



An Bille um Chinnteoireacht Chuidithe (Cumas) (Leasú), 2022
Assisted Decision-Making (Capacity) (Amendment) Bill 2022

Mar a tionscnaíodh

As initiated



**AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS) (LEASÚ), 2022
ASSISTED DECISION-MAKING (CAPACITY) (AMENDMENT) BILL 2022**

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ACTS REFERRED TO

Adoptive Leave Acts 1995 and 2005
Assisted Decision-Making (Capacity) Act 2015 (No. 64)
Carer's Leave Act 2001 (No. 19)
Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (No. 13)
Civil Service Regulation Acts 1956 to 2005
Companies Act 2014 (No. 38)
Data Protection Act 2018 (No. 7)
Data Sharing and Governance Act 2019 (No. 5)
Disability Act 2005 (No. 14)
Electoral Act 1992 (No. 23)
Ethics in Public Office Acts 1995 and 2001
Freedom of Information Act 2014 (No. 30)
Garda Síochána Act 2005 (No. 20)
Irish Human Rights and Equality Commission Act 2014 (No. 25)
Juries Act 1976 (No. 4)
Maternity Protection Acts 1994 and 2004
Minimum Notice and Terms of Employment Acts 1973 to 2005
National Disability Authority Act 1999 (No. 14)
Organisation of Working Time Act 1997 (No. 20)
Parent's Leave and Benefit Act 2019 (No. 35)
Parental Leave Acts 1998 to 2019
Paternity Leave and Benefit Act 2016 (No. 11)
Protection of Employees (Fixed-Term Work) Act 2003 (No. 29)
Protection of Employees (Part-Time Work) Act 2001 (No. 45)
Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)
Redundancy Payments Acts 1967 to 2014
Succession Act 1965 (No. 27)
Terms of Employment (Information) Acts 1994 to 2014
Unfair Dismissals Acts 1977 to 2015



**AN BILLE UM CHINNTEOIREACHT CHUIDITHE (CUMAS) (LEASÚ), 2022
ASSISTED DECISION-MAKING (CAPACITY) (AMENDMENT) BILL 2022**

Bill

entitled

An Act to give further effect to the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006; for that and other purposes to amend the Assisted Decision-Making (Capacity) Act 2015; to amend the Juries Act 1976, the Electoral Act 1992, the National Disability Authority Act 1999, the Disability Act 2005, the Irish Human Rights and Equality Commission Act 2014 and the Freedom of Information Act 2014; and to provide for related matters. 5
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Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Assisted Decision-Making (Capacity) (Amendment) Act 2022. 15
- (2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as the Minister, after consultation with the Minister for Health, may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions. 20
- (3) *Sections 66 and 67* shall come into operation on such day or days as the Minister for Health, after consultation with the Minister, may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Definitions

2. In this Act, unless the context otherwise requires—

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth;

“Principal Act” means the Assisted Decision-Making (Capacity) Act 2015.

Repeals

3. The following provisions of the Principal Act are repealed:

- (a) section 57;
- (b) section 61;
- (c) section 62; 5
- (d) section 70;
- (e) section 144.

PART 2

AMENDMENT OF PRINCIPAL ACT

Amendment of section 2 of Principal Act 10

4. Section 2(1) of the Principal Act is amended—

- (a) in the definition of “intervener”, by the substitution of “(d), (da), (db)” for “(d)”,
- (b) in the definition of “intervention”—
 - (i) in paragraph (d), by the substitution of “general visitor,” for “general visitor, or”, and 15
 - (ii) by the insertion of the following paragraphs after paragraph (d):
 - “(da) a court friend, or
 - (db) a person to whom section 36(8)(b) applies,”
- (c) by the substitution of the following for the definition of “Minister”:
 - “ ‘Minister’, other than in Part 8, means the Minister for Children, Equality, Disability, Integration and Youth;”, 20
- (d) in the definition of “personal welfare”, by the insertion of the following paragraph after paragraph (e):
 - “(ea) participation by the relevant person 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;”, 25
- (e) in paragraph (i) of the definition of “property and affairs”, by the substitution of “for the needs of other persons” for “of other persons”, and
- (f) by the insertion of the following definition: 30
 - “ ‘treatment’, in relation to a person, means an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose related to the physical or mental health of the person, and includes life sustaining treatment;”.

Insertion of new section 4A into Principal Act

5. The Principal Act is amended by the insertion of the following section after section 4:

“Regulations

4A. (1) The Minister may make regulations for the purposes of this Act (other than Part 8) including regulations prescribing any matter or thing which is referred to in this Act (other than Part 8) as prescribed or to be prescribed or to be the subject of regulations made by him or her or for the purpose of enabling any provision of this Act (other than Part 8) to have full effect. 5

(2) Regulations under this Act (other than Part 8) may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.”. 10

Amendment of section 8 of Principal Act

6. Section 8(7)(d) of the Principal Act is amended— 15

(a) in subparagraph (i), by the substitution of “matter,” for “matter, and”,

(b) by the substitution of the following subparagraph for subparagraph (ii):

“(ii) any decision-making assistant, co-decision-maker, decision-making representative, attorney or attorney under the Act of 1996 for the relevant person,”. 20

and

(c) by the insertion of the following subparagraphs after subparagraph (ii):

“(iii) any court friend or person to whom section 36(8)(b) applies, where the intervention relates to proceedings under Part 5, and

(iv) a designated healthcare representative within the meaning of Part 8 for the relevant person, where the intervention relates to treatment and an advance healthcare directive within the meaning of Part 8 is applicable,”. 25

Amendment of section 9 of Principal Act

7. Section 9 of the Principal Act is amended— 30

(a) in the definition of “decision-making assistant”, by the substitution of “section 10(4) and specifications made under section 10(4A)” for “section 10(4)”, and

(b) in the definition of “decision-making assistant appointer”, by the substitution of “section 10(4) and specifications made under section 10(4A)” for “section 10(4)”. 35

Amendment of section 10 of Principal Act

8. Section 10 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “subsection (4) and specifications made under subsection (4A)” for “subsection (4)”,
- (b) in subsection (2), by the substitution of “subsection (4) and specifications made under subsection (4A)” for “subsection (4)”,
- (c) by the substitution of the following subsection for subsection (4): 5
 - “(4) The Minister shall make regulations as respects decision-making assistance agreements, including—
 - (a) prescribing procedures and requirements relating to the execution, variation and revocation of a decision-making assistance agreement, 10
 - (b) specifying the personal welfare or property and affairs, or both, which may be specified in a decision-making assistance agreement,
 - (c) providing for the giving by the appointer of notice of the execution, variation or revocation of a decision-making assistance agreement— 15
 - (i) to the Director, and
 - (ii) to other specified persons, and whether or not by reference to persons who, under this Act, are required to be notified of an application made under this Act.”,
- (d) by the insertion of the following subsection after subsection (4): 20
 - “(4A) The Director may, with the consent of the Minister, specify in writing the following:
 - (a) the form of a decision-making assistance agreement,
 - (b) the information to be included in or annexed to a decision-making assistance agreement for the purpose of ensuring that any document purporting to create a decision-making assistance agreement incorporates adequate information as to the effect of making or accepting the appointment, 25
 - (c) that the following statements shall be included in a decision-making assistance agreement: 30
 - (i) by the appointer, that he or she has read and understands the information as to the effect of making the appointment or that such information has been explained to the appointer, by a person other than the proposed decision-making assistant;
 - (ii) by the decision-making assistant, that he or she understands and undertakes to act in accordance with the functions of a decision-making assistant, including the duty to act in accordance with the guiding principles, 35
 - (d) the form of attestation of the signatures of the appointer and decision-making assistant by a person other than the appointer or the proposed decision-making assistant, 40

- (e) the forms to be used in connection with the execution, variation and revocation of a decision-making assistance agreement, and
- (f) the form of notice to be given by the appointer of the execution, variation or revocation of a decision-making assistance agreement.”.

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Amendment of section 11 of Principal Act

9. Section 11(1) of the Principal Act is amended—

- (a) in paragraph (a), by the substitution of “her, or the person or property of a child of that person” for “her”,
- (b) in paragraph (b), by the substitution of “her, or a child of that person” for “her”, and 10
- (c) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34,”.

Amendment of section 13 of Principal Act

10. Section 13(4) is amended—

- (a) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34,”, and 15
- (b) in paragraph (h), by the substitution of the following subparagraph for subparagraph (iii):
 - “(iii) has an enduring power of attorney that is the subject of a notification that has been accepted by the Director under section 71C, or an enduring power under the Act of 1996 that has been registered, in respect of himself or herself, or”. 20

Amendment of section 14 of Principal Act

11. Section 14(1)(b) of the Principal Act is amended by the substitution of “assist” for “advise”.

Amendment of section 15 of Principal Act

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12. Section 15 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) by the substitution of “one or more of” for “one or both of”,
 - (ii) in paragraph (a)—
 - (I) by the substitution of “the scope of, or in breach of,” for “the scope of”, and 30
 - (II) by the substitution of “agreement, or in breach of this Act” for “agreement”,
- and

- (iii) in paragraph (c), by the substitution of “to enter into, or to vary or revoke, the decision-making assistance agreement” for “to enter into the co-decision-making agreement”,
- (b) by the insertion of the following subsections after subsection (1):
 - “(1A) Following the receipt of a complaint under subsection (1) the Director shall carry out an investigation of the matter which is the subject of the complaint and shall, subject to subsection (1B), form a view as to whether or not the complaint is well founded not later than 3 months after the date of his or her receipt of the complaint (in this section referred to as the ‘initial investigation period’).”
 - (1B) The Director may, before the date of expiry of the initial investigation period, extend the duration of his or her investigation by a period of up to 6 months from that date by sending written notice to the complainant, the person who is the subject of the complaint and the relevant person concerned giving reasons for the extension.”
- (c) in subsection (2)—
 - (i) by the substitution of “The Director shall, as soon as is practicable after having formed a view under subsection (1A)” for “Following the receipt of a complaint under subsection (1), the Director shall carry out an investigation of the matter which is the subject of the complaint and”,
 - (ii) in paragraph (a), by the substitution of “complaint,” for “complaint, or”, and
 - (iii) by the insertion of the following paragraph after paragraph (a):
 - “(aa) notwithstanding paragraph (a), where he or she is of the view that the complaint is well founded and that—
 - (i) the provision of clarification by him or her to the decision-making assistant regarding the role of the decision-making assistant would be an appropriate resolution, or
 - (ii) the subject matter of the complaint could be appropriately resolved under section 96(4),
 the Director may, not later than 3 months after having completed his or her investigation, and having obtained the written consent of the complainant, the person who is the subject of the complaint and the relevant person concerned or, where the written consent of the relevant person cannot be obtained, having determined it to be, to the greatest extent possible, the will and preference of the relevant person, provide the clarification referred to in subparagraph (i), or proceed to resolve the complaint as soon as possible under section 96(4), as the case may be, and”
- (d) in subsection (3), by the substitution of “3 months” for “21 days”,
- (e) in subsection (4), by the substitution of “investigation, to which this section shall, with any necessary modifications, apply” for “investigation and make an

application to the court for a determination in relation to any matter specified in subsection (1)”,

(f) by the insertion of the following subsections after subsection (4):

“(4A) Where subsection (2)(aa) applies and the Director has provided the clarification referred to in subparagraph (i) of that subsection or has resolved the complaint under section 96(4) as referred to in subparagraph (ii) of that subsection, the Director may— 5

(a) request further information regarding the outcome of the clarification or resolution, as the case may be, or

(b) request confirmation that the complaint has been resolved, 10
from the complainant, the person who is the subject of the complaint or the relevant person, as the Director considers appropriate.

(4B) If the Director is not satisfied, following the receipt of the information or confirmation referred to in subsection (4A), that the clarification or resolution referred to in that subsection has satisfactorily resolved the complaint, the Director may make an application to the court in accordance with subsection (2)(a) or may take such other steps as he or she considers appropriate in order to resolve the complaint.”, 15

(g) in subsection (5)—

(i) in paragraph (a), by the deletion of “or (4)”, and 20

(ii) in paragraph (b), by the substitution of “subsection (3) or (7)(b)” for “subsection (3)”,

and

(h) by the insertion of the following subsections after subsection (5):

“(6) The Director shall, in accordance with this section, investigate a complaint under subsection (1) unless in his or her opinion there has been undue delay in making the complaint. 25

(7) A decision by the Director under subsection (6) not to investigate a complaint—

(a) shall be in writing, shall contain the reasons for the decision and shall be sent to the complainant as soon as possible after it is made, and 30

(b) may be appealed by the complainant to the court not later than 3 months after the date of receipt by the complainant of the decision.

