

The Assisted Decision-Making (Capacity) Act 2015:

Processes for enduring powers of attorney

Áine Flynn, Director of the Decision Support Service
Aoife McMahon, Head of Registration

LawWise

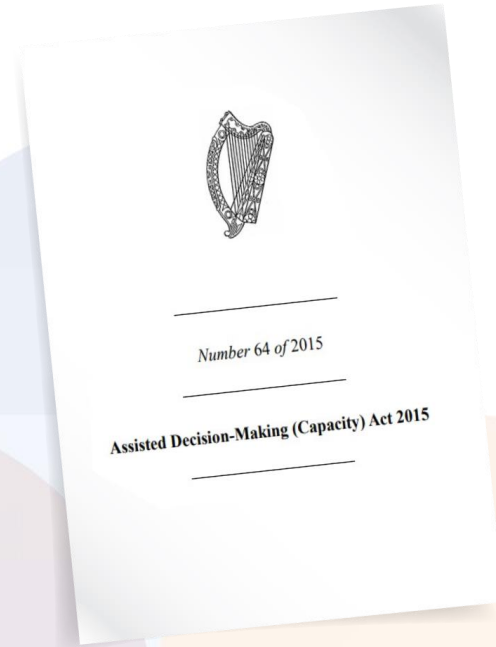
10 December 2024



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**.

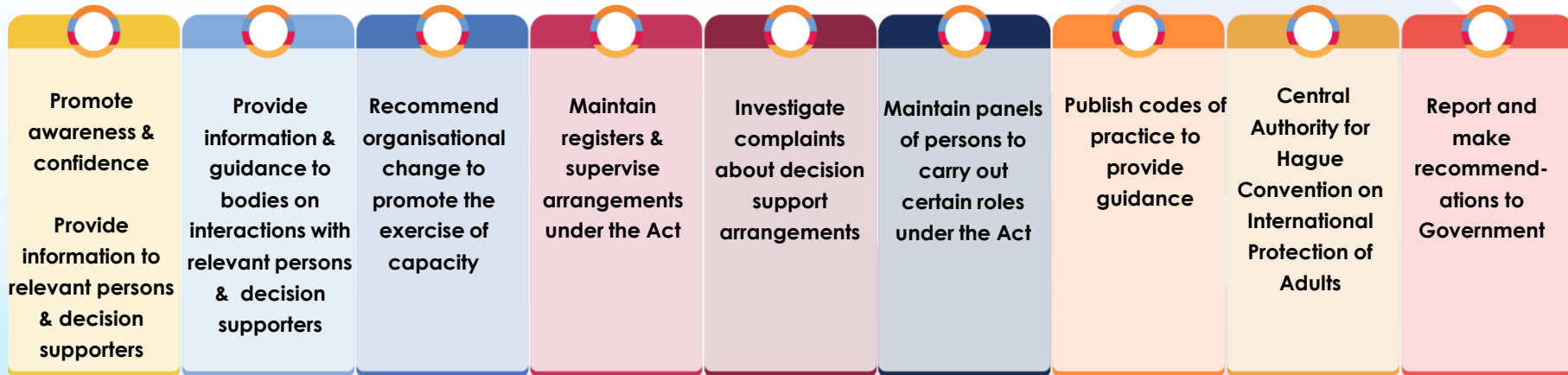
- Enacted 30 December 2015
- Act (as amended) commenced 26 April 2023
- Decision Support Service began operations



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

Functions include:





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.

My decisions. My rights.



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decision support service

DecisionSupportService.ie



Helen's story.



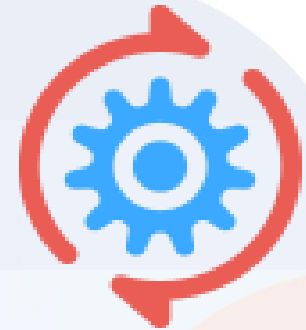
An Roinn Leanaí, Comhionannais,
Míchionais, Láimhdeánacha agus Oige
Departments of Children, Equality,
Disability, Integration and Youth



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Statutory functional assessment of capacity

- “A person’s capacity shall be assessed on the basis of ability to understand at the time that a decision is to be made, the nature and consequences of the decision in the context of available choices”
- Not ‘a person of unsound mind’
- Capacity is time-specific and issue-specific
- No diagnostic criteria or threshold; no reference to ‘mental capacity’
- A person lacks capacity if unable to:
 - understand;
 - retain;
 - weigh up information;
 - communicate a decision, with appropriate assistance if necessary



The Act sets out guiding principles

These include:

- presumption of capacity for adults
- persons must be supported to make own decisions as far as possible
- minimal restriction of rights and freedom of action
- dignity, bodily integrity, privacy, autonomy, right to control over own financial affairs and property
- give effect to 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'**
- United Nations Convention on Rights of Persons with Disabilities
- *Article 12: persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life*



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: decisions that are outside scope; existing law on capacity and consent is unchanged**

Section 59(5B): treatment decisions may not be included in an EPA



- A donor may not purport to give an attorney power to consent to or refuse treatment; any such provision is null and void
- Section 2: '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
 - includes life-sustaining treatment
- A person with capacity may plan ahead for treatment by way of an advance healthcare directive

