

Decision Support Service: Delivery of Statutory Functions Overview and Update

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Director of the Decision Support Service

Assisted Decision-Making (Capacity) Act 2015:
Reflections, Challenges and Opportunities
Cork, 2-3 December 2024



My decisions. My rights.



seirbhís tacaíochta
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decision support service

DecisionSupportService.ie



Margaret's story.

I have the right to make the decisions that matter to me. Decisions about my money, my property, where I live. Decisions about care and medical treatment. If I need formal supports, the new Decision Support Service can help. And if I want to plan ahead so that my wishes are always known and respected, I can do that too. The Decision Support Service can help me and those close to me to understand the options available.

My decisions. My rights.



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An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Oige
Department of Children, Equality,
Disability, Integration and Youth

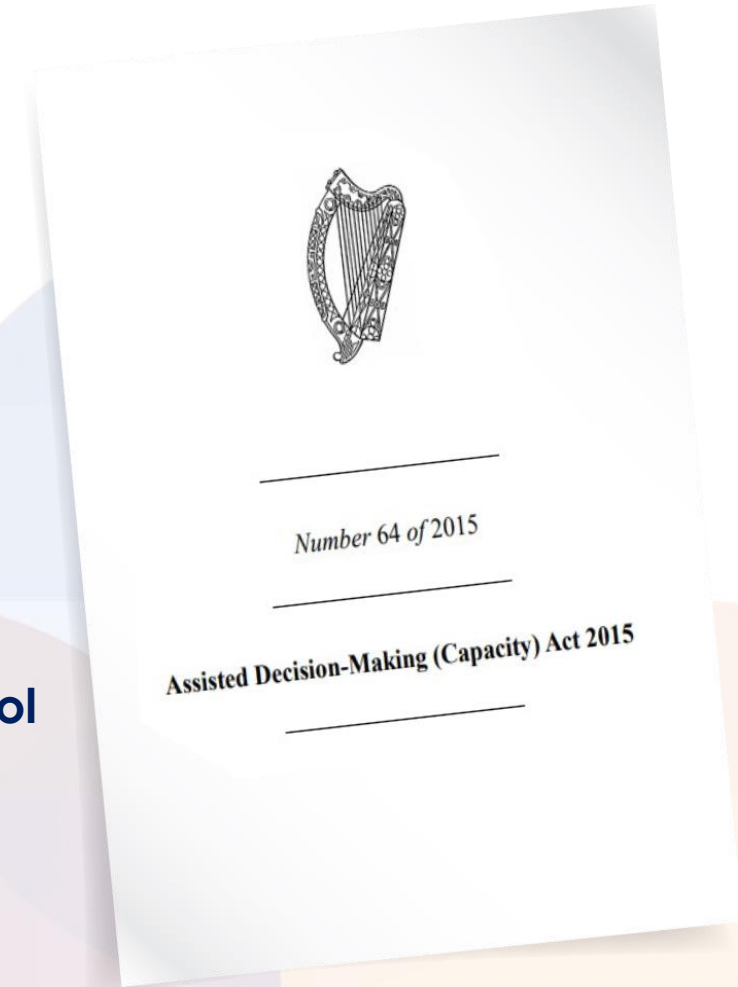


colmáin meabhair - shúilte
mental health commission

Assisted Decision-Making (Capacity) Act 2015

“An Act to provide for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future.”

- Enacted 30 December 2015
- **A seismic cultural shift towards a rights-based approach of choice, control and consent** - Inclusion Ireland, December 2015
- Assisted Decision-Making (Capacity) (Amendment) Act 2022 enacted 17 December 2022
- Act (as amended) commenced 26 April 2023; Decision Support Service began operations



Decision Support Service (DSS)

Director of the DSS is appointed by the Mental Health Commission to carry out functions conferred on the Director by the 2015 Act

- Funded by Department of Children, Equality, Disability, Integration and Youth since 2020

Functions include:

Promote awareness & confidence
Provide information to relevant persons & decision supporters

Provide information & guidance to bodies on interactions with relevant persons & decision supporters