(8) In this section a reference to an act includes a reference to an omission and a reference to the doing of an act includes a reference to the making of an omission.”. 35

Insertion of new section 15A into Principal Act

13. The Principal Act is amended by the insertion of the following section after section 15:

“Offence in relation to decision-making assistance agreement

15A. (1) A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke a decision-making assistance agreement commits an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or 5

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

(2) The reference in subsection (1) to coercion or undue influence includes any case where a person’s access to, or continued stay in, a designated centre or mental health facility is contingent (whether in whole or in part) on the person having to, or being led to believe that he or she has to, make, vary or revoke a decision-making assistance agreement.”. 10

Amendment of section 16 of Principal Act

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14. Section 16 of the Principal Act is amended, in the definition of “co-decision-maker”, by the substitution of “this Part, regulations made under section 31 and specifications made under section 31A” for “this Part and regulations made under section 31”.

Amendment of section 17 of Principal Act

15. Section 17 of the Act of 2015 is amended—

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(a) in subsection (1), by the substitution of “this Part, regulations made under section 31 and specifications made under section 31A” for “this Part and regulations made under section 31”,

(b) by the insertion of the following subsection after subsection (1):

“(1A) A person in relation to whom a decision-making representation order was made in circumstances where section 38(1)(a) or section 55(4) applied may appoint a co-decision-maker in accordance with this section, and this Part and the regulations and specifications made thereunder shall apply to that appointment with any necessary modifications.”,

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and

(c) in subsection (3), by the substitution of “this section, regulations made under section 31 and specifications made under section 31A” for “this section and regulations made under section 31”.

Amendment of section 18 of Principal Act

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16. Section 18(1)(g) of the Principal Act is amended by the substitution of “section 15A, 34,” for “section 34,”.

Amendment of section 20 of Principal Act

17. Section 20(6) of the Principal Act is amended—

- (a) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34”, and
- (b) in paragraph (h), by the substitution of the following subparagraph for subparagraph (iii):

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“(iii) has an enduring power of attorney that is the subject of a notification that has been accepted by the Director under section 71C, or an enduring power under the Act of 1996 that has been registered, in respect of himself or herself, or”.

Amendment of section 21 of Principal Act

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18. Section 21 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of “in such form as shall be specified under section 31A” for “in such form”,
- (b) in subsection (3), by the substitution of “specified under section 31A” for “prescribed by regulations made under section 31”,
- (c) by the insertion of the following subsections after subsection (3):

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“(3A) Subsection (3)(a) shall not apply—

- (a) in relation to the spouse of an appointer, where, at the time at which the application is made under subsection (2)—
 - (i) a decree of judicial separation has been granted to either the appointer or his or her spouse by a court in the State or any decree has been so granted by a court outside the State and is recognised in the State as having like effect,
 - (ii) a written agreement to separate has been entered into between the appointer and his or her spouse, or
 - (iii) subject to section 2(2), the appointer and his or her spouse have separated and have ceased to cohabit for a continuous period of 12 months,
- and
- (b) in relation to the civil partner of an appointer, where, at the time at which the application is made under subsection (2)—
 - (i) a written agreement to separate has been entered into between the appointer and his or her civil partner, or
 - (ii) subject to section 2(2), the civil partners have separated and have ceased to cohabit for a continuous period of not less than 12 months.

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(3B) Subject to section 2(2), subsection (3)(b) shall not apply in relation to the cohabitant of an appointer where, at the time at which the application is made under subsection (2), the appointer and his or her

cohabitant have separated and have ceased to cohabit for a continuous period of not less than 12 months.”,

and

- (d) in subsection (4)(g), by the substitution of “specified under section 31A” for “prescribed by regulations made under section 31”. 5

Amendment of section 22 of Principal Act

19. Section 22(7) of the Principal Act is amended—

- (a) in subsection (7), by the substitution of “For the purposes of subsection (6), a document” for “A document”, and
- (b) by the insertion of the following subsection after subsection (7): 10
- “(8) Once the Director has registered or has refused to register under this section a co-decision-making agreement, the applicants concerned shall, as soon as practicable, give notice to the persons referred to in section 21(3) (other than those to whom subsections (3A) and (3B) of that section relate) of that registration or refusal, as the case may be, in the form specified under section 31A.”. 15

Amendment of section 24 of Principal Act

20. Section 24(2) of the Principal Act is amended by the substitution of “in such form as shall be specified under section 31A” for “in such form”.

Amendment of section 25 of Principal Act 20

21. Section 25 of the Principal Act is amended—

- (a) in subsection (3)—
- (i) by the substitution of “The Director shall make such details of the Register as he or she shall specify” for “The Director shall make the Register”, and
- (ii) in paragraph (b), by the substitution of “inspecting those details of the Register” for “inspecting the Register”, 25
- (b) in subsection (4), by the substitution of “or part thereof, or, where applicable, a varied co-decision-making agreement or part thereof,” for “or part thereof,”
- (c) by the insertion of the following subsection after subsection (4):
- “(4A) An authenticated copy of a co-decision-making agreement or part thereof, or, where applicable, of a varied co-decision-making agreement or part thereof, that is issued by the Director under subsection (4) and stamped by the Director with a time and date stamp (which may be by automated means), shall be evidence of the contents of the agreement or part thereof as at the date and time indicated on the stamp.”. 30 35

and

- (d) in subsection (5), by the substitution of “or part thereof, or, where applicable, a varied co-decision-making agreement or part thereof,” for “or part thereof.”

Amendment of section 27 of Principal Act

22. Section 27 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of— 5
 - (i) “specified under section 31A” for “prescribed by regulations made under section 31”, and
 - (ii) “as are specified under section 31A” for “as are prescribed”,and
- (b) in subsection (4)(a), by the substitution of— 10
 - (i) “specifications made under section 31A” for “regulations made under section 31”, and
 - (ii) “relevant specifications” for “relevant regulations”.

Amendment of section 28 of Principal Act

23. Section 28 of the Principal Act is amended—

- (a) in subsection (3), by the substitution of “in such form as shall be specified under section 31A” for “in such form”, and
- (b) in subsection (4), by the substitution of “specified under section 31A” for “prescribed by regulations made under section 31”. 15

Amendment of section 29 of Principal Act

24. Section 29 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of “specified under section 31A” for “prescribed by regulations made under section 31”,
- (b) in subsection (3), by the substitution of “and each such signature” for “and, in the case of a revocation by the appointer, his or her signature”, 25
- (c) in subsection (4), by the substitution of the following for “as the case may be”:
 - “as the case may be, and the notification, which shall be in such form as shall be specified under section 31A, shall be accompanied by the following:
 - (a) a statement in writing by the person making the revocation 30
outlining his or her reasons for the revocation;
 - (b) if the appointer is the person making the revocation, a statement by a registered medical practitioner and a statement by such other healthcare professional as shall be prescribed by regulations made under section 31 that in his or her opinion, the appointer has 35
capacity to revoke the co-decision-making agreement;

- (c) details of the notice given pursuant to subsection (4A);
 - (d) information on any change in the details provided pursuant to section 21(4)(e) in the application to register the co-decision-making agreement;
 - (e) the appropriate fee, as prescribed by regulations made under section 31.”, 5
- (d) by the insertion of the following subsection after subsection (4):
- “(4A) The person making the revocation or revocation in part of a registered co-decision-making agreement shall, at the same time as notifying the Director under subsection (4), give notice of the revocation or revocation in part, in such form as shall be specified under section 31A, to the persons specified in section 21(3).” 10
- and
- (e) in subsection (5)—
- (i) by the substitution of “extent of the revocation.” for “extent of the revocation,”, and 15
 - (ii) by the deletion of “and in either case notify the persons specified in section 21(3) of the fact of the revocation or revocation in part, as the case may be.”

Amendment of section 30 of Principal Act

- 25.** Section 30 of the Principal Act is amended— 20
- (a) in subsection (1)—
 - (i) in paragraph (a)—
 - (I) by the substitution of “the scope of, or in breach of,” for “the scope of”, and
 - (II) by the substitution of “agreement, or in breach of this Act” for “agreement”, 25
 - and
 - (ii) in paragraph (e), by the substitution of “to enter into, or to vary or revoke,” for “to enter into”,
 - (b) by the insertion of the following subsections after subsection (1): 30
 - “(1A) Following the receipt of a complaint under subsection (1) the Director shall carry out an investigation of the matter which is the subject of the complaint and shall, subject to subsection (1B), form a view as to whether or not the complaint is well founded not later than 3 months after the date of his or her receipt of the complaint (in this section referred to as the ‘initial investigation period’). 35
 - (1B) The Director may, before the date of expiry of the initial investigation period, extend the duration of his or her investigation by a period of up to 6 months from that date by sending written notice to the

complainant, the person who is the subject of the complaint and the relevant person concerned giving reasons for the extension.”,

(c) in subsection (2)—

(i) by the substitution of “The Director shall, as soon as is practicable after having formed a view under subsection (1A)” for “Following the receipt of a complaint under subsection (1), the Director shall carry out an investigation of the matter which is the subject of the complaint and”, 5

(ii) in paragraph (a), by the substitution of “complaint,” for “complaint, or”, and

(iii) by the insertion of the following paragraph after paragraph (a):

“(aa) notwithstanding paragraph (a), where he or she is of the view that the complaint is well founded and that— 10

(i) the provision of clarification by him or her to the co-decision-maker regarding the role of the co-decision-maker would be an appropriate resolution, or

(ii) the subject matter of the complaint could be appropriately resolved under section 96(4), 15

the Director may, not later than 3 months after having completed his or her investigation, and having obtained the written consent of the complainant, the person who is the subject of the complaint and the relevant person concerned or, where the written consent of the relevant person cannot be obtained, having determined it to be, to the greatest extent possible, the will and preference of the relevant person, provide the clarification referred to in subparagraph (i), or proceed to resolve the complaint as soon as possible under section 96(4), as the case may be, and” 20 25

(d) in subsection (3), by the substitution of “3 months” for “21 days”,

(e) in subsection (4), by the substitution of “investigation, to which this section shall, with any necessary modifications, apply” for “investigation and make an application to the court for a determination in relation to any matter specified in subsection (1)”. 30

(f) by the insertion of the following subsections after subsection (4):

“(4A) Where subsection (2)(aa) applies and the Director has provided the clarification referred to in subparagraph (i) of that subsection or has resolved the complaint under section 96(4) as referred to in subparagraph (ii) of that subsection, the Director may— 35

(a) request further information regarding the outcome of the clarification or resolution, as the case may be, or

(b) request confirmation that the complaint has been resolved,

from the complainant, the person who is the subject of the complaint or the relevant person, as the Director considers appropriate. 40

- (4B) If the Director is not satisfied, following the receipt of the information or confirmation referred to in subsection (4A), that the clarification or resolution referred to in that subsection has satisfactorily resolved the complaint, the Director may make an application to the court in accordance with subsection (2)(a) or may take such other steps as he or she considers appropriate in order to resolve the complaint.” 5
- (g) in subsection (5)—
- (i) in paragraph (a), by the deletion of “or (4)”, and
- (ii) in paragraph (b), by the substitution of “subsection (3) or (7)(b)” for “subsection (3)”, 10
- and
- (h) by the insertion of the following subsections after subsection (5):
- “(6) The Director shall, in accordance with this section, investigate a complaint under subsection (1) unless in his or her opinion there has been undue delay in making the complaint. 15
- (7) A decision by the Director under subsection (6) not to investigate a complaint—
- (a) shall be in writing, shall contain the reasons for the decision and shall be sent to the complainant as soon as possible after it is made, and 20
- (b) may be appealed by the complainant to the court not later than 3 months after the date of receipt by the complainant of the decision.
- (8) In this section a reference to an act includes a reference to an omission and a reference to the doing of an act includes a reference to the making of an omission.”. 25

Amendment of section 31 of Principal Act

26. The Principal Act is amended by the substitution of the following section for section 31:

“Regulations – Part 4

31. The Minister, having regard to the requirements of this Part, shall prescribe by regulations the following matters: 30
- (a) the bodies or classes of persons referred to in section 25(3)(a) and section 25(4)(a), who may inspect the Register or receive an authenticated copy of a co-decision-making agreement, as the case may be;
- (b) the class of healthcare professionals under section 21(4)(f), 26(3) (b), 28(4)(c) and 29(4)(b); 35
- (c) the fees to be paid in connection with—
- (i) an application to register a co-decision-making agreement or a varied co-decision-making agreement,

- (ii) an objection to an application to register a co-decision-making agreement or a varied co-decision-making agreement,
- (iii) the issue of an authenticated copy of a co-decision-making agreement, and
- (iv) the notification to the Director of the revocation or revocation in part of a co-decision-making agreement; 5
- (d) the circumstances in which the fees referred to in paragraph (c) may be waived by the Director.”.