Enduring power of attorney (EPA): statutory changes

- An EPA made under the Powers of Attorney Act 1996 before 26 April 2023 is still valid;
- No new process is required to register a 1996 Act EPA; the DSS is not involved
- Court continues to hold the register of EPAs under the 1996 Act.
 - Section 81(1A) providing for registration of 1996 Act EPAs by the DSS **not commenced**
- Section 76 (2): the DSS may receive and investigate complaints against an attorney appointed under the 1996 Act
- 2015 Act introduces two-step process
 - Step 1: EPA is submitted to the DSS for review and registration
 - Step 2: notification to DSS when the donor lacks capacity in relation to relevant decisions
- Capacity statement by a medical **or** other healthcare professional
- New supervision and reporting requirements for an attorney
- Attorney must apply the guiding principles

Signing and witnessing requirements under the 2015 Act

- Section 60(4)(a) and (b)
 - The donor or the person signing on his behalf and the attorney shall sign the instrument creating the EPA **in the presence of each other and in the presence of two witnesses**
- ‘In the presence of’ has been interpreted to mean ‘in the actual presence of’
- Witnesses:
 - over 18
 - at least one is not an immediate family member of donor or attorney
 - neither is an employee or agent of the attorney – the instructed solicitor should not be a witness if on record for the attorney



Director's Discretion

○ Notice requirements

- section 69(1B)
 - if the notice requirements under section 68(3) have not been complied with, the Director may, **if satisfied that all reasonable efforts have been made, treat criteria as having been met**

○ Variation of EPA

- section 73(4B)
 - a variation to the EPA may be made 6 months after registration or at intervals of 12 months **unless earlier or frequent variation is agreed by the Director**

Statement by legal practitioner*

Section 60(1)(b): Content of instrument creating an EPA shall include:

- statement by a legal practitioner that, after interviewing the donor and making necessary enquiries, he or she :
 - **is satisfied that** the donor understands the implications of creating the power
 - **is satisfied that** the donor is aware that he or she may vary or revoke
 - **has no reason to believe that** the instrument is being executed as a result of fraud, coercion or undue pressure
- Compare section 5(d)(ii) Powers of Attorney Act 1996/ 'Part D' statement
- See Law Society Practice Note on Enduring Powers of Attorney 15 February 2024
 - [Practice Note on Enduring Powers of Attorney \(lawsociety.ie\)](https://www.lawsociety.ie/practice-note-on-enduring-powers-of-attorney)

* Section 2: a person who is a practising barrister or practising solicitor

New supervision and reporting requirements



Section 75: after acceptance of notification, attorney must :

- Submit- within 12 months and annually- a report to the DSS on performance of functions to include details of expenses and remuneration
- Additionally, if authorised in respect of property and affairs:
 - submit within 3 months a schedule of assets and liabilities, and projections of income and expenditure
 - keep accounts and financial records and make these available for inspection by the DSS
- If reporting is incomplete, Director may determine that the attorney should no longer act and remove from the register
 - determination may be appealed to the Circuit Court
- Section 76: DSS may investigate a complaint against an attorney on specified grounds and refer a 'well founded' complaint to the Circuit Court for determination

DSS 'digital first' approach

- To help promote
 - efficient delivery of service across all functions
 - data security
 - reduction in rate of error
 - sustainability
- In compliance with government policy
- Engagement with DPC/ Data Protection Impact Assessment
- Section 95B: Director may specify that
 - relevant document may be in electronic format and
 - circumstances in which this specification shall or shall not apply
 - Director may certify an electronic copy as a true copy



... not digital only

- An alternative manual process has been available since commencement
- Accessibility policy adopted July 2024 Accessibility Policy
 - to assist those who are not able to use the online portal with access to appropriate supports, or alternative format
 - to ensure that resources are targeted to provide individualised support
 - to promote the efficient operation of the service for all its users
 - where a person is unable to use the portal, due to digital literacy/connectivity problems, or another issue, and cannot reasonably be supported to do so by the DSS, by a professional or by another person, they can be facilitated with the alternative manual process

Getting on the MyDSS portal - telling us who you are

- Why? We create an account for every person using DSS services, so we can be sure who is interacting with the system
- When? Identity verification is the first step of the process for all DSS services
- Where? Identity verification is completed on the MyDSS portal – access is via our website
- How? Most accounts are opened with a fully verified MyGovID account- alternative is available
- A secure MyDSS portal account allows an applicant to create unique forms, access supporting documents prefilled with their information, upload and submit for registration
- Over 19,000 verified MyDSS accounts have been opened (end November 2024)

MyGovID and alternatives



- MyGovID is a single login for many government services in Ireland
- 2.3 (approx.) million adults have verified MyGovID, including 38% of those over 70
- Public Services Card (including free travel card) holders are 'MyGov ready'
- 13, 654 (over 71%) of fully verified MyDSS accounts have been opened with MyGovID
- 8,973 MyDSS account holders are aged over 70; over 57% have opened their accounts with MyGovID

- **Do I have to have a MyGovID?**
- **No, an alternative process for ID verification is available**
- **A form is available on the DSS website**

- Once the manual ID verification process is completed, an applicant has full access to the MyDSS portal in the same way as with MyGovID