Recommend organisational change to promote the exercise of capacity

Maintain registers & supervise arrangements under the Act

Investigate complaints about decision support arrangements

Maintain panels of persons to carry out certain roles under the Act

Publish codes of practice to provide guidance

Central Authority for Hague Convention on International Protection of Adults

Report and make recommendations to government

DSS must apply the guiding principles

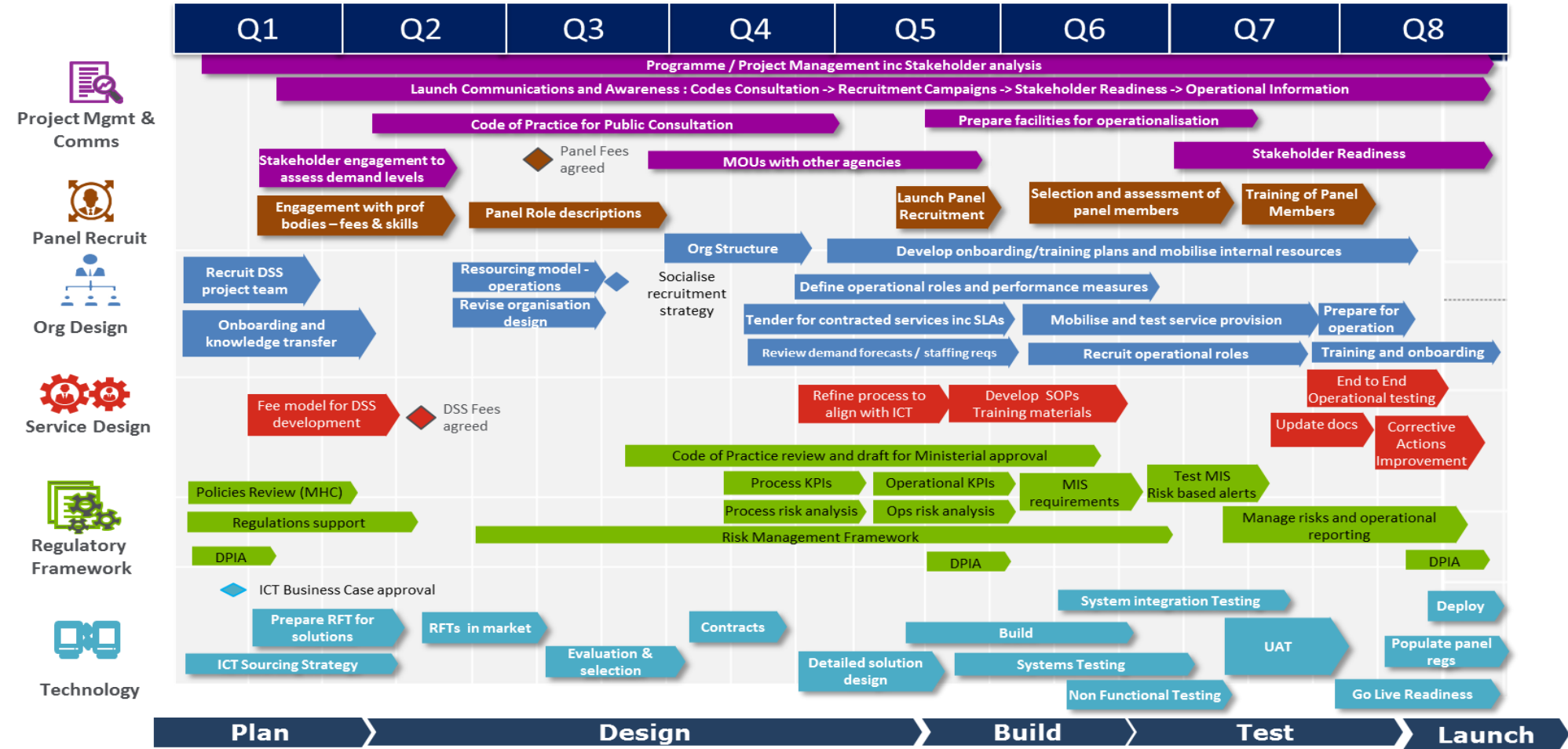
Guiding Principles

- presumption of capacity for adults
- a persons shall not be considered unable to make a decision unless all practicable steps have been taken to help him or her to do so
- an unwise decision does not mean that the person lacks capacity
- proportionality, minimal restriction of rights and freedom of action
- dignity, bodily integrity, privacy, autonomy, right to control over own finances and property
- give effect as far as practicable to past and present **will and preferences**
- act in good faith and for the benefit of the person
- **No reference to best interests**
- ethos of United Nations Convention on Rights of Persons with Disabilities, ratified by Ireland in 2018- Article 12
- UNCRPD Optional Protocol comes into effect 30 November 2024