Insertion of new section 31A into Principal Act

27. The Principal Act is amended by the insertion of the following section: 10

“Matters to be specified by Director in relation to co-decision-making agreements

31A. The Director may, with the consent of the Minister, specify in writing the following:

- (a) the form of a co-decision-making agreement; 15
- (b) the form of an application under sections 21(2) and 28(3) to register a co-decision-making agreement and a varied co-decision-making agreement;
- (c) the form of notice under sections 21(3) and 28(4) of an application to register a co-decision-making agreement and a varied co-decision-making agreement; 20
- (d) the form of references under section 21(4)(g) as to the personal character of a co-decision-maker;
- (e) the form of notice by the applicants under section 22(8);
- (f) the form of an objection under section 24 to the registration of a co-decision-making agreement and a varied co-decision-making agreement; 25
- (g) the form of a report under section 27 to be submitted by a co-decision-maker to the Director;
- (h) the form of revocation, or revocation in part, under section 29(2) of a co-decision-making agreement; 30
- (i) the form of notice of the revocation, or revocation in part, of a registered co-decision-making agreement under section 29(4A) to the persons specified in section 21(3).”.

Amendment of section 36 of Principal Act

35

28. Section 36 of the Principal Act is amended—

- (a) in subsection (4)—
 - (i) by the insertion of the following paragraphs after paragraph (c):

- “(ca) the cohabitant of the relevant person,
 - (cb) a child of the relevant person who has attained the age of 18 years,”
- and
- (ii) by the substitution of the following paragraph for paragraph (g): 5
 - “(g) an attorney or an attorney under the Act of 1996 for the relevant person,”
 - (b) in subsection (8)(b), by the substitution of “the court, having regard to the known will and preferences of the relevant person,” for “the court”, and
 - (c) by the insertion of the following subsection after subsection (11): 10
 - “(12) In this section—
 - (a) a reference to a spouse of a relevant person shall not include a person where, at the time at which the application is made under subsection (1)—
 - (i) a decree of judicial separation has been granted to either the relevant person or his or her spouse by a court in the State or any decree has been so granted by a court outside the State and is recognised in the State as having like effect, 15
 - (ii) a written agreement to separate has been entered into between the relevant person and his or her spouse, or 20
 - (iii) subject to section 2(2), the relevant person and his or her spouse have separated and have ceased to cohabit for a continuous period of 12 months,
 - (b) a reference to a civil partner of a relevant person shall not include a person where, at the time at which the application is made under subsection (1)— 25
 - (i) a written agreement to separate has been entered into between the relevant person and his or her civil partner, or
 - (ii) subject to section 2(2), the civil partners have separated and have ceased to cohabit for a continuous period of not less than 12 months, 30
- and
- (c) subject to section 2(2), a reference to a cohabitant of a relevant person shall not include a person where, at the time at which the application is made under subsection (1), the relevant person and his or her cohabitant have separated and have ceased to cohabit for a continuous period of not less than 12 months.”. 35

Amendment of section 38 of Principal Act

29. Section 38 of the Principal Act is amended by the insertion of the following subsection

after subsection (8):

“(8A) Notwithstanding subsection (2)(b), the court, in making a decision-making representation order in the circumstances where subsection (1)(a) or section 55(4) applies, shall—

- (a) in attaching any conditions under subsection (8)(c), take into account the application of section 41(3) to the decision-making representative, and
- (b) make provision for the decision-making representation order to cease to have effect on the date of registration of a co-decision-making agreement in relation to the relevant person under Part 4.”.

Amendment of section 39 of Principal Act

30. Section 39(1)(g) of the Principal Act is amended by the substitution of “section 15A, 34,” for “section 34,”.

Amendment of section 40 of Principal Act

31. Section 40(4) of the Principal Act is amended—

- (a) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34,” and
- (b) in paragraph (h), by the substitution of the following subparagraph for subparagraph (iii):

“(iii) has an enduring power of attorney that is the subject of a notification that has been accepted by the Director under section 71C, or an enduring power under the Act of 1996 that has been registered, in respect of himself or herself, or”.

Amendment of section 41 of Principal Act

32. Section 41 of the Principal Act is amended by the insertion of the following subsection after subsection (2):

“(3) Notwithstanding subsection (2), a decision-making representative appointed in circumstances where section 38(1)(a) or section 55(4) applies shall ensure, in so far as is practicable, that he or she jointly makes decisions with the relevant person.”.

Amendment of section 42 of Principal Act

33. Section 42 of the Principal Act is amended by the insertion of the following subsections after subsection (2):

“(3) Subject to subsection (4), where a decision-making representative is appointed by the court in the circumstances to which section 38(7) applies and—

| | |
|--|----|
| <ul style="list-style-type: none"> (a) the court makes an order to which subsection (1) refers that the decision-making representative shall not be entitled to be reimbursed out of the assets of the relevant person in respect of his or her fair and reasonable expenses reasonably incurred in performing his or her functions, | 5 |
| <ul style="list-style-type: none"> (b) the court has not made a direction under subsection (2), or | |
| <ul style="list-style-type: none"> (c) where paragraph (a) or (b) does not apply, but the assets of the relevant person are insufficient to pay the relevant reimbursement or remuneration, as the case may be, | |
| <p>the Director may—</p> | 10 |
| <ul style="list-style-type: none"> (i) reimburse the decision-making representative in respect of his or her fair and reasonable expenses reasonably incurred in performing his or her functions as decision-making representative, or | |
| <ul style="list-style-type: none"> (ii) pay such reasonable remuneration to the decision-making representative in relation to the performance of his or her functions as decision-making representative and which functions are carried out in connection with his or her trade or profession, or in other exceptional circumstances specified by the Director. | 15 |
| <p>(4) The reimbursement of expenses referred to in subsection (3)(i) and the payment of remuneration referred to in subsection (3)(ii)—</p> | 20 |
| <ul style="list-style-type: none"> (a) shall be calculated in accordance with such guidance, and | |
| <ul style="list-style-type: none"> (b) shall be paid subject to such conditions, | |
| <p>as may be prescribed by regulations made by the Minister, with the consent of the Minister for Public Expenditure and Reform.”.</p> | |
| <p>Amendment of section 43 of Principal Act</p> | 25 |
| <p>34. Section 43 of the Principal Act is amended by the deletion of subsections (3) to (5).</p> | |
| <p>Amendment of section 44 of Principal Act</p> | |
| <p>35. Section 44 of the Principal Act is amended by the deletion of subsections (5) to (8).</p> | |
| <p>Amendment of section 45 of Principal Act</p> | |
| <p>36. Section 45 of the Principal Act is amended—</p> | 30 |
| <ul style="list-style-type: none"> (a) in subsection (3)— | |
| <ul style="list-style-type: none"> (i) by the substitution of “The Director shall make such details of the Register as he or she shall specify” for “The Director shall make the Register”, and | |
| <ul style="list-style-type: none"> (ii) in paragraph (b), by the substitution of “inspecting those details of the Register” for “inspecting the Register”, | 35 |
| <ul style="list-style-type: none"> (b) in subsection (4), by the substitution of “or part thereof, or, where applicable, any variations to the order or part thereof,” for “or part thereof,” and | |

(c) by the insertion of the following subsections after subsection (4):

“(5) An authenticated copy of a decision-making representation order or part thereof, or, where applicable, any variations to the order or part thereof, that is issued by the Director under subsection (4) and stamped by the Director with a time and date stamp (which may be by automated means), shall be evidence of the contents of the order or part thereof, or where applicable, of any variations to the order or part thereof, as at the date and time indicated on the stamp. 5

(6) The Director shall keep a record of any body or person that has inspected the Register or received an authenticated copy of a decision-making representation order, or part thereof, or where applicable, of any variations to the order or part thereof, from him or her.”. 10

Amendment of section 46 of Principal Act

37. Section 46 of the Principal Act is amended— 15

(a) in subsection (3), by the substitution of “specified by the Director, with the consent of the Minister,” for “prescribed by regulations made by the Minister”,

(b) by the deletion of subsection (4),

(c) in subsection (6)(b), by the substitution of “Director, by a general visitor” for “Director”, and 20

(d) in subsection (8)(a)—

(i) by the substitution of “specifications made by the Director under subsection (3)” for “regulations made by the Minister”, and

(ii) by the substitution of “relevant specifications” for “relevant regulations”.

Amendment of section 47 of Principal Act 25

38. Section 47 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the substitution of “one or both of” for “one or more of”, and

(ii) in paragraph (a)—

(I) by the substitution of “the scope of, or in breach of,” for “the scope of”, 30
and

(II) by the substitution of “order, or in breach of this Act” for “order”,

(b) by the insertion of the following subsections after subsection (1):

“(1A) Following the receipt of a complaint under subsection (1) the Director shall carry out an investigation of the matter which is the subject of the complaint and shall, subject to subsection (1B), form a view as to whether or not the complaint is well founded not later than 3 months 35

after the date of his or her receipt of the complaint (in this section referred to as the ‘initial investigation period’).

(1B) The Director may, before the date of expiry of the initial investigation period, extend the duration of his or her investigation by a period of up to 6 months from that date by sending written notice to the complainant, the person who is the subject of the complaint and the relevant person concerned giving reasons for the extension.”, 5

(c) in subsection (2)—

(i) by the substitution of “The Director shall, as soon as is practicable after having formed a view under subsection (1A)” for “Following the receipt of a complaint under subsection (1), the Director shall carry out an investigation of the matter which is the subject of the complaint and”, 10

(ii) in paragraph (a), by the substitution of “complaint,” for “complaint, or”, and

(iii) by the insertion of the following paragraph after paragraph (a):

“(aa) notwithstanding paragraph (a), where he or she is of the view that the complaint is well founded and that— 15

(i) the provision of clarification by him or her to the decision-making representative regarding the role of the decision-making representative would be an appropriate resolution, or 20

(ii) the subject matter of the complaint could be appropriately resolved under section 96(4),

the Director may, not later than 3 months after having completed his or her investigation, and having obtained the written consent of the complainant, the person who is the subject of the complaint and the relevant person concerned or, where the written consent of the relevant person cannot be obtained, having determined it to be, to the greatest extent possible, the will and preference of the relevant person, provide the clarification referred to in subparagraph (i), or proceed to resolve the complaint as soon as possible under section 96(4), as the case may be, and”, 25 30

(d) in subsection (3), by the substitution of “3 months” for “21 days”,

(e) in subsection (4), by the substitution of “investigation, to which this section shall, with any necessary modifications, apply” for “investigation and make an application to the court for a determination in relation to any matter specified in subsection (1)”, 35

(f) by the insertion of the following subsections after subsection (4):

“(4A) Where subsection (2)(aa) applies and the Director has provided the clarification referred to in subparagraph (i) of that subsection or has resolved the complaint under section 96(4) as referred to in subparagraph (ii) of that subsection, the Director may— 40

- (a) request further information regarding the outcome of the clarification or resolution, as the case may be, or
- (b) request confirmation that the complaint has been resolved,
 - from the complainant, the person who is the subject of the complaint or the relevant person, as the Director considers appropriate. 5
- (4B) If the Director is not satisfied, following the receipt of the information or confirmation referred to in subsection (4A), that the clarification or resolution referred to in that subsection has satisfactorily resolved the complaint, the Director may make an application to the court in accordance with subsection (2)(a) or may take such other steps as he or she considers appropriate in order to resolve the complaint.” 10
- (g) in subsection (5)—
 - (i) in paragraph (a), by the deletion of “or (4)”, and
 - (ii) in paragraph (b), by the substitution of “subsection (3) or (7)(b)” for “subsection (3)”, 15
 and
- (h) by the insertion of the following subsections after subsection (5):
 - “(6) The Director shall, in accordance with this section, investigate a complaint under subsection (1) unless in his or her opinion there has been undue delay in making the complaint. 20
 - (7) A decision by the Director under subsection (6) not to investigate a complaint—
 - (a) shall be in writing, shall contain the reasons for the decision and shall be sent to the complainant as soon as possible after it is made, and 25
 - (b) may be appealed by the complainant to the court not later than 3 months after the date of receipt by the complainant of the decision.
 - (8) In this section a reference to an act includes a reference to an omission and a reference to the doing of an act includes a reference to the making of an omission.”. 30

Amendment of section 50 of Principal Act

39. Section 50(2)(a) of the Principal Act is amended by the deletion of the words “(including reports relating to the cognitive ability of that person)”.

Amendment of section 54 of Principal Act

40. Section 54 of the Principal Act is amended— 35

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) An application for a declaration under section 55(1) in respect of a ward who has attained the age of 18 years by the date of

commencement of this Part may be made to the wardship court at any time—

- (a) by the ward,
- (b) by the committee of the ward, or
- (c) with the consent of the wardship court, by— 5
 - (i) a relative or friend of the ward who has had such personal contact with the ward over such period of time that a relationship of trust exists between them, or
 - (ii) such other person as appears to the wardship court to have a sufficient interest in, or expertise in relation to, the welfare of the ward.”, 10

and

- (b) by the substitution, in subsection (2)(a), of “is 18 years or older” for “reaches the age of 18 years”.