Solicitor instructed by donor to create EPA

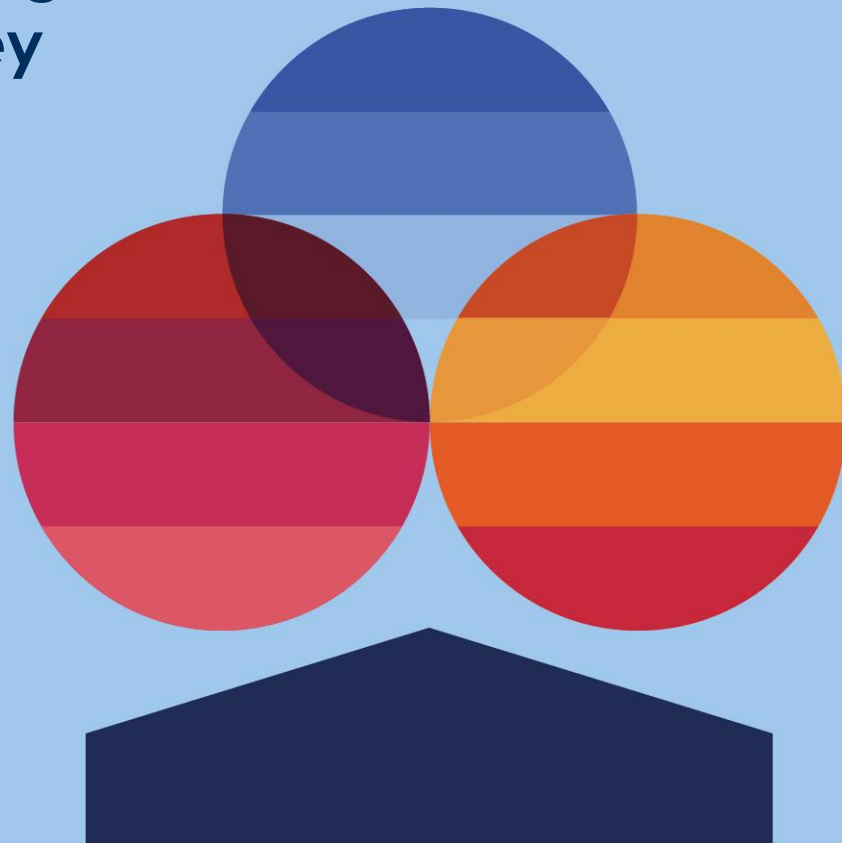
- If a donor instructs a solicitor to make and register your EPA, the solicitor may be recorded as an authorised contact for the application
- *There is no prohibition in the ADM(C)A or in DSS processes on the practitioner assisting clients in navigating the DSS portal for the creation of EPAs. Where such are being inputted by the practitioner providing assistance and advice to the client, clear authority for the solicitor's receipt and use of username / password / personal data should be obtained and retained on the file*
 - Law Society Practice Note 15 February 2024
- Legal Aid is available for EPA applications

The Practical Steps in Registering your Enduring Power of Attorney

Part 7

Aoife McMahon,
Head of Registration
Decision Support Service

10 December 2024



Two stage process to enacting an enduring power of attorney

Stage 1: Registration

- Donor chooses decisions and attorney(s)
- 'Execute' the arrangement by signing declarations together
- Evidence needed that donor has capacity
- Decision Support Service reviews registration application

Stage 2: Notification

- Attorney(s) notify Decision Support Service when donor loses capacity for one or more decisions
- Evidence needed that donor has lost capacity for the decisions
- Decision Support Service reviews notification application

Planning for making an enduring power of attorney

What Decisions to include?

- Personal welfare, or
- Property and affairs, or
- Both
- Gifts?

What Authority is being given?

- General authority or specific authority

Which Attorney is being appointed?

- How many main attorneys
- Any replacement attorneys
- Remuneration?
- Multiple, how will they act?

