance of commencement and additional resources which may be required to support implementation at service level.

Key Deliverables for HSE:

1. Identify key human resources gaps which may be impacted by the commencement of the 2015 Act
2. Identify additional human resource requirements using the yearly estimates process through the HSE Accountability framework

How the key deliverables will be met - Necessary Activities:

The HSE National Office for Human Rights and Equality Policy, Strategy and Research will continue to support HSE services in the implementation of the requirements of the Act and escalate key messages on any human resource concerns. Local services should identify any existing vacancies and service gaps that will have an impact on the implementation of the 2015 Act.

Action Plan with Responsibilities and Timeframe:

Theme 7: Resources

#	Action	Responsibility	Timeframe
1	Identify existing vacancies that may have an impact on the implementation of the 2015 Act	HSE NATIONAL OFFICE, OPERATIONAL SERVICES AND	Ongoing

		SCHEMES, OTHER HSE FUNCTIONS	
2	<i>Identify existing service gaps that may have an impact on the implementation of the 2015 Act</i>	HSE NATIONAL OFFICE, OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	<i>Ongoing</i>
3	<i>Use HSE estimates process through the HSE accountability framework to source necessary resources to close service gaps</i>	HSE National Office, OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	<i>Ongoing</i>
4	<i>Identify appropriate lead with administrative support within service sectors to support implementation of the 2015 Act at service level</i>	OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	<i>Ongoing</i>
5	<i>Escalate key risk issues on human resources concerns through the HSE accountability framework e.g. disproportionate impact on limited human resources</i>	HSE NATIONAL OFFICE, OPERATIONAL SERVICES AND SCHEMES, OTHER HSE FUNCTIONS	<i>Ongoing</i>

10. Conclusion

The purpose of this HSE Implementation Plan is to give direction on the key themes for successful implementation of the 2015 Act. It is anticipated that each HSE Service will use this framework to enable the development of a local service specific implementation plan. The successful implementation of the 2015 Act will require both national and operational HSE functions to work together in a coordinated and effective manner. The HSE Office for Human Rights and Equality Policy, Strategy and Research will continue to support, update and provide guidance to HSE services on developments and implications in relation to the 2015 Act.

11. Appendix 1

Assisted Decision Making (Capacity) Act Statutory Guiding Principles:

For clarity and consistency of understanding, the guiding principles set out in Part 2 of the 2015 Act are included below. The 2015 Act states that these are '*Principles that Apply before and during Intervention in respect of Relevant Persons*'.

These are the key implementation measures and requirements for services. These principles are non-negotiable and service approaches including documentation will need to demonstrate compliance and evidence. As outlined previously, many of the guiding principles are currently integrated into HSE Policy and good practice approaches. The challenge for HSE services will be to ensure a consistent application of the requirements set out in the guiding principles.

1) The principles set out in subsections (2) to (10) shall apply for the purposes of an intervention in respect of a relevant person, and the intervener shall give effect to those principles accordingly.

*(2) It shall be **presumed that a relevant person who falls within paragraph (a) of the definition of "relevant person" in section 2(1) has capacity** in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act.*

*(3) A relevant person who falls within paragraph (a) of the definition of "relevant person" in section 2 (1) **shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so.***

*(4) A relevant person who falls within paragraph (a) of the definition of "relevant person" in section 2 (1) **shall not be considered as unable to make a decision in respect of the matter concerned merely by reason of making, having made, or being likely to make, an unwise decision.***

(5) There shall be no intervention in respect of a relevant person unless it is necessary to do so having regard to the individual circumstances of the relevant person.

(6) An intervention in respect of a relevant person shall—

(a) be made in a manner that minimises—

(i) the restriction of the relevant person's rights, and

(ii) the restriction of the relevant person's freedom of action,

(b) have due regard to the need to respect the right of the relevant person to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property,

(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.

(7) The intervener, in making an intervention in respect of a relevant person, shall—

(a) permit, encourage and facilitate, in so far as is practicable, the relevant person to participate, or to improve his or her ability to participate, as fully as possible, in the intervention,

(b) give effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable,

(c) take into account—

(i) the beliefs and values of the relevant person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and

(ii) any other factors which the relevant person would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,

(d) unless the intervener reasonably considers that it is not appropriate or practicable to do so, consider the views of—

(i) any person named by the relevant person as a person to be consulted on the matter concerned or any similar matter, and

(ii) any decision-making assistant, co-decision-maker, decision-making representative or attorney for the relevant person,

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

(f) consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant.

*(8) The intervener, in making an intervention in respect of a relevant person, **may consider the views of—***

(a) any person engaged in caring for the relevant person,

(b) any person who has a bona fide interest in the welfare of the relevant person, or

(c) healthcare professionals.

*(9) In the case of an **intervention in respect of a person who lacks capacity**, regard shall be had to—*

(a) the likelihood of the recovery of the relevant person's capacity in respect of the matter concerned, and

(b) the urgency of making the intervention prior to such recovery.

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

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

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

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

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

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