Insertion of new section 54A into Principal Act 15

41. The Principal Act is amended by the insertion of the following section after section 54:

“Assistance to ward during proceedings

54A. (1) The wardship court, on application being made to it under section 54(1), or in proceedings pursuant to section 54(2) or 54(3), may allow the ward, if he or she has not instructed a legal practitioner, and subject to section 100(13), to be assisted in court by a court friend for the ward unless, subject to sections 100(14) and 103(15A), there is another person (in this section referred to as a ‘court assistant’) in respect of whom the court, having regard to the known will and preferences of the ward, is satisfied that such person is suitable, willing and able to assist the ward during the course of the hearing. 20 25

- (2) Where, on an application being made to the wardship court under section 54(1), or in proceedings pursuant to section 54(2) or 54(3)—
 - (a) the ward the subject of the application or proceedings has not instructed a legal practitioner, 30
 - (b) there is no court friend for the ward, and
 - (c) there is no court assistant in respect of the ward,

the wardship court may direct the Director to appoint a court friend for the ward.

- (3) Proceedings under section 54 shall be conducted with the least amount of formality consistent with the proper administration of justice.”. 35

Amendment of section 55 of Principal Act

42. Section 55 of the Principal Act is amended—

- (a) in subsection (2)—
 - (i) by the substitution of “person the subject of the declaration be” for “former ward be”, and
 - (ii) by the substitution of “that person.” for “the former ward.”,
 - (b) in subsection (3)— 5
 - (i) by the substitution of “person the subject of the declaration be” for “former ward be”, and
 - (ii) by the substitution of “that person.” for “former ward.”,
 - (c) in subsection (4)—
 - (i) by the substitution of “wardship court makes” for “court makes”, 10
 - (ii) in paragraph (a), by the substitution of “person the subject of the declaration after his or her discharge from wardship” for “former ward”,
 - (iii) in paragraph (b), by the substitution of “person the subject of the declaration after his or her discharge from wardship” for “former ward”,
 - (iv) in paragraph (i), by the substitution of “such orders and give such directions” 15 for “such orders”, and
 - (v) by the substitution of the following paragraphs for paragraph (ii):
 - “(ii) discharge the ward from wardship upon the appointment of a decision-making representative in respect of him or her, and
 - (iii) order that the property of the person the subject of the discharge 20 under paragraph (ii) be returned to him or her upon the appointment of a decision-making representative in respect of him or her.”,
 - (d) in subsection (5)—
 - (i) in paragraph (a), by the substitution of “such orders and give such 25 directions” for “such orders”, and
 - (ii) by the substitution of the following paragraphs for paragraph (b):
 - “(b) discharge the ward from wardship upon the appointment of a decision-making representative in respect of him or her, and
 - (c) order that the property of the person the subject of the discharge 30 from wardship under paragraph (b) be returned to him or her upon the appointment of a decision-making representative in respect of him or her.”,
- and
- (e) by the insertion of the following subsections after subsection (5): 35
 - “(6) Where the wardship court is making an order or giving a direction under Part 5, to which subsection (4)(i) or subsection (5)(a) refers, subsections (4) to (12) and subsection (14) of section 38 shall apply

with any necessary modifications, and as if the ward, or the person the subject of a discharge from wardship under subsection (4)(ii) or (5)(b), as the case may be, were a relevant person.

- (7) Sections 39 to 44 and sections 46 and 47 shall apply to decision-making representatives appointed, or to be appointed, by a wardship court under Part 5 as they apply to decision-making representatives appointed, or to be appointed, by a court under Part 5. 5
- (8) A reference in section 45 to a decision-making representation order includes a reference to a decision-making representation order made by a wardship court.”. 10

Insertion of new section 55A into Principal Act

43. The Principal Act is amended by the insertion of the following section after section 55:

“Review of declaration by wardship court as respects capacity

55A. (1) Where the wardship court makes a declaration under section 55(1)(b), the wardship court shall make an order that the capacity of the person the subject of the declaration be reviewed by the court— 15

- (a) subject to paragraph (b), not later than 12 months from the date on which the wardship court made the declaration, or
- (b) not later than 3 years from the date on which the wardship court made the declaration if the wardship court is satisfied that the person is unlikely to recover his or her capacity, 20

and section 49(4) shall apply in respect of the review as it applies to the review of a declaration by a court under section 37(1), with the following modifications:

- (i) a reference in section 49(4) to the declaration made by the court under section 37(1) shall be read as a reference to the declaration made by the wardship court under section 55(1)(b); 25
- (ii) a reference in section 49 to the relevant person shall be read as a reference to the person the subject of the declaration of the wardship court under section 55(1)(b). 30

(2) After the review referred to in subsection (1) has taken place, section 49 shall thereafter apply to the declaration by the wardship court under section 55(1)(b) as it applies to a declaration by a court under section 37(1), with the following modifications:

- (a) a reference in section 49 to a declaration made by the court under section 37(1) shall be read as a reference to a declaration made by the wardship court under section 55(1)(b); 35
- (b) a reference in section 49 to a relevant person shall be read as a reference to the person the subject of the declaration of the wardship court under section 55(1)(b); 40

- (c) a reference in section 49(1) to any of the persons referred to in any of paragraphs (b) to (i) of section 36(4) shall be read as a reference to any person who has attained the age of 18 years and who has a *bona fide* interest in the welfare of the person the subject of the declaration of the wardship court under section 55(1)(b).” 5

Amendment of section 58 of Principal Act

44. Section 58 of the Principal Act is amended by the substitution of the following definition for the definition of “trust corporation”:

“ ‘trust corporation’ has the same meaning as it has in paragraph (b) of the definition of ‘trust corporation’ in section 30(4) of the Succession Act 1965.” 10

Insertion of new sections 58A and 58B into Principal Act

45. The Principal Act is amended by the insertion of the following sections after section 58:

“Provisions regarding trust corporations

58A. (1) The Director shall, with the consent of the Minister, specify from time to time the procedural requirements that a trust corporation shall be required to fulfil— 15

- (a) on an application for registration of an instrument creating an enduring power of attorney in which the trust corporation is named as an attorney in order for the Director to be satisfied as to the suitability for appointment of the trust corporation as attorney, and 20

(b) on a notification by an attorney under section 71A.

(2) Without prejudice to the generality of subsection (1), the Director may, with the consent of the Minister, specify the following matters:

- (a) the information and documents that are to be provided by the trust corporation to the Director on an application for registration of an instrument creating an enduring power of attorney, which may include— 25

(i) an affidavit, or a statement of truth within the meaning of section 21 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, that the trust corporation can lawfully act as such and an undertaking to notify the Director forthwith if this changes at any time throughout the duration of the appointment as attorney, 30

(ii) information and supporting documents to demonstrate the internal management of the trust corporation and the supervision and controls operated by it, in particular with regard to— 35

(I) the decision making process of the trust corporation,

- (II) the manner in which the trust corporation may hold a donor's assets and funds, and
- (III) the manner in which those assets and funds may be paid out,
- (iii) the total amount of assets and funds of donors held by the trust corporation and the level of insurance cover that the trust corporation has and shall maintain in respect of loss, through dishonesty, breach of duty, negligence or any other cause, to the assets and funds, and 5
- (iv) information regarding any additional regulation to which that the trust corporation is and will be subject, 10
- (b) the information and documents required to be provided to demonstrate the identity and manner of authorisation of the persons authorised to carry out any or all of the actions referred to in subsection (3), and
- (c) the information and documents to be provided to the Director on notification under section 71A, in particular regarding the authorisation of any further persons to whom paragraph (b) refers. 15
- (3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof (in this section referred to as an 'authorised officer') may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the Director or an enduring power of attorney may require, and the acts of an authorised officer shall be binding on the trust corporation. 20
- (4) The requirement in section 59(1) regarding the minimum age of an attorney shall not apply to a trust corporation. 25

Liability of officers of trust corporation for offences

- 58B.** (1) Where an offence under section 80 or section 145 has been committed by a trust corporation and the doing of the acts that constituted the offence has been authorised, or consented to, or connived in, by a person, being a director, manager, chief executive officer, secretary, or other similar officer of the trust corporation, or a person who purports to act in any such capacity, that person as well as the trust corporation shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 30
- (2) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the trust corporation concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the trust corporation, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that that person consented to the doing of the acts by the trust corporation which constituted the commission by it of the offence concerned under section 80 or 145. 35 40

- (3) Where the affairs of a trust corporation are managed by its members, subsections (1) and (2) shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the trust corporation.”.

Amendment of section 59 of Principal Act

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46. Section 59 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the substitution of “sections 58A, 60,” for “sections 60,”, and

(ii) in paragraph (a), by the substitution of “donor’s personal welfare or property and affairs, or both;” for “donor’s property and affairs; or”,

10

(b) in subsection (2), by the substitution of “this Part, regulations made under section 79 and specifications made by the Director under section 79A” for “this Part and regulations made under section 79”,

(c) in subsection (3), by the substitution of “acting as attorney, or resigns from his or her role as attorney” for “acting as attorney”,

15

(d) by the substitution of the following subsection for subsection (4):

“(4) An enduring power of attorney shall not enter into force until—

(a) the instrument creating the enduring power of attorney has been registered under section 69,

(b) the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power,

20

(c) the Director has been notified under section 71A of the matters in paragraph (b), and

(d) the Director accepts the notification under section 71C.”,

and

25

(e) by the insertion of the following subsections after subsection (5):

“(5A) Where an enduring power of attorney confers authority under paragraph (a) or (b) of subsection (1) in relation to the personal welfare of the donor, this shall not authorise the attorney to consent to or refuse treatment for the donor.

30

(5B) A donor shall not, in an enduring power of attorney, purport to give a power to the attorney to consent to or refuse treatment for the donor and any provision of a power of attorney relating to such purported power shall be null and void.”.

Amendment of section 60 of Principal Act

35

47. Section 60(1) of the Principal Act is amended—

- (a) in paragraph (a)(iii), by the substitution of “registration, and on or after its registration until the attorney notifies the Director under section 71A that the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power of attorney and this notification has been accepted by the Director under section 71C” for “registration”, 5
- (b) in paragraph (b)(ii), by the substitution of “registration, and on or after its registration until the attorney notifies the Director under section 71A that the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power of attorney and this notification has been accepted by the Director under section 71C” for “registration”, and 10
- (c) in paragraph (e)(v), by the substitution of “power, and in relation to notification of the Director under section 71A when the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power” for “power”. 10

Amendment of section 65 of Principal Act 15

48. Section 65(1) of the Principal Act is amended—

- (a) in paragraph (a), by the substitution of “attorney, or the person or property of a child of that person” for “attorney”,
- (b) in paragraph (b), by the substitution of “attorney, or a child of that person” for “attorney”, and 20
- (c) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34,”.

Amendment of section 66 of Principal Act

49. Section 66(4) of the Principal Act is amended—

- (a) in paragraph (g), by the substitution of “section 15A, 34,” for “section 34,”, and
- (b) in paragraph (h), by the substitution of the following subparagraph for subparagraph (iii): 25
 - “(iii) has executed as a donor an enduring power of attorney that has been the subject of a notification under section 71A that has been accepted by the Director under section 71C or has executed as a donor an enduring power under the Act of 1996 that has been registered under that Act,”. 30

Amendment of section 67 of Principal Act

50. The Principal Act is amended by the substitution of the following section for section 67:

“Function of court prior to acceptance of notification

67. On application to it by any interested party, the court may, where it has reason to believe that the donor of an enduring power of attorney that has been registered under section 69 lacks capacity in relation to one or more relevant decisions, exercise any power which would become exercisable under section 77(3) on the acceptance by the Director under section 71C 35

of a notification under section 71A and the court may do so whether or not the attorney concerned has so notified the Director.”.