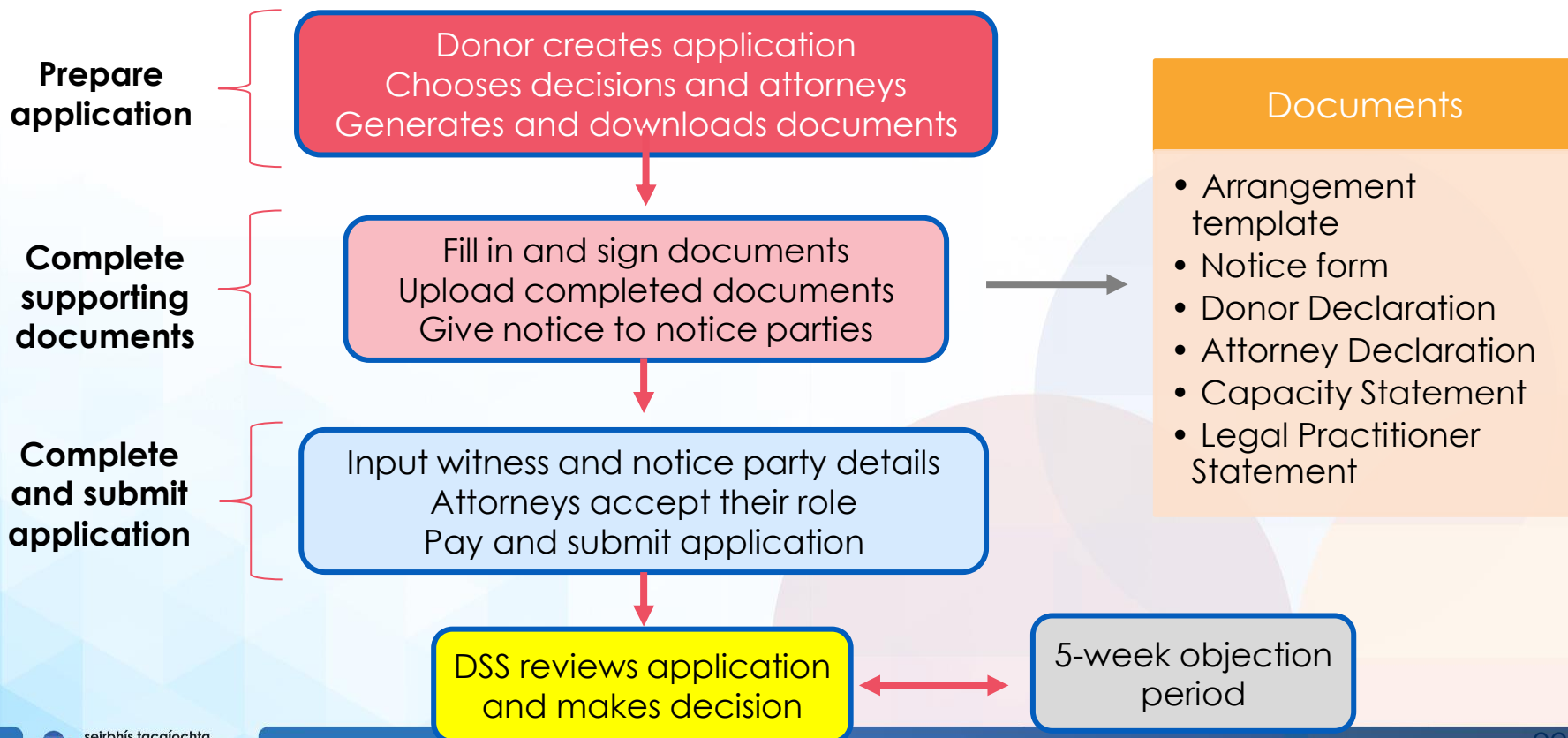


Checklist: Planning to make an enduring power of attorney

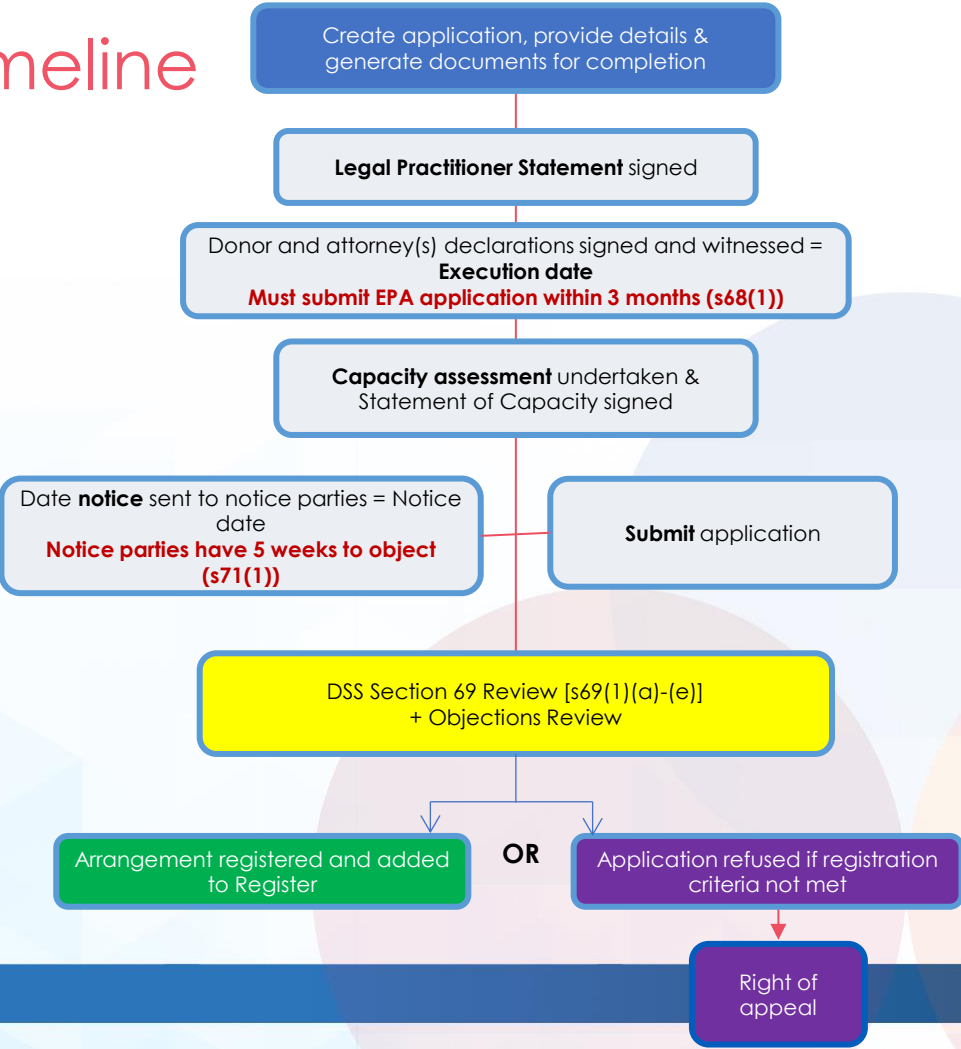
Checklist: Are You EPA ready?