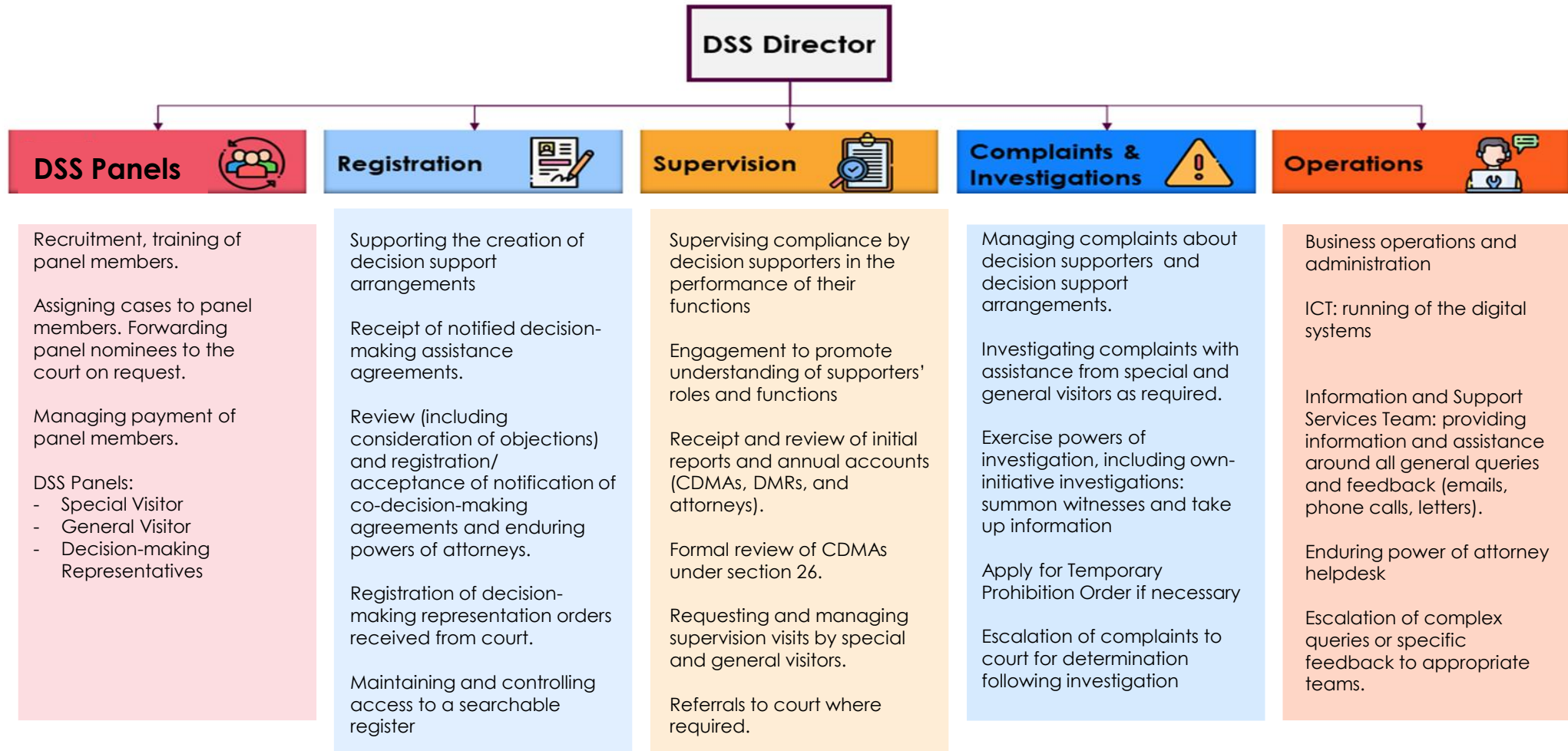


CONVENTION on the RIGHTS of
PERSONS with DISABILITIES

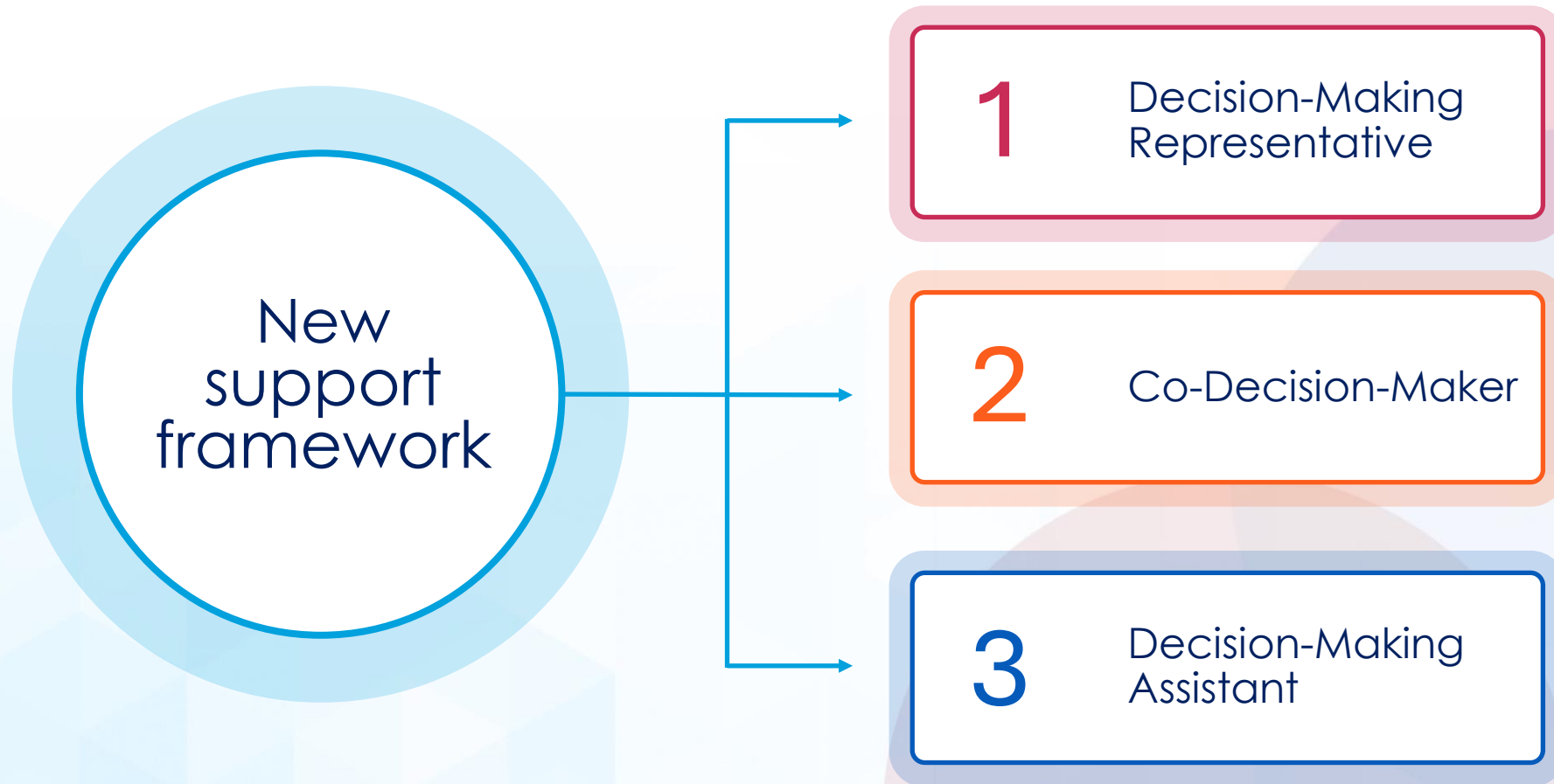
Pathway to establishment



DSS Director



New support framework - 3 tiers



What decisions may be supported?