Amendment of section 68 of Principal Act

51. Section 68 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1): 5
 “(1) The donor, or, with the donor’s written consent, his or her attorney, shall, not later than 3 months after the date of the execution of an instrument creating an enduring power of attorney or the date of receipt of all completed supporting documentation, whichever is the later, make an application to the Director, in accordance with this Part 10 and any regulations and specifications made thereunder, to register the instrument creating the enduring power of attorney.”,
- (b) in subsection (2), by the substitution of “form as specified by the Director under section 79A” for “form”,
- (c) in subsection (3)— 15
 - (i) by the substitution of “donor, or, as the case may be, his or her attorney, shall” for “attorney shall”,
 - (ii) by the substitution of “specified by the Director under section 79A” for “prescribed”,
 - (iii) by the substitution of the following paragraph for paragraph (a): 20
 “(a) where the application was made by the attorney, the donor,”,
 - (iv) by the insertion of the following paragraph after paragraph (a):
 “(aa) where the application was made by the donor, his or her attorney or attorneys, as the case may be,”,
and 25
 - (v) by the substitution of the following paragraph for paragraph (j):
 “(j) any other person or persons as may be specified by the donor in the instrument creating the enduring power of attorney as a person or persons to whom notice shall be given under this section and section 71A(3) and where there are fewer than 3 persons to whom 30 notice may be given pursuant to paragraphs (a) to (i), the donor shall so specify at least 2 persons.”,
- (d) by the insertion of the following subsections after subsection (3):
 “(3A) Subsection (3)(b) shall not apply—
 - (a) in relation to the spouse of a donor, where, at the time at which the 35 application is made under subsection (1)—
 - (i) a decree of judicial separation has been granted to either the donor or his or her spouse by a court in the State or any decree

- has been so granted by a court outside the State and is recognised in the State as having like effect,
- (ii) a written agreement to separate has been entered into between the donor and his or her spouse, or
 - (iii) subject to section 2(2), the donor and his or her spouse have separated and have ceased to cohabit for a continuous period of 12 months,
- and
- (b) in relation to the civil partner of a donor, where, at the time at which the application is made under subsection (1)—
 - (i) a written agreement to separate has been entered into between the donor and his or her civil partner, or
 - (ii) subject to section 2(2), the civil partners have separated and have ceased to cohabit for a continuous period of not less than 12 months.
- (3B) Subject to section 2(2), subsection (3)(c) shall not apply in relation to the cohabitant of a donor where, at the time at which the application is made under subsection (1), the donor and his or her cohabitant have separated and have ceased to cohabit for a continuous period of not less than 12 months.”,
- (e) in subsection (4), by the substitution of “A donor or attorney, as the case may be, may,” for “An attorney may,”
 - (f) by the deletion of subsections (5) and (6),
 - (g) in subsection (7)—
 - (i) by the deletion of paragraph (b),
 - (ii) by the substitution of “donor” for “appointer” in paragraph (c), and
 - (iii) by the substitution of the following paragraph for paragraph (e):
 - “(e) where a trust corporation is named as an attorney, the information and documents specified by the Director under section 58A(2), and”,
- and
- (h) by the deletion of subsection (8).

Amendment of section 69 of Principal Act

52. Section 69 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by the substitution of “60 and” for “60, 62 and”,
 - (ii) by the insertion of the following paragraph after paragraph (c):

- “(ca) where a trust corporation is named as an attorney, that it has complied with the requirements specified by the Director under section 58A,”
- and
- (iii) in paragraph (d), by the deletion of “section 61 and”, 5
- (b) by the insertion of the following subsections after subsection (1):
- “(1A) Where the instrument creating the enduring power of attorney differs in an immaterial respect from the form specified by the Director under section 79A(1)(a), the Director may, notwithstanding such difference, treat the enduring power of attorney and the instrument creating it as being in accordance with the form specified by the Director under section 79A(1)(a), if he or she thinks it appropriate to do so. 10
- (1B) If the notice requirements under section 68(3) for registering an enduring power of attorney have not been complied with, the Director may, if he or she is satisfied that all reasonable efforts have been made to satisfy the notice requirements, make an application to the court for permission to treat the criteria under subsection (1)(d) as having been met.” 15
- (c) in subsection (5), by the substitution of “A donor” for “An attorney”,
- (d) in subsection (8), by the substitution of “For the purposes of subsection (7), a document” for “A document”, and 20
- (e) by the insertion of the following subsection after subsection (8):
- “(9) Once the Director has registered or has refused to register under this section an instrument creating an enduring power of attorney, the donor concerned, or, with his or her written consent, his or her attorney, shall, as soon as practicable, give notice to the persons referred to in section 68(3) (other than those to whom subsections (3A) and (3B) of that section relate) of that registration or refusal, as the case may be, in the form specified by the Director under section 79A.”. 25 30

Amendment of section 71 of Principal Act

53. Section 71 of the Principal Act is amended—

- (a) in subsection (2)—
- (i) in paragraph (a), by the substitution of “60” for “60, 62”,
- (ii) in paragraph (b), by the deletion of “section 61 or” and 35
- (iii) in paragraph (c), by the substitution of “lacks” for “does not lack”,
- and
- (b) in subsection (3)(b)—
- (i) by the substitution of “with the donor” for “with the attorney”, and

- (ii) by the substitution of “with the attorney” for “the donor”.

Insertion of new sections 71A to 71D into Principal Act

54. The Principal Act is amended by the insertion of the following sections after section 71:

“Notification to Director by attorney

- 71A.** (1) Where an attorney has reason to believe that a donor lacks capacity in relation to one or more relevant decisions that are the subject of an instrument creating an enduring power of attorney that was executed by the donor and registered under section 69, the attorney shall, as soon as is practicable, so notify the Director, in compliance with this Part and in the form specified by the Director under section 79A. 5 10
- (2) A notification to the Director under subsection (1) shall be accompanied by—
- (a) the fee prescribed by the Minister under section 79,
 - (b) a statement by each of 2 persons, each being either—
 - (i) a registered medical practitioner, or 15
 - (ii) such other healthcare professional of a class that shall be prescribed by the Minister under section 79,
that in his or her opinion the donor lacks capacity in relation to one or more relevant decisions which are the subject of the enduring power, and 20
 - (c) a copy of any notice given under subsection (3).
- (3) The attorney shall, at the same time as he or she notifies the Director under subsection (1), give notice in the form specified by the Director under section 79A of the application, and give a copy of the instrument creating an enduring power of attorney, to the following persons: 25
- (a) the donor;
 - (b) a spouse or civil partner (if any) of the donor;
 - (c) the cohabitant (if any) of the donor;
 - (d) any children of the donor who have attained the age of 18 years;
 - (e) any decision-making assistant for the donor; 30
 - (f) any co-decision-maker for the donor;
 - (g) any decision-making representative for the donor;
 - (h) any designated healthcare representative for the donor;
 - (i) any other attorney for the donor or attorney under the Act of 1996 in respect of the donor; 35
 - (j) any other person or persons that were specified by the donor in the instrument creating the enduring power of attorney as a person or

persons to whom notice shall be given under this section and section 68(3).

- (4) Subsection (3)(b) shall not apply—
- (a) in relation to the spouse of a donor, where, at the time at which the notification is made under subsection (1)— 5
 - (i) a decree of judicial separation has been granted to either the donor or his or her spouse by a court in the State or any decree has been so granted by a court outside the State and is recognised in the State as having like effect,
 - (ii) a written agreement to separate has been entered into between the donor and his or her spouse, or 10
 - (iii) subject to section 2(2), the donor and his or her spouse have separated and have ceased to cohabit for a continuous period of 12 months,and 15
 - (b) in relation to the civil partner of a donor, where, at the time at which the notification is made under subsection (1)—
 - (i) a written agreement to separate has been entered into between the donor and his or her civil partner, or
 - (ii) subject to section 2(2), the civil partners have separated and have ceased to cohabit for a continuous period of not less than 12 months. 20
- (5) Subject to section 2(2), subsection (3)(c) shall not apply in relation to the cohabitant of a donor where, at the time at which the notification is made under subsection (1), the donor and his or her cohabitant have separated and have ceased to cohabit for a continuous period of not less than 12 months. 25
- (6) An attorney may, before making a notification under subsection (1), apply to the court for a determination on any question as to the validity of the enduring power of attorney in question. 30
- (7) Where an attorney has made a notification under subsection (1), then pending acceptance of the notification by the Director under section 71C, the attorney, or if more than one attorney has been appointed to act jointly or jointly and severally, as the case may be, any one of them, may take action under the enduring power of attorney in question— 35
- (a) to maintain the donor or prevent loss to the donor’s assets,
 - (b) to the extent permitted by the enduring power, to make a relevant decision which cannot reasonably be deferred until the notification has been accepted, or 40

- (c) to remunerate the attorney or other persons in so far as that is permitted under the power.
- (8) Following the taking of an action pursuant to subsection (7), an attorney shall report to the Director—
 - (a) what action he or she took, 5
 - (b) the reasons as to why the action could not be deferred until after acceptance by the Director of the notification,
 - (c) any measures he or she took to encourage the donor to participate in the action taken, and
 - (d) the outcome of the action. 10
- (9) Where there is more than one attorney appointed under an enduring power of attorney, any two or more of the attorneys may make a joint notification under subsection (1).

Objections to acceptance by Director of notification

- 71B.** (1) Any of the persons referred to in paragraphs (a) to (j) of section 71A(3) (other than those to whom subsections (4) and (5) of that section relate), or any other person who appears to the Director to have sufficient interest or expertise in the welfare of the donor, may, no later than 5 weeks from the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed acceptance of the notification made under section 71A. 15 20
- (2) An objection under subsection (1) shall be in such form as specified by the Director under section 79A and shall be accompanied by such fee as shall be prescribed by regulations made under section 79 and may be made on one or more of the following grounds: 25
- (a) that the notification was not made in accordance with section 71A;
 - (b) that the notice requirements of section 71A(3) were not complied with;
 - (c) that the donor does not lack capacity; 30
 - (d) that a false statement is included in the notification to the Director.
- (3) Where the Director receives an objection under subsection (1) that is in accordance with subsection (2) and that was made within the period specified in subsection (1), he or she shall—
- (a) review the objection, 35
 - (b) consult with the attorney,
 - (c) unless he or she thinks it inappropriate to do so, consult with the donor, and
 - (d) consult with such other persons as he or she considers relevant, and shall, where he or she decides that— 40

- (i) the objection is not well founded, notify the donor, the attorney and the person who made the objection of his or her decision, provide reasons for that decision and proceed, subject to section 71C, to accept the notification of the instrument concerned and to register the acceptance in the Register, or 5
- (ii) the objection is well founded, notify the donor, the attorney and the person who made the objection of his or her decision and refuse under section 71C to accept the notification.
- (4) A person who has been notified under subsection (3) of the Director's decision may, not later than 21 days after the date of issue of the notification by the Director, appeal the decision concerned to the court. 10
- (5) Upon an appeal under subsection (4), the court may—
 - (a) where the Director has made a decision to which subsection (3)(i) refers— 15
 - (i) affirm the decision of the Director, or
 - (ii) require the Director to refuse to, or as the case may be, rescind, his or her acceptance of the notification under section 71C and to make any appropriate modifications to the Register,
 - (b) where the Director has made a decision to which subsection (3)(ii) refers— 20
 - (i) affirm the decision of the Director, or
 - (ii) declare that the objection was not well founded and require the Director to proceed to consider, in accordance with section 71C, the notification under section 71A, taking the court's declaration into account, 25

or

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

Acceptance by Director of notification

- 71C.** (1) On receipt of a notification under section 71A, the Director shall review the notification and any objections received under section 71B and shall carry out such reasonable enquiries as he or she considers necessary in order to establish whether the following criteria are met: 30
- (a) notice has been given in accordance with section 71A;
 - (b) the application is in accordance with section 71A. 35
- (2) Where, after reviewing a notification under section 71A, the Director is satisfied that the notification is in order, he or she shall, subject to section 71B, accept the notification and note the fact of the acceptance on the Register.
- (3) Where, after reviewing an application under section 71A, the Director forms the view that one or more of the criteria in paragraphs (a) and 40

- (b) of subsection (1) are not satisfied, he or she shall notify the attorney and the donor of his or her view, provide reasons for that view and give the attorney and the donor an opportunity, within a reasonable timeframe specified by the Director, to respond.
- (4) Following a review of any response received pursuant to subsection (3), the Director shall— 5
- (a) where he or she is of the view that the criteria set out in paragraphs (a) and (b) of subsection (1) are satisfied, accept, subject to section 71B, the notification and note the fact of the acceptance in the Register, or 10
- (b) where he or she remains of the view that one or more of the criteria set out in paragraphs (a) and (b) of subsection (1) is not satisfied, refuse to accept the notification and notify the attorney and the donor of that fact and the reasons for his or her view.
- (5) An attorney whose notification under section 71A is not accepted may, not later than 21 days after the date of issue of the notification by the Director under subsection (4)(b), appeal the refusal by the Director to accept the notification to the court. 15
- (6) Upon an appeal under subsection (5), the court may—
- (a) require the Director to accept the notification and note the acceptance in the Register, 20
- (b) affirm the decision of the Director, or
- (c) make such other order or declaration as it considers appropriate.
- (7) Following acceptance by the Director of a notification, he or she shall send an authenticated copy of the instrument to the attorney and the donor. 25
- (8) For the purposes of subsection (7), a document purporting to be a copy of an instrument creating an enduring power of attorney which has been authenticated by the Director shall be evidence of the contents of the instrument and the date upon which it was notified. 30
- (9) Once the Director has accepted or has refused to accept under this section a notification under section 71A, the attorney concerned shall, as soon as practicable, give notice to the persons referred to in section 71A(3) (other than those to whom subsections (4) and (5) of that section relate) of that acceptance or refusal, as the case may be, in the form specified by the Director under section 79A. 35

Effect and proof of acceptance by Director of notification

- 71D.** (1) The effect of the acceptance by the Director under section 71C of a notification under section 71A is that—
- (a) no purported revocation of the enduring power of attorney by the donor shall be valid unless the Director recognises a written notice of revocation under section 73A, 40

- (b) no resignation by an attorney from his or her role as attorney under the enduring power shall be valid except on notice to the donor and with the consent of the court under section 74(3), and
 - (c) subject to section 73A, the donor may not extend or restrict the scope of the authority conferred by him or her in the enduring power and no consent or instruction given by the donor after acceptance by the Director under section 71C of a notification under section 71A shall, in the case of a consent, confer any right and in the case of an instruction, impose or confer any obligation or right on or create any liability of the attorney or other persons having notice of the consent or instruction.
- (2) Subsection (1) applies for as long as the acceptance of the notification is in force.”.