<p>Donor details: (the relevant person making the application)</p> <p>Name:</p> <p>Date of birth:</p> <p>Email:</p> <p>Address:</p>	<p>Attorney: (the appointed supporter) <input checked="" type="checkbox"/></p> <p>Name:</p> <p>Date of birth:</p> <p>Email:</p> <p>Address:</p> <p>Main attorney <input type="checkbox"/> or replacement attorney <input type="checkbox"/></p>
<p>Attorney: (the appointed supporter)</p> <p>Name:</p> <p>Date of birth:</p> <p>Email:</p> <p>Address:</p> <p>Main attorney <input type="checkbox"/> or replacement attorney <input type="checkbox"/></p>	<p>Attorney: (the appointed supporter) <input type="checkbox"/></p> <p>Name:</p> <p>Date of birth:</p> <p>Email:</p> <p>Address:</p> <p>Main attorney <input type="checkbox"/> or replacement attorney <input type="checkbox"/></p>
<p>Number of attorneys:</p> <ul style="list-style-type: none"> How many attorneys do you want? Do you want any replacement attorneys? If you have replacement attorney(s), when should they act? 	<p>How many:</p> <p>Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>If one attorney is not able <input type="checkbox"/> or if no attorney is able <input type="checkbox"/></p>
<p>Attorney authority:</p> <p>If you are choosing more than one attorney, how do you want them to act?</p>	<p>Jointly for all decisions (all decisions must be made together) <input type="checkbox"/></p> <p>Jointly and severally for all decisions (Decisions can be made together or separately) <input type="checkbox"/></p> <p>Jointly and severally for all decisions (Decisions can be made together or separately) <input type="checkbox"/></p>
<p>Attorney remuneration</p> <p>Do you want to pay your attorney(s)</p> <p>If yes,</p> <ul style="list-style-type: none"> How Much? How often? <p>(example, when commence or every year)</p> <ul style="list-style-type: none"> What for? 	<p>Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>€</p> <p>.....</p> <p>.....</p>
<p>Decision types:</p> <p>What types of decisions do you want to include?</p>	<p>Personal Welfare decisions <input type="checkbox"/></p> <p>Property and affairs decisions <input type="checkbox"/></p> <p>Both <input type="checkbox"/></p> <p>Specified Decisions:</p> <p>.....</p>
<p>Any exclusions or conditions you want to include? (Example: General authority for all decisions except the sale of the family home)</p>	<p>..... <input type="checkbox"/></p> <p>.....</p>

Registration Application Stages



EPA Application Timeline



EPA Notification:
Note: When donor loses capacity:

- Attorney must notify DSS when donor loses capacity (s71A(1))
- Notice parties have 5 weeks to object (s71B(1)).

Prepare the application stage



- Create application on donor's account
- Enter donor details and attorney details
- Record any existing decision support arrangement
- Choose decisions to include & Authority to be given
- Generate and download application documents

Application process

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decision support service

Welcome to the Decision Support Service portal

- Your details**
Manage your personal information and keep it up to date
- Invoices and payments**
View invoices and submit payments
- Applications**
Start or edit an arrangement application
- Arrangements**
View and manage your decision support arrangements
- Fee waivers**
Apply to waive a fee
- Objections**
Make an objection to a decision support arrangement



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decision support service

Home > My account > Applications

Applications

Start or edit an arrangement application. For more information please [visit our Help & support guidelines](#).

Created on	Arrangement reference	Type of arrangement	Role type	Status
There are no records to display.				

+ Start new application



Fields marked with (*) are mandatory.

Type of arrangement *

- Please Select
- Please Select
- Co-decision-making agreement
- Decision-making assistance agreement
- Enduring power of attorney

Start application

Application steps

Enduring power of attorney

Arrangement reference: EPA-2023-002063-001
Status: Draft

Joan Smith

Cancel Close

- 1. Complete, generate and download application forms**
Provide information to be included in your arrangement and generate, download and review your application documents.
1A Relevant person details: Living arrangements, civil status, occupation and conditions or difficulties.
1B Supporter details: Date of birth, PPS number, email, mobile/telephone, address and relationship to supporter.
1C Existing decision support arrangements: Types, reference number and specific decisions included in each.
1D Decisions included in arrangement: Decision details to be included.
1E Generate and download application documents: Access and download application documents.
- 2. Upload completed application forms**
Upload completed application documents.
- 3. Add witness details**
Add arrangement witnesses and required details.
Witness details: Name, email, relationship to witness and date arrangement was witnessed.
- 4. Add notice party details**
Add arrangement notice parties and required details.
Notice party details: Name, email, relationship to notice party and date notice was provided to the named notice party.
- 5. Payment**
Calculate your fee and make payment for your application. Payment can be made using a credit or debit card or by completing a bank transfer.

← Back to applications Submit application

Arrangement decisions



1. Complete, generate & download application forms



- 1A - Relevant person details ✓
- 1B - Supporter details ✓
- 1C - Existing arrangements ✓
- 1D - Arrangement decisions**
- 1E - Generate documents

→ Please add details of the decisions you want to include. If you do not press the "Save and next" button, all added details will be lost.

Fields marked with () are mandatory.*

Enduring power of attorney

Please select the decision type(s) you would like to include in your enduring power of attorney *

Property and affairs decisions only

Authority for property and affairs decisions *

General authority for property and affairs decisions

Details of property and affairs decisions

Item number	Status	Type of decision	Details
-------------	--------	------------------	---------

There are no records to display.

+ Add new property and affairs decision

← Back to previous step

Save and next >

Generate documents

- 1E: Generate documents
 - Generate based on information provided
 - Download to be filled in

1. Complete, generate and download application forms

1A - Relevant person details ✓ 1B - Supporter details ✓ 1C - Existing arrangements ✓ 1D - Arrangement decisions ✓ 1E - Generate documents

→ Generate and download your documents to complete step 1 of your application. An email will be sent to your supporter(s) asking them to confirm their appointment.

Generate documents

Download documents

Document name	Created On ↑
There are no records to display.	