Property and affairs, including:

- Buying and selling property
- Applying for benefits
- Carrying on a business
- Paying debt and liabilities
- Providing for other persons
- Court proceedings

Personal Welfare, including

- Accommodation
- Education and training
- Social services
- Healthcare
- Participation in healthcare/social care research, not including clinical trials
- “...other matters relating to the relevant person’s wellbeing”

- Section 138 : Limited exceptions apply: certain matters where the new framework does not apply

Decision-making assistant (DMA)



- Appointed by a person ('appointer') who considers that his or her capacity is or may shortly be in question
- Relevant decisions are set out in a decision-making assistance agreement
- Functions of decision-making assistant:
 - assist to obtain and explain relevant information
 - ascertain and help appointer to communicate will and preferences
 - assist appointer to make and express decisions
 - help to ensure that decisions implemented
- **The appointer still makes the decision**
- No capacity assessment required
- Notified to but not formally registered with the Decision Support Service



- 50 DMAAs notified
- 46 submitted to the DSS
- 223 'active applications' *

Co-decision-maker (CDM)

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- Appointed by a person ('appointer') who considers that his or her capacity is or may shortly be in question
- Co-decision-maker is a relative or friend in a pre-existing relationship of trust
- Functions of co-decision-maker:
 - advise, helping appointer to obtain and understand information
 - ascertain and help appointer to communicate will and preferences
 - make a relevant decision **jointly**
 - make reasonable efforts to ensure that decision is implemented
- Co-decision-making agreement takes effect when registered with the DSS
 - includes capacity statement by medical/other prescribed healthcare professional
 - DSS has collaborated on development of training with the Health Service Executive**
- Relevant decisions taken otherwise than jointly are null and void
- Co-decision-maker reports to and is supervised by the DSS
- Section 26: DSS conducts separate periodic reviews- general visitor reports have been commissioned



- 59 CDMA's registered
- 59 submitted/pending registration
- 168 active applications *

Decision-making representative (DMR)

3

- Court appointment- by Circuit Court, or by wardship court on discharge of a former ward
- Where no suitable, willing DMR, court seeks nominations from the DSS panel
 - panel of professionals has been selected, vetted and trained
 - over 200 requests for nominations
 - subject to court order, panel DMRs may be reimbursed and remunerated by DSS
 - second phase of recruitment to panel is underway
- Court order is sent to the DSS for registration
- DMR is supervised by and reports to the DSS
 - after 3 months- schedule of assets and liabilities, income and expenditure
 - annual report on performance of functions- must keep accounts and records
- Section 41 (3) when a DMR is appointed in default of a CDM, the DMR shall ensure in so far as practicable that he or she makes decisions **with** the relevant person
- DSS has developed guidance on reporting duties for DMRs



Reporting requirements of a decision-making representative | Decision Support Service

- 630 registered decision-making representation orders *

Planning ahead: enduring power of attorney (EPA)

- EPAs have been available since Powers of Attorney Act 1996
- New 2-step process under 2015 Act
 - EPA is submitted to DSS for review and registration at time of execution
 - notices and supporting documentation required
 - DSS is notified if the donor loses capacity so that EPA is 'activated'
- Attorney is supervised by and reports to the DSS
 - after 3 months- schedule of assets and liabilities, income and expenditure
 - annual report on performance of functions- must keep accounts and records

- 1, 287 EPAs registered
- 28 EPAs notified (second step)
- 1,403 EPAs submitted, pending registration
- 4, 857 active applications *



Advance Planning: Advance Healthcare Directive (AHD)

- Minister for Health **may** make regulations
 - to require the directive-maker to give notice to the Director of the DSS and other specified persons
 - to require the Director to establish and maintain a searchable register of AHDs.
- An AHD does not require registration to be valid
- Minister for Health has approved a template AHD for guidance; published on the DSS website
- DSS can receive and investigate complaints about a designated healthcare representative appointed under an AHD



Searchable register

2,009 registrations*

DSS register is searchable by:

- bodies and classes of persons prescribed by regulation and approved following DSS process;
- a person who can demonstrate a legitimate interest
- authenticated copy may be taken up