Amendment of section 72 of Principal Act

- 55.** Section 72 of the Principal Act is amended—
- (a) in subsection (1), by the substitution of “attorney that have been registered by him or her under section 69” for “attorney”,
 - (b) in subsection (2), by the substitution of “appropriate, but shall specify which instruments are, and which instruments are not, the subject of a notification under section 71A that has been accepted by the Director under section 71C” for “appropriate”,
 - (c) in subsection (3)—
 - (i) by the substitution of “The Director shall make such details of the Register as he or she shall specify” for “The Director shall make the Register”, and
 - (ii) in paragraph (b), by the substitution of “inspecting those details of the Register” for “inspecting the Register”,
 - (d) in subsection (4), by the substitution of “instrument creating an enduring power of attorney that is the subject of a notification under section 71A that has been accepted by the Director under section 71C, or part thereof, and any variations to the enduring power or part thereof,” for “enduring power, or part thereof,”, and
 - (e) by the insertion of the following subsection after subsection (4):
 - “(4A) An authenticated copy of an instrument or part thereof, and, where applicable, any variations to the instrument or part, that is issued by the Director under subsection (4) and stamped by the Director with a time and date stamp (which may be by automated means), shall be evidence of the contents of the instrument or part thereof, and where applicable, any variations to that instrument or part, as at the date and time indicated on the stamp.”.

Amendment of section 73 of Principal Act

- 56.** Section 73 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) An enduring power of attorney that has been registered under section 69 may be varied or revoked by the donor where the instrument creating the enduring power of attorney has not been the subject of a notification under section 71A that has been accepted by the Director under section 71C.”, 5
 - (b) in subsection (2), by the substitution of “specified by the Director under section 79A” for “prescribed”,
 - (c) in subsection (4)—
 - (i) by the deletion of paragraphs (c) and (d), and 10
 - (ii) in paragraph (e), by the substitution of “in the case of a variation, that he or she is aware of the variation” for “that he or she is aware of the variation or revocation”,
 - (d) by the insertion of the following subsections after subsection (4):
 - “(4A) The donor shall, as soon as practicable after the revocation of an enduring power of attorney, give notice to the attorney, in the form specified by the Director under section 79A, of the revocation. 15
 - (4B) A variation of an enduring power of attorney may be made—
 - (a) subsection to paragraph (b), at any time after the expiry of 6 months from the date of the registration of the instrument creating the enduring power under section 69, and 20
 - (b) where more than one variation is made, at intervals of at least 12 months from the date of the previous variation,
 - unless an earlier variation in the case of paragraph (a), or variation at more frequent intervals in the case of paragraph (b), is agreed by the Director.”, 25
- and
- (e) by the deletion of subsections (5) and (6).

Insertion of new section 73A into Principal Act

- 57. The Principal Act is amended by the insertion of the following new section after section 73: 30

“Provisions regarding where donor regains capacity after acceptance by Director of notification

73A. (1) The following persons:

- (a) the donor; 35
- (b) on the written request of the donor to act on his or her behalf, the attorney;

- (c) on the written request of the donor to act on his or her behalf, any of the persons referred to in paragraphs (a) to (j) of section 71A(3) (other than those to whom subsections (4) and (5) of that section relate);
 - (d) on the written request of the donor to act on his or her behalf, any other person who appears to the Director to have sufficient interest or expertise in the welfare of the donor, 5
- may, after the acceptance by the Director under section 71C of a notification under section 71A—
- (i) request the Director to rescind his or her acceptance as a result of the donor having regained capacity, or 10
 - (ii) request the Director to rescind his or her acceptance as a result of the donor having regained capacity and to recognise the revocation by the donor of the instrument creating the enduring power.
- (2) A request under paragraph (i) or (ii), as the case may be, of subsection (1), shall be in the form specified by the Director under section 79A and shall be accompanied by— 15
- (a) a statement by the donor that he or she understands the implications of his or her request under paragraph (i) or (ii), as the case may be, of subsection (1), 20
 - (b) a statement by a legal practitioner that, after interviewing the donor and making any necessary enquiries, he or she—
 - (i) is satisfied that the donor understands the implications of a request being made to the Director under paragraph (i) or (ii), as the case may be, of subsection (1), and 25
 - (ii) has no reason to believe that the request by the donor, or on his or her behalf, is the result of fraud, coercion or undue pressure on the donor,
 - (c) a statement by each of 2 persons, each being either—
 - (i) a registered medical practitioner, or 30
 - (ii) such other healthcare professional of a class as shall be prescribed by the Minister by regulations under section 79,

that in his or her opinion the donor no longer lacks capacity in relation to the relevant decisions that are the subject of the enduring power, 35
 - (d) a statement by the attorney that he or she is aware of the request being made under paragraph (i) or (ii), as the case may be, of subsection (1) and undertakes to act accordingly, and
 - (e) in the case of a request under subsection (1)(ii), a written notice of revocation by the donor of the instrument creating the enduring 40

power of attorney in the form specified by the Director under section 79A.

- (3) Where the Director receives a request under paragraph (i) or (ii), as the case may be, of subsection (1) that is in accordance with subsection (2), he or she shall— 5
- (a) review the request,
 - (b) consult with the attorney,
 - (c) consult with the donor, and
 - (d) consult with such other persons as he or she considers relevant, and shall— 10
- (i) where he or she is of the view that the request is not well founded, notify the donor, the attorney and any person who made the request on behalf of the donor at the donor's request of his or her view, and provide reasons for that view,
 - (ii) in the case of a request under subsection (1)(i), where he or she is of the view that the request is well founded— 15
 - (I) notify the donor, the attorney and any person who made the request on behalf of the donor at the donor's request of his or her view,
 - (II) rescind his or her acceptance of the notification, and 20
 - (III) modify the Register accordingly,or
 - (iii) in the case of a request under subsection (1)(ii), where he or she is of the view that the request is well founded— 25
 - (I) notify the donor, the attorney and any person who made the request on behalf of the donor at the donor's request of his or her view, 25
 - (II) rescind his or her acceptance of the notification,
 - (III) recognise the donor's revocation of the instrument creating the enduring power, and 30
 - (IV) modify the Register accordingly.
- (4) A person who receives a notification under subsection (3)(i) may, not later than 21 days after the date of issue of the notification by the Director under subsection (3)(i), appeal the notification concerned to the court. 35
- (5) Upon an appeal under subsection (4), the court may—
- (a) in the case of a request under subsection (1)(i), require the Director to accept the request, rescind his or her acceptance under section

71C of the notification under section 71A and make the appropriate modifications to the Register,

- (b) in the case of a request under subsection (1)(ii), require the Director to rescind his or her acceptance under section 71C of the notification under section 71A, recognise the donor’s revocation of the enduring power of attorney and make the appropriate modifications to the Register, 5
 - (c) affirm the notification by the Director under subsection (3)(i), or
 - (d) make such other declaration or order as it considers appropriate.
- (6) Once the Director has accepted or has refused to accept under this section a request under paragraph (i) or (ii), as the case may be, of subsection (1), the donor concerned, or, with his or her written consent, his or her attorney, or former attorney, as the case may be, shall, as soon as practicable, give notice to the persons referred to in section 71A(3) (other than those to whom subsections (4) and (5) of that section relate) of that acceptance or refusal, as the case may be, in the form specified by the Director under section 79A. 10 15
- (7) Where a request under subsection (1)(i) has been accepted by the Director, the enduring power of attorney shall be deemed to be a power of attorney that has been registered under section 69 and the provisions of this Part (other than section 71) shall apply accordingly.”. 20

Amendment of section 74 of Principal Act

58. The Principal Act is amended by the substitution of the following section for section 74:

“Resignation by attorney

74. (1) An attorney—

- (a) may resign from his or her role as attorney where the enduring power of attorney in which he or she has been appointed attorney has not been the subject of a notification under section 71A that has been accepted by the Director under section 71C, and 30
 - (b) shall notify the donor, the Director and any other attorney appointed under the enduring power of attorney concerned of his or her resignation as soon as may be after it is made.
- (2) Where there is more than one attorney appointed under an enduring power of attorney and one or more of them resigns under subsection (1), the instrument creating the enduring power of attorney may be the subject of a notification, and enter into force, in respect of the remaining attorney or attorneys, as the case may be, unless the enduring power expressly provides to the contrary. 35
- (3) Where an instrument creating an enduring power of attorney has been the subject of a notification under section 71A that has been accepted by the Director under section 71C, an attorney may resign from his or 40

her role as attorney under the enduring power created by the instrument only with the consent of the court.”.

Amendment of section 75 of Principal Act

59. Section 75 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “a notification having been made under section 71A that has been accepted by the Director under section 71C in relation to the enduring power” for “the registration of the instrument appointing him or her as attorney”, 5
- (b) in subsection (2)—
 - (i) by the substitution of “shall, after a notification has been made under section 71A that has been accepted by the Director under section 71C in relation to the enduring power, keep” for “shall keep”, and 10
 - (ii) in paragraph (b), by the substitution of “Director, by a general visitor” for “Director”,
- (c) in subsection (3), by the substitution of “a notification has been made under section 71A that has been accepted by the Director under section 71C in relation to the enduring power” for “registration of the instrument appointing him or her as attorney”, 15
- (d) in subsection (4)—
 - (i) by the substitution of “specified by the Director under section 79A” for “prescribed by regulations made under section 79”, and 20
 - (ii) by the substitution of “as are specified” for “as are prescribed”,
- (e) by the deletion of subsection (5),
- (f) in subsection (7)—
 - (i) by the substitution of “specifications made by the Director under section 79A” for “regulations made under section 79” in paragraph (a), 25
 - (ii) by the substitution of “relevant specifications” for “relevant regulations” in paragraph (a), and
 - (iii) in subsection (7)(b), by the substitution of “attorney” for “co-decision-maker”, 30
- (g) in subsection (8)—
 - (i) by the substitution of “subsection (7)(b)” for “subsection (7)(a)”, and
 - (ii) by the substitution of “donor concerned, and may make any order that it considers appropriate” for “donor concerned”, 35
- and
- (h) by the substitution of the following subsection for subsection (9):
 - “(9) In this section, ‘relevant period’ means the period of time to which the report relates which shall be the period of time between the date the

attorney notified the Director that the donor lacks capacity in relation to one or more of the relevant decisions which are the subject of the power or the date of submission of the previous report, whichever is the later, and the date immediately preceding the date of submission of the report concerned.”.