← Back to previous step Save and return to application

→ Generate and download your documents to complete step 1 of your application. An email will be sent to your supporter(s) asking them to confirm their appointment.

Generate documents

Download documents

Document name	Created On ↑	
Attorney declaration	12/07/2023 2:14 PM	
Donor declaration	12/07/2023 2:14 PM	
Enduring power of attorney instrument template	12/07/2023 2:14 PM	
Notice form	12/07/2023 2:14 PM	
Statement from legal practitioner	12/07/2023 2:15 PM	
Statement of capacity	12/07/2023 2:15 PM	

← Back to previous step Save and return to application

1A: Relevant person details 1B: Supporter details 1C: Existing arrangements 1D: Arrangement decisions **1E: Generate documents** 2: Upload documents 3: Witness details 4: Notice party details 5: Payment

Complete your supporting documents stage



- Execution of enduring power of attorney
- Legal practitioner statement
- Statement of capacity
- Upload completed documents
- Give notice to notice parties

Remember:

You must submit your application within three months of date of execution.

Execution of enduring power of attorney



- Donor and all attorneys (including replacement attorneys) sign declarations
- All sign together at the same time
- All sign in front of same two witnesses
- Witnesses must be:
 - 18 or over
 - At least one is not an immediate family member of donor or attorney(s)
 - Not an agent or employee of attorney(s)

Legal practitioner statement



Legal practitioner statement

Note: The notes in this form are provided by way of guidance only and do not constitute a statement of the law or the provisions under the Assisted Decision-Making (Capacity) Act 2015 (as amended) or any ancillary or related legislation.

Name of donor:	Joan Smith
Name of proposed attorney(s):	Tom Smith
Name of proposed replacement attorney(s), if applicable:	
Arrangement type:	Enduring power of attorney
Pursuant to:	Section 60(1)(b) of the Assisted Decision-Making (Capacity) Act 2015
Category of decision types within enduring power of attorney:	Personal welfare decisions and property and affairs decisions
Unique reference number:	EPA-2023-000000-001
Date of interview:	12/04/2023

I have interviewed Joan Smith and made any enquiries necessary for the purposes of making a statement as required by 60(1)(b) of the Assisted Decision-Making (Capacity) Act 2015 (as amended).

I am satisfied that the donor understands the implications of creating the enduring power of attorney.

Note: For use only in accordance with the Assisted Decision-Making (Capacity) Act 2015 (as amended). Penalties may apply for giving false or misleading information. Page 1 of 2

I am satisfied that the donor is aware that they may vary or revoke the enduring power of attorney prior to its registration, and on or after its registration until the attorney notifies the Director of the Decision Support Service under section 71A of the Act that the donor lacks capacity in relation to one or more of the relevant decisions which are subject of the enduring power of attorney and this notification has been accepted by the Director of the Decision Support Service.

I have no reason to believe that the donor is executing the instrument a result of fraud, coercion or undue pressure.

Name:	James Murphy		
Firm (if applicable):	Example & Co solicitors		
Registration number:	12345678		
Contact number:	011 111 1111		
Email address:	james@exampleandco.ie		
Any other comments:			
Signed:	<i>James Murphy</i>	Date:	12/04/2023

Note: It is an offence to knowingly provide a false or misleading statement.

Note: For use only in accordance with the Assisted Decision-Making (Capacity) Act 2015 (as amended). Penalties may apply for giving false or misleading information. Page 2 of 2

Sample forms for all generated documents available at:
<https://www.decisionsupportservice.ie/resources/forms>

Statement of capacity



Statement of capacity

Note: The notes in this form are provided by way of guidance only and do not constitute a statement of the law or the provisions under the Assisted Decision-Making (Capacity) Act 2015 (as amended) or any ancillary or related legislation.

Name of donor:	Joan Smith
Name of attorney(s):	Tom Smith
Name of replacement attorney(s), if applicable:	
Arrangement type:	Enduring power of attorney
Pursuant to:	Section 60(1)(c) of the Assisted Decision-Making (Capacity) Act 2015
Category of decision types within the enduring power of attorney:	Personal welfare decisions and property and affairs decisions
Unique reference number:	EPA-2023-000001-001

I undertook an assessment of capacity of Joan Smith, in accordance with section 3 of the Assisted Decision-Making (Capacity) Act 2015 (as amended) (the Act), for the purpose of making a statement of capacity as required by the Act.

I have discussed the implications of creating the enduring power of attorney with the donor. I am of the opinion that at the time the power was executed, the donor had the capacity to understand the implications of creating the power.

Name:	Michael Johnson		
Profession:	General Practitioner		
Registration number:	87654321		
Contact number:	081 112 1222		
Email address:	michaeljohnson@generalmedical.ie		
Date of execution of enduring power of attorney:	14/04/2023		
Date of assessment:	21/04/2023		
Any other comments:			
Signed:	<i>Michael Johnson</i>	Date:	21/04/2023

Note: It is an offence to knowingly provide a false or misleading statement.

Give notice to notice parties



- All people from the mandatory list:
 - Your spouse, civil partner or cohabitant
 - Your adult children, if any (including stepchildren)
 - Any decision supporters you have
- If you do not have at least three from this list, you must also notify two other people of your choosing
- Anyone else you wish to specify as a notice party
- Give a copy of the arrangement template, signed declarations and notice form to each person

Upload documents

- Upload completed documents:
 - Arrangement template
 - Signed legal practitioner statement
 - Signed and witnessed donor and attorney declarations
 - Signed statement of capacity

Enduring power of attorney

Joan Smith
Arrangement reference: EPA-2023-001596-001
Status: Draft

20%

Cancel X Close

1. Complete, generate and download application forms

2. Upload completed application forms



2. Upload completed application forms



→ Please upload the completed application documents listed by clicking the "add completed application forms" button below.