Prescribed bodies include:

- Designated centres
- Approved centres
- Public bodies and authorities
- Banks
- Regulated financial service providers



Prescribed classes of persons include:

- Legal practitioners
- Financial professionals
- Registered healthcare professionals

Legitimate interest:

- Any person can apply to the DSS
- Must demonstrate a legitimate interest in inspecting the register at the time



Functionality for digital searches is at advanced stage; pilot project for automated search functionality with HSE

DSS keeps record of searches

Pending development of digital searches:
registersearches@decisionsupportservice.ie

Investigations of complaints arising in a decision support arrangement

Grounds of complaint

- Acting outside scope
- Unsuitability
- Arrangement not in accordance with will and preferences
- Fraud, coercion, undue influence
- Capacity issues
- Breach of function or a breach of Act
- A complaint may also be made against an attorney under the Powers of Attorney Act 1996



Director may

- Commission a special or general visitor
- Summon witnesses
- Take up evidence
- Escalate to court
- Apply to suspend temporarily pending investigation
- Conduct own initiative investigations
- Escalate for criminal investigation
- Resolve informally

- 51 complaints since commencement ; 9 open investigations *
- 75% approx. concern attorneys under 1996 Act
- A complaint may be made by 'any person' procedures published on DSS website
- 90% approx. of complaints from family members; 10% from professionals and services

Hague Convention on International Protection of Adults

- Ratification took effect 1 September 2024
- Director of the DSS has functions of Central Authority
 - acting as facilitator between Competent Authorities – judicial and administrative authorities in Contracting States
 - cooperating with Central Authorities in Contracting States
- Preparatory work carried out supported by MHC Legal
 - connections established with counterparts in other Convention countries
- Attendance at meetings of working party on EU Regulation for Protection of Adults



DSS Communications and Stakeholder Engagement

- Development of information and guidance materials in range of formats on DSS website
- 13 codes of practice published pre-commencement following public consultation
- Information services team has managed over 26,100 calls and over 15,700 emails
- Dedicated EPA helpdesk established September 2024
- Public information campaign 2023-2024, 'My Decisions. My Rights' featuring DSS champions
- Public information campaign 2024-2025 on advance planning
- Stakeholder engagement across diverse sectors including health and social care, banking and financial services, judiciary and legal profession, disability services, regulators, potential service users and their families and carers
- Participation at meetings of Inter-Departmental Steering Group
- Ongoing bilateral 'problem solving' engagements with sectoral stakeholders
- Collaborative partnerships, including with Age Friendly Ireland and the Irish Hospice Foundation to promote public awareness
- Stakeholder forum of experts by experience



DSS does not



What's next for the DSS?

- management of increasing volume of applications at all tiers of support; over 700 arrangements now under supervision
- ongoing evaluation of policy and processes based on data, to promote continuous improvement
- review of business model and workforce plan
- review of panels, ongoing training of panel members
- support by DSS for initiatives to promote applications for discharge from wardship
- developing functions as of Central Authority function under Hague Convention
- section 102(3) two-year report published by MHC
- input on external policy, procedural and statutory reform/ alignment with the Act
- opportunities for thematic section 102(6) reports

DSS Stakeholder Forum



**Accessing Functional Capacity Training

- An online learning programme for registered medical practitioners and prescribed classes of professionals in relation to completing statements of capacity under the Assisted Decision Making (Capacity) Act 2015 has been co-developed by the Decision Support Service and the HSE and is funded by the Department of Children, Equality, Disability, Integration and Youth.
- Access to this online learning programme is available on the DSS Learning Management System - [Log in to the site | Decision Support Service](#)
- New users must create an account through the “signup” tab and complete the self-registration form.
- All sections of the form must be completed.
- Once form is completed and saved users will receive a verification email with a link. This link will bring you to your account where you will be automatically enrolled to the course: “Functional Assessment of Capacity Training for the purposes of Part 4 and 7 of the Assisted Decision-Making (Capacity) Act 2015 (as amended)”.

Thank you



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*Updates valid as of 2 December 2024

This presentation is intended as an overview of certain parts of the Assisted Decision-Making (Capacity) Act 2015 and related matters and should not be relied on as legal advice or opinion