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Amendment of section 76 of Principal Act

60. Section 76 of the Principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a)—

(I) by the substitution of “the scope of, or in breach of,” for “the scope of”, 15
and

(II) by the substitution of “attorney, or in breach of this Act” for “attorney”,

(ii) in paragraph (c), by the substitution of “attorney, to vary or revoke an enduring power of attorney under section 73, to make a request under section 73A(1)(i) or to make a request and written notice of revocation under section 73A(1)(ii);” for “attorney.”, and 15

(iii) by the insertion of the following paragraphs after paragraph (c):

“(d) that the donor did not, at the time the enduring power of attorney was executed, have the capacity to make an enduring power of attorney; 20

(e) that the donor did not, at the time the enduring power of attorney was registered, have the capacity to register an enduring power of attorney.”,

(b) by the insertion of the following subsections after subsection (2):

“(2A) Following the receipt of a complaint under subsection (1) or (2) the Director shall carry out an investigation of the matter which is the subject of the complaint and shall, subject to subsection (2B), form a view as to whether or not the complaint is well founded not later than 3 months after the date of his or her receipt of the complaint (in this section referred to as the ‘initial investigation period’). 25 30

(2B) The Director may, before the date of expiry of the initial investigation period, extend the duration of his or her investigation by a period of up to 6 months from that date by sending written notice to the complainant, the person who is the subject of the complaint and the relevant person concerned giving reasons for the extension.”, 35

(c) in subsection (3)—

(i) by the substitution of “The Director shall, as soon as is practicable after having formed a view under subsection (2A)” for “Following the receipt of a complaint under subsection (1) or (2), the Director shall carry out an investigation of the matter which is the subject of the complaint and”, 40

- (ii) in paragraph (a), by the substitution of “complaint,” for “complaint, or”, and
- (iii) by the insertion of the following paragraph after paragraph (a):
 - “(aa) notwithstanding paragraph (a), where he or she is of the view that the complaint is well founded and that—
 - (i) the provision of clarification by him or her to the attorney regarding the role of the attorney would be an appropriate resolution, or
 - (ii) the subject matter of the complaint could be appropriately resolved under section 96(4),
 - the Director may, not later than 3 months after having completed his or her investigation, and having obtained the written consent of the complainant, the person who is the subject of the complaint and the relevant person concerned or, where the written consent of the relevant person cannot be obtained, having determined it to be, to the greatest extent possible, the will and preference of the relevant person, provide the clarification referred to in subparagraph (i), or proceed to resolve the complaint as soon as possible under section 96(4), as the case may be, and”
- (d) in subsection (4), by the substitution of “3 months” for “21 days”,
- (e) in subsection (5), by the substitution of “investigation, to which this section shall, with any necessary modifications, apply” for “investigation and make an application to the court for a determination in relation to any matter specified in subsection (1) or (2)”,
- (f) by the insertion of the following subsections after subsection (5):
 - “(5A) Where subsection (3)(aa) applies and the Director has provided the clarification referred to in subparagraph (i) of that subsection or has resolved the complaint under section 96(4) as referred to in subparagraph (ii) of that subsection, the Director may—
 - (a) request further information regarding the outcome of the clarification or resolution, as the case may be, or
 - (b) request confirmation that the complaint has been resolved,
 - from the complainant, the person who is the subject of the complaint or the relevant person, as the Director considers appropriate.
 - (5B) If the Director is not satisfied, following the receipt of the information or confirmation referred to in subsection (5A), that the clarification or resolution referred to in that subsection has satisfactorily resolved the complaint, the Director may make an application to the court in accordance with subsection (3)(a) or may take such other steps as he or she considers appropriate in order to resolve the complaint.”
- (g) in subsection (6)—
 - (i) in paragraph (a), by the deletion of “or (5)”, and

- (ii) in paragraph (b), by the substitution of “subsection (4) or (6B)(b)” for “subsection (4)”,
- (h) by the insertion of the following subsections after subsection (6):
 - “(6A) The Director shall, in accordance with this section, investigate a complaint under subsection (1) or (2) unless in his or her opinion there has been undue delay in making the complaint. 5
 - (6B) A decision by the Director under subsection (6A) not to investigate a complaint—
 - (a) shall be in writing, shall contain the reasons for the decision and shall be sent to the complainant as soon as possible after it is made, and 10
 - (b) may be appealed by the complainant to the court not later than 3 months after the date of receipt by the complainant of the decision.
 - (6C) In this section a reference to an act includes a reference to an omission and a reference to the doing of an act includes a reference to the making of an omission.”, 15
- (i) in subsection (7), by the substitution of “section 95” for “sections 95 and 96”, and
- (j) in subsection (8), by the substitution of “sections 95 and 99” for “sections 95, 96 and 99”. 20

Amendment of section 77 of Principal Act

61. Section 77(3) of the Principal Act is amended—

- (a) by the substitution of “the subject of a notification under section 71A that has been accepted by the Director under section 71C” for “registered”, and
- (b) by the substitution of the following paragraph for paragraph (c): 25
 - “(c) consent to a resignation by the attorney of his or her role as attorney under the enduring power of attorney.”.

Amendment of section 78 of Principal Act

62. Section 78 of the Principal Act is amended—

- (a) in subsection (1)— 30
 - (i) in paragraph (a), by the substitution of “section 73A” for “section 73(6)”, and
 - (ii) in paragraph (b), by the substitution of “disqualified, dies, resigns from his or her role as attorney or is unable to act” for “disqualified”,
- and 35
- (b) by the substitution of the following subsection for subsection (2):

“(2) In the circumstances described in subsection (1)(b), where there is at least one attorney remaining due to—

(a) the donor having appointed more than one attorney under an enduring power of attorney, or

(b) the donor having specified a person to act as attorney for him or her in the event that the attorney on whom the authority is conferred is disqualified, dies, resigns from his or her role as attorney or is unable to act, 5

the Director shall not remove the instrument from the Register, but shall note on the Register in connection with the power concerned the disqualification, death, resignation or inability to act, as the case may be.”. 10

Amendment of section 79 of Principal Act

63. The Principal Act is amended by the substitution of the following section for section 79:

“Regulations – Part 7 15

79. (1) The Minister may make regulations for the purpose of giving this Part full effect.

(2) Without prejudice to the generality of subsection (1), the Minister shall, having regard to the requirements of this Part, prescribe by regulations the following matters: 20

(a) the class of healthcare professionals under sections 60(1)(d), 71A(2)(b)(ii) and 73A(2)(c)(ii);

(b) the bodies or classes of persons under subsections (3)(a) and (4)(a) of section 72 who may inspect the Register and receive an authenticated copy of an enduring power of attorney; 25

(c) the safeguards that shall apply in relation to consent and data protection in the conduct of health and social care research involving relevant persons;

(d) the fees to be paid in connection with the operation of Part 7, including in connection with— 30

(i) an application to register an enduring power of attorney,

(ii) an objection to an application to register an enduring power of attorney,

(iii) a notification to the Director by an attorney under section 71A,

(iv) an objection under section 71B(1), 35

(v) the issue of an authenticated copy of an enduring power of attorney under section 72(4),

(vi) the variation of an enduring power of attorney, and

(vii) the revocation of an enduring power of attorney,

and

- (e) the circumstances in which the fees referred to in paragraph (d) may be waived by the Director.
- (3) In prescribing the matters referred to in paragraphs (d) and (e) of subsection (2), the Minister shall take into account the nature of the matter for which the fee is being charged, the costs associated with that matter and the need to ensure the protection of the assets and funds of a donor.”. 5

Insertion of new section 79A into Principal Act

64. The Principal Act is amended by the insertion of the following section after section 79: 10

“Matters to be specified by Director in relation to enduring powers of attorney

79A. (1) The Director may, with the consent of the Minister, specify in writing the following:

- (a) the form of an instrument creating an enduring power of attorney; 15
- (b) the form of application under section 68(2) to register an instrument;
- (c) the form of notice under section 68(3) of an application to register an instrument;
- (d) the form of notice by a donor, or, with his or her written consent, his or her attorney, under section 69(9); 20
- (e) the form of an objection under section 71(2) to the registration of an instrument;
- (f) the form under section 71A(1) to notify the Director that a donor lacks capacity in relation to one or more relevant decisions that are the subject of an instrument creating an enduring power of attorney that was registered by the donor; 25
- (g) the form of notice under section 71A(3) of a notification to the Director;
- (h) the form of an objection under section 71B to the acceptance of a notification by the Director; 30
- (i) the form of notice by an attorney under section 71C(9);
- (j) the form of variation or revocation under section 73(2) of an enduring power of attorney;
- (k) the form of a request to the Director under section 73A(1)(i); 35
- (l) the form of a request to the Director under section 73A(1)(ii) and the accompanying written notice of revocation to which section 73A(2)(e) refers;

(m) the form of notice under section 73(4A) of revocation of an enduring power of attorney;

(n) the form of notice under section 73A(6);

(o) the form of a report under section 75 to be submitted by an attorney to the Director, 5

and the forms may contain such further information as the Director considers appropriate.

(2) When making a specification under subsection (1), the Director shall—

(a) take into account the guiding principles specified in section 8 and the other provisions of this Act, 10

(b) ensure that the forms are easy to read and to understand,

(c) ensure that the forms are made available in accessible formats, and

(d) take into account the different persons or classes or persons that will be using or reading the forms.”. 15

Amendment of section 80 of Principal Act

65. Section 80(2) of the Principal Act is amended by the substitution of “such an application, or in a notification to the Director under section 71A or in connection with such a notification,” for “such an application,”.

Amendment of section 82 of Principal Act

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66. Section 82 of the Principal Act is amended by the deletion of the definition of “treatment”.

Amendment of section 92 of Principal Act

67. Section 92(3) of the Principal Act is amended by the substitution of the following paragraph for paragraph (h): 25

“(h) an attorney or an attorney under the Act of 1996 for the directive-maker,”.

Amendment of section 95 of Principal Act

68. Section 95 of the Principal Act is amended by the substitution of the following for subsection (5): 30

“(5) In carrying out his or her functions, the Director may—

(a) consult with any person who has any functions in relation to the care or treatment of a relevant person, and

(b) request information relating to the carrying out of functions under this Act from decision-making assistants, co-decision-makers, 35

decision-making representatives, attorneys, designated healthcare representatives or relevant persons.”.

Insertion of new sections 95A and 95B into Principal Act

69. The Principal Act is amended by the insertion of the following sections after section 95:

- “Regulations providing for disclosure of certain data by Director** 5
- 95A.** (1) The Minister, following consultation with such other Minister of the Government as he or she considers appropriate and with the Data Protection Commission, may make regulations to provide for the disclosure by the Director of information lawfully obtained by him or her, which may include personal data in relation to a relevant person or another person, to a public authority or a public body specified under subsection (2)(b), and in particular may make regulations relating to where— 10
- (a) such disclosure is necessary to protect the vital interests of the relevant person or another person, 15
 - (b) such disclosure is necessary to protect and safeguard the interests of a relevant person or another person in relation to his or her treatment or care,
 - (c) such disclosure is necessary to protect and safeguard the assets of a relevant person, or 20
 - (d) the Director comes into possession of information that discloses the commission or possible commission of a criminal offence.
- (2) Regulations made under subsection (1) shall specify—
- (a) the type of information that the Director may disclose,
 - (b) the public authorities or public bodies to which the Director may disclose the information, 25
 - (c) the purpose or purposes of the disclosure of the information, and
 - (d) the conditions in accordance with which the information is to be disclosed.
- (3) Without prejudice to the generality of subsection (1), regulations made thereunder may provide for the sharing of special categories of personal data or data relating to the prevention, detection, investigation or prosecution of criminal offences in relation to a relevant person where this is necessary for reasons of substantial public interest, in which case the regulations shall identify— 30
- (a) the substantial public interest concerned, and
 - (b) the suitable and specific measures to be taken to safeguard the fundamental rights and freedoms of data subjects in processing the personal data which is authorised by the regulations. 35

- (4) For the purposes of subsection (3)(b), subsections (2) to (8) of section 36 of the Data Protection Act 2018 shall apply in like manner to regulations to which subsection (3) of this section refers as they apply to regulations made under the said section 36.
- (5) The Minister, when making regulations under subsection (1), shall have regard to the need for the protection of individuals with regard to the processing of their personal data, and without prejudice to the generality of that need, have regard to—
- (a) the nature, scope and purposes of the processing,
 - (b) the nature of the substantial public interest concerned,
 - (c) any benefits likely to arise for the data subjects concerned,
 - (d) any risks arising for the rights and freedoms of such subjects, and
 - (e) the likelihood of any such risks arising and the severity of such risks.
- (6) Regulations made under subsection (1) shall—
- (a) respect the essence of the right to data protection, and
 - (b) enable processing of such data only in so far as is necessary and proportionate to the aim sought to be achieved.
- (7) Regulations made under subsection (1) may, in specifying the conditions in accordance with which the information referred to in subsection (2) is to be disclosed under paragraph (d) of the said subsection (2), provide for information to be disclosed under and in accordance with a data sharing agreement within the meaning of section 2 of the Data Sharing and Governance Act 2019.
- (8) In this section—
- ‘Act of 2018’ means the Data Protection Act 2018;
 - ‘information’ includes data;
 - ‘personal data’ has the same meaning as it has in section 69(1) of the Act of 2018;
 - ‘public authority’ has the same meaning as it has in section 2(1) of the Act of 2018;
 - ‘public body’ has the same meaning as it has in section 2(1) of the Act of 2018;
 - ‘special categories of personal data’ has the same meaning as it has in section 2(1) of the Act of 2018.