- ✓ Attorney declaration
- ✓ Donor declaration
- ✓ Enduring power of attorney instrument template
- ✓ Statement from legal practitioner
- ✓ Statement of capacity

Fields marked with (*) are required.

Completed application forms

Document type	Document name	Created On ↑		
Attorney declaration	Attorney_Declaration	17/04/2023 7:54 PM		
Donor declaration	Donor_Declaration	17/04/2023 7:55 PM		
Enduring power of attorney instrument template	Arrangement_	17/04/2023 7:55 PM		
Statement from legal practitioner	Legal_Practitioner_Statement	17/04/2023 7:56 PM		
Statement of capacity	Statement_of_capacity	17/04/2023 7:56 PM		

+ Add completed application forms

Save completed application forms

Complete and submit application stage



- Add details of the two witnesses
- Add details of the people who were given notice
- Pay the application fee
- Each attorney accepts their role
- Submit the application

Complete application

- Applicants input witness details – witness date becomes the execution date
- Applicants input notice party details
- Applicants pay for application

3. **Add witness details**

Add arrangement witnesses and required details:
Witness details: Name, email, relationship to witness and date arrangement was witnessed.

4. **Add notice party details**

Add arrangement notice parties and required details:
Notice party details: Name, email, relationship to notice party and date notice was provided to the named notice party.

5. **Payment**

Calculate your fee and make payment for your application. Payment can be made using a credit or debit card or by completing a bank transfer.

Add notice party

Personal details

First name *
Kate

Surname *
Bloggs

What is your relationship to this person?
Daughter

On what date did you provide notice to the n
17/04/2023

Contact details

Notice party email *
kate.bloggs@gmail.com

Save

Add witness

Personal details

First name *
Craig

Surname *
Simmons

What is your relationship to this person? *
Friend

Date witnessed *
17/04/2023

Contact details

Witness email *
craig.simmons@gmail.com

Save

Attorney approval

- Attorney(s) to accept their role as supporter via their own MyDSS account
- Once this is done, donor can submit the application via their account

Message details

Date received

03/05/2023

Status

Reply pending

Regarding

Open record >

Subject

You've been appointed as a supporter on an arrangement application

Message

You've been appointed as a supporter on an arrangement application.

You can view the details of the arrangement application by clicking on the 'Open record' button at the top of this message.

To accept your role as a supporter on this arrangement application, please go to the bottom of this message and select 'Yes' to confirm your approval.

If you have any queries, you can contact us at:

Email: queries@decisionsupportservice.ie

Telephone: + 353 1 211 0750

Thank you,
Decision Support Service

Document Name

Created On ↑

There are no records to display.

Your answer

Confirm your approval

Please Select

< Back to messages

Submit



Once your application is submitted

- The Decision Support Service makes sure it meets all legal requirements
- Five-week objection period - allows people to raise any concerns before the arrangement is registered

DSS Section 69 Review

- Decision Support Service (DSS) review application against criteria outlined in section 69(1)(a)-(e), including:
 - Content and form (s59, 60):
 - S59: Parties are 18+, includes types of authority to confer, statutory compliance criteria, must not include consent to or refusal of treatment
 - S60: Statements to be included in the instrument and their requirements, execution and witness requirements, remuneration details (if any)
 - Scope of authority: Rules around gifting of property (s63)
 - Attorney suitability based on ability to perform functions(s59(6))
 - Attorney eligibility: Not convicted of certain offences, not owner/provider of centre where donor resides. For property and affairs: not undischarged bankruptcy/debt settlement, not convicted of an offence involving fraud or dishonesty, disqualification order (s65)
 - Notice requirements: At the same time as making application, list of mandatory notice parties and minimum number of notice parties (s68(3))
 - Requirements for submission (s68): Within 3 months of execution, form and fee specified by Director, must specify existing arrangements

If criteria met, arrangement registered and added to Register

If criteria not met, DSS engage with applicants to resolve.
If unresolved, refusal to register – right to appeal

Objections

Five-week objection period from notice date – any objections reviewed and determined well-founded/not well-founded – right to appeal

Objection Grounds (s71(2))

- EPA does not meet legal requirements (scope, content, supporting statements)
- Notice requirements not followed
- Donor lacks capacity to make the EPA
- Fraud, coercion or undue influence used to make the donor enter into the EPA
- EPA contains a false statement
- Attorney not a suitable person

Who can object (s71(1)):

- Notice parties
- Anyone with “sufficient interest or expertise in the welfare of the donor”

Certified copy

- Once approved, applicants get a certified copy of their arrangement



Enduring power of attorney

Unique reference: EPA-2023-000000-001
Date of registration: 14-May-2023

Details of the donor

Donor name: Joan Smith
Donor address: Ivano House
Cork City
Cork
Donor Eircode: C01 A234
Donor date of birth: 14-April-1960

Details of the attorney(s)

Attorney 1 name: Tom Smith
Attorney 1 address: Ivano House
Cork City
Cork
Ireland
C01 A234
Attorney 1 Eircode: C01 A234
Attorney 1 date of birth: 13-March-1955

Authority in relation to personal welfare decisions

The donor confers the following authority on the attorney(s) in relation to personal welfare decisions: Authority to do specified things on the donor's behalf in relation to the donor's personal welfare

Details of relevant personal welfare decisions

The following personal welfare decisions fall within scope of this enduring power of attorney, to be made by the attorney(s) on behalf of the donor:

- Decisions relating to Accommodation

Details:

Decisions relating to my primary residence. Decisions relating to living in residential care. Decisions relating to moving into a nursing home.

Exclusions or exceptions:

N/A

Authority in relation to property and affairs decisions

The donor confers the following authority on the attorney(s) in relation to property and affairs decisions: General authority to act on the donor's behalf in relation to the donor's property and affairs

Functions of the attorney(s)

Attorney(s) appointed under this enduring power of attorney are authorised under Section 59 of the Assisted Decision-Making (Capacity) Act 2015 (as amended) to act on the donor's behalf in relation to the relevant decisions specified.

Where a general authority is conferred on the attorney(s) in relation to personal welfare decisions, this authority relates to the following matters:

- accommodation, including whether or not the donor should live in a designated centre
- participation by the donor in employment, education or training
- participation by the donor in social activities
- decisions on any social services provided or to be provided to the donor
- healthcare
- participation by the donor in healthcare research and social care research except in relation to clinical trials of medicinal products for human use or clinical investigations undertaken to assess the safety or performance of medical devices
- other matters relating to the donor's well-being

Where a general authority is conferred on the attorney(s) in relation to property and affairs decisions, this authority relates to the following matters:

- the custody, control and management of some or all of the donor's property or property rights
- the sale, exchange, mortgaging, charging, gift or other disposition of the donor's property
- the acquisition of property by the donor, or on his or her behalf
- the carrying on, on behalf of the donor, of any profession, trade or business which may lawfully be carried on by a person other than the donor
- the making of a decision which will have the effect of dissolving a partnership in which the donor is a partner
- the carrying out of any contract entered into by the donor
- the discharge of the donor's debts, tax and duty liabilities and obligations or other obligations
- the execution or exercise of any of the powers or discretions vested in the donor as a tenant for life
- providing, to the extent that the donor 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 donor or for the needs of other persons
- the conduct of proceedings before any court or tribunal, whether in the name of the donor or on his or her behalf
- making an application for housing, social welfare or other benefits or otherwise protecting or advancing the interests of the donor in relation to those matters

CERTIFIED COPY

THIS DOCUMENT IS AN AUTHENTICATED COPY OF A DECISION SUPPORT ARRANGEMENT, REGISTERED WITH AND CERTIFIED BY THE DIRECTOR OF THE DECISION SUPPORT SERVICE IN ACCORDANCE WITH THE ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (AS AMENDED).

Áine Flynn, Director of the Decision Support Service

Authenticated on: 14/05/2023 14:16:03

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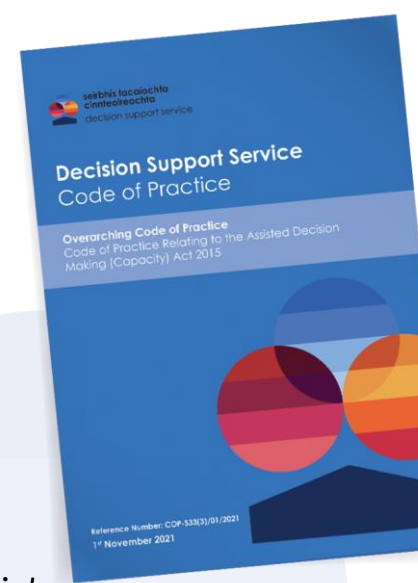
Notification of enduring power of attorney



- If donor loses capacity in relation to one/more decision, attorney **must** notify the Decision Support Service
- 2 statements regarding donor's capacity required
- Notice to notice parties (incl. Donor)
- Five-week objection period
- Once notification is accepted by the Decision Support Service, the EPA is activated and the Attorney(s) has legal authority to make relevant decisions on behalf of the donor
- The notified EPA is included on the Decision Support Service register of decision support arrangements
- Attorney(s) commence role under the Supervision Team

Codes of Practice

- general guidance code on supporting decision-making and assessing capacity
- guidance for attorneys
- guidance for legal practitioners
- codes published with Ministerial consent
- *A person concerned shall have regard to a code of practice when performing any function under the Act in respect of which the code provides guidance*
- codes are available on the DSS website with other materials and resources



EPAs in numbers

As of end November 2024

- 1,287 EPAs fully registered
- 1,403 EPAs submitted, pending review and registration
- 4,857 active applications
- 9,698 draft applications
- 28 **notified** EPAs

- solicitors are instructed in 27% (approx.) of applications
- 98% of EPAs submitted grant a general authority to the attorney(s)



EPA Helpdesk In-Person Event Galway, November 2024



Current Advance Planning Campaign

Make a decision your future self will thank you for.



Join thousands in setting up your Enduring Power of Attorney and Advance Healthcare Directive with help from the Decision Support Service.

My decisions. My rights.



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Resources

- ▶ [Specimen completed forms](#)
- ▶ [Code of Practice - Supporting decision making and Assessing capacity](#)
- ▶ [Code of Practice for Legal Practitioners](#)
- ▶ [Code of Practice for Attorneys](#)
- ▶ [MyDSS online portal Help](#) – Videos
- ▶ [MyDSS online portal help](#) – written guides

- ▶ EPA Helpdesk established September 2024
- ▶ **Telephone: 01 2119750**

Thank You



Website: www.decisionsupportservice.ie

Email: queries@decisionsupportservice.ie

Telephone: (01) 2119750

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