Documents in electronic form

- 95B.** (1) The Director may specify—
- (a) that a relevant document, or class of relevant documents, may—
 - (i) be in electronic form,

- (ii) be in a format that he or she may specify, and
 - (iii) be sent to him or her, or submitted to him or her, in electronic form,
- and
- (b) the circumstances in which a specification under paragraph (a) shall or shall not apply. 5
- (2) The Director may certify a copy of—
- (a) a relevant document transmitted or received by the Director in electronic form in accordance with this section, or
 - (b) a relevant document kept by the Director in electronic form where the relevant document was transmitted or received by the Director otherwise than in an electronic form and an electronic copy was made of the document, 10
- to be a true copy of that document.
- (3) In this section— 15
- ‘electronic form’ means information that is generated, communicated, processed, sent, received, recorded, stored or displayed by electronic means and is capable of being used to make a legible copy or reproduction of that communicated information but does not include information communicated in the form of speech and such electronic means includes electrical, digital, magnetic, optical electro-magnetic, biometric, photonic and any other form of related technology; 20
- ‘relevant document’ means—
- (a) an application, notice, notification, objection or complaint under any provision of this Act, 25
 - (b) any document required to be provided by or to the Director in connection with an application, notice, notification, objection or complaint referred to in paragraph (a),
 - (c) a report by or to the Director under this Act, or
 - (d) any other document provided by or to the Director under this Act.”. 30

Amendment of section 96 of Principal Act

70. Section 96 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) This section shall apply to an investigation carried out by the Director under section 15, 30, 47 or 76 and a reference in this section to an investigation is a reference to an investigation to which this section applies.”, 35

- (b) in subsection (2), by the substitution of “The Director may, when conducting an investigation” for “The Director may, to enable him or her to perform his or her functions under subsection (1)”,
 - (c) in subsection (4), by the substitution of “Subject to sections 15, 30, 47 and 76, the Director may seek resolution of complaints, or investigations on his or her own initiative,” for “The Director may seek resolution of complaints”, 5
 - (d) in subsection (5), by the substitution of “complaints, or to investigations on his or her own initiative,” for “complaints”,
 - (e) in subsection (7), by the substitution of the following paragraph for paragraph (b): 10
 - “(b) hinders or obstructs—
 - (i) the Director in the carrying out of an investigation, or
 - (ii) one or more of the Director’s staff to whom the Director has delegated one or more functions under section 98(2) with regard to the carrying out of an investigation,” 15
- and
- (f) by the insertion of the following subsection after subsection (7):
 - “(8) The Director may, if he or she thinks fit, pay to a witness summoned to attend before the Director under subsection (2)—
 - (a) sums in respect of travelling and subsistence expenses properly incurred by the witness, or 20
 - (b) allowances by way of compensation for loss of his or her time, that shall be calculated in accordance with such guidance and be paid subject to such conditions as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform.”. 25

Insertion of new sections 96A and 96B into Principal Act

71. The Principal Act is amended by the insertion of the following sections after section 96:

“Temporary prohibition order

96A. (1) Where the Director considers, while he or she is conducting an investigation under section 15, 30, 47 or 76, as the case may be, that an immediate prohibition of a decision-making assistant, co-decision-maker, decision-making representative or attorney for a relevant person from acting as such is necessary because of an immediate risk of harm to the relevant person or the property of the relevant person, he or she may make an application to the court for a temporary prohibition order under subsection (3) pending the resolution, by the Director or the court, as the case may be, of his or her investigation. 30 35

- (2) Where an application under subsection (1) for an order is made *ex parte*, it shall be grounded on an affidavit sworn by the Director or by a person to whom that function is delegated under section 98(2).
- (3) The court may, on an application under subsection (1), make an order (in this section referred to as a ‘temporary prohibition order’) prohibiting the decision-making assistant, co-decision-maker, decision-making representative or attorney concerned from acting as such for the relevant person concerned for a period of time, or until the occurrence of an event, specified in the order where, having regard to the circumstances of the case, the court considers it necessary to do so for the protection of the relevant person or the property of the relevant person.
- (4) An order under this section—
- (a) may be made *ex parte* where, having regard to the circumstances of the particular case, the court considers it necessary or expedient to do so in the interests of justice, and
- (b) where it is made *ex parte* shall be for such period, not exceeding 14 working days, as is specified in the order unless on application by the Director and on notice to the decision-making assistant, co-decision-maker, decision-making representative or attorney concerned, as the case may be, the temporary prohibition order is confirmed within that period by order of the court.
- (5) Where a temporary prohibition order is made, the Director shall, as soon as is practicable, serve a copy of the order and of the affidavit referred to in subsection (2) on the decision-making assistant, co-decision-maker, decision-making representative or attorney concerned and on any other persons identified by the Director and approved by the court.
- (6) A temporary prohibition order—
- (a) shall take effect from the date of the service of a copy of the order referred to in subsection (5) on the decision-making assistant, co-decision-maker, decision-making representative or attorney concerned,
- (b) subject to subsection (4), shall have effect for the period specified in the order, or on the occurrence of an event to which section 15, 30, 47 or 76, as the case may be, refers, and specified by the court in the order, and
- (c) subject to subsection (4), may contain such further directions or conditions as the court considers appropriate, including regarding the variation, renewal or discharge of the order.
- (7) During the period that a temporary prohibition order is in effect—

- (a) where the order is in relation to a decision-making assistant, the relevant person may appoint another decision-making assistant for that period or otherwise,
- (b) where the order is in relation to a co-decision-maker, the relevant person may appoint another co-decision-maker for that period or otherwise, 5
- (c) where the order is in relation to a decision-making representative, any relevant decisions that are required to be made during that period may be made by order of the court or, notwithstanding section 38(1), by a decision-making representative appointed by the court by order under section 38(2)(b) on behalf of the relevant person, or 10
- (d) where the order is in relation to an attorney and there is no other attorney appointed by the donor under the enduring power of attorney who may make any relevant decisions that are required to be made during that period, any such relevant decisions may be made by order of the court or, notwithstanding section 38(1), by a decision-making representative appointed by the court by order under section 38(2)(b) on behalf of the relevant person. 15
- (8) An application under subsection (1) shall be heard otherwise than in public unless the court considers it appropriate to hear the application in public. 20
- (9) A notice document that is required to be served on a person under this section shall be addressed to the person concerned by name and shall be served on the person in one of the following ways: 25
 - (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, at that address;
 - (c) by sending it by post in a prepaid registered letter or by any other form of recorded delivery service to the address referred to in paragraph (b), or 30
 - (d) by electronic means, in a case in which the person has given notice in writing to the person serving the document concerned of his or her consent to the document (or documents of a class to which the document belongs) being served on him or her in that manner. 35
- (10) For the purposes of this section, a company within the meaning of the Companies Act 2014 is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business. 40

Power of Director to specify form of signature

96B. The Director may specify the form of signature (including a signature in

electronic format) of any person, including signatories and witnesses, to an agreement, instrument, directive or other document under this Act, including a decision-making assistance agreement, a co-decision-making agreement, an instrument creating an enduring power of attorney, an advance healthcare directive or any document specified by the Director, or prescribed by the Minister by regulations, under this Act.” 5

Amendment of section 98 of Principal Act

72. Section 98 of the Principal Act is amended—

- (a) in subsection (6), by—
 - (i) the substitution of “Director” for “Mental Health Commission”, and 10
 - (ii) the substitution of “he or she” for “the Director”,and
- (b) in subsection (7), by—
 - (i) the substitution of “Minister” for “Minister for Health”, and
 - (ii) the substitution of “Decision Support Service” for “Mental Health Commission”. 15

Amendment of section 99 of Principal Act

73. Section 99 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (2):
 - “(2) A special visitor shall be— 20
 - (a) a registered medical practitioner who has particular knowledge, expertise and experience as respects the capacity of persons, or
 - (b) a person who, although not a registered medical practitioner, is, in the opinion of the Director, a person who has particular knowledge, expertise and experience as respects the capacity of persons, 25who may assist the Director in performing his or her supervisory function referred to in section 95(1)(e), in performing his or her functions under section 96, or in undertaking assessments of capacity where the Director brings an application under Part 5 in relation to a declaration of capacity.”, 30
- (b) in subsection (3), by the substitution of “section 95(1)(e) and in performing his or her functions under section 96” for “section 95(1)(e)”,
- (c) in subsection (4), by the substitution of “Minister” for “Minister for Health”, and
- (d) in subsection (5)—
 - (i) in paragraph (a), by the substitution of “person,” for “person, or”, 35
 - (ii) in paragraph (b), by the substitution of “section 48, or” for “section 48”, and

(iii) by the insertion of the following paragraph after paragraph (b):

“(c) any other person specified in the direction (who may include a family member or a provider of a service) who the Director considers is necessary to visit to obtain further information about the relevant person.”.

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Amendment of section 100 of Principal Act

74. Section 100 of the Principal Act is amended by the insertion of the following subsections after subsection (12):

“(13) Where a court friend has been appointed for a ward of court by the Director pursuant to a direction of the wardship court under section 54A(2), subsections (2) to (11) of this section shall apply, with all necessary modifications, with regard to the court friend, and in particular—

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(a) a reference in those subsections to a relevant person shall be construed as a reference to the ward of court, and

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(b) a reference in those subsections to Part 5 shall be construed as a reference to Part 6.

(14) Subsections (2) to (10) shall, with all necessary modifications, apply to a person referred to in section 54A as a ‘court assistant’ as they apply, in accordance with subsection (13), to a court friend to which the said subsection (13) refers.”.

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Amendment of section 101 of Principal Act

75. Section 101 of the Principal Act is amended by the substitution of the following paragraph for paragraph (a):

“(a) decision-making representatives for—

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(i) relevant persons in the circumstances to which section 38(7) applies, and

(ii) persons the subject of a discharge from wardship under section 55(4)(ii) or 55(5)(b), as the case may be, in the circumstances to which section 38(7) applies by virtue of section 55(6).”.

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Amendment of section 102 of Principal Act

76. Section 102 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) The Mental Health Commission shall cause a copy of a report submitted to it pursuant to subsection (1) to be forwarded to the Minister for Health and the Minister as soon as may be, but not later than 3 months after the date on which the Commission received the report.”.

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Amendment of section 103 of Principal Act

77. Section 103 of the Principal Act is amended—

(a) in subsection (2)—

(i) in paragraph (i), by the substitution of “on supporting decision-making by relevant persons and, where appropriate, assessing” for “assessing”, 5

(ii) by the insertion of the following paragraph after paragraph (x):

“(xa) the guidance of committees and any other persons assisting a ward in court;”,

and

(iii) by the substitution of the following paragraph for paragraph (xi): 10

“(xi) the guidance of other persons, including healthcare professionals, legal practitioners and financial service providers, in relation to their dealings with—

(I) relevant persons, or

(II) wards of court in relation to proceedings under Part 6;”, 15

and

(b) by the insertion of the following subsection after subsection (15):

“(15A) To the extent that a code of practice published or approved of under subsection (2) is for the purposes of court friends, the provisions of the code shall, with all necessary modifications, apply to a person referred to in section 54A as ‘a court assistant’ in respect of a ward of court as those provisions apply to a court friend for a ward of court.”. 20

Amendment of section 139 of Principal Act

78. Section 139 of the Principal Act is amended by the insertion of the following subsection after subsection (1): 25

“(1A) Subsection (1) shall, with all necessary modifications, apply to a review under Part 6 by the wardship court of the capacity of a ward as it applies to an application under Part 5, 7 or 8 to the court or High Court in respect of the relevant person the subject of the application.”.

Amendment of section 143 of Principal Act 30

79. Section 143 of the Principal Act is amended by the deletion of paragraphs (b) and (d).

Amendment of section 145 of Principal Act

80. Section 145 of the Principal Act is amended by the substitution of “attorney or designated healthcare representative for a relevant person” for “attorney for the relevant person, or designated healthcare representative”. 35

Amendment of section 146 of Principal Act

81. The Principal Act is amended by the substitution of the following section for section 146:

“Review of this Act (other than Part 8)

146. The Minister, after consultation with the Minister for Health shall, not later than 5 years after the date on which *section 81 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022* comes into operation, conduct a review of the operation and effectiveness of the Assisted Decision-Making (Capacity) Act 2015 (other than Part 8) and shall, not later than 6 months after the end of that period of 5 years, or on the completion of the review, whichever is the earlier, prepare a report, in writing, of the findings of the review and of the conclusions drawn from those findings and cause copies of the report to be laid before each House of the Oireachtas.”.

PART 3

AMENDMENTS TO OTHER ENACTMENTS

Amendment of Juries Act 1976

82. The Juries Act 1976 is amended—

(a) in section 7—

(i) by the designation of that section as subsection (1), and

(ii) by the insertion of the following subsection: 20

“(2) A person who is deaf shall not be ineligible for jury service by reason only of his or her requiring the services of a sign language interpreter for the purpose of enabling him or her to perform the duties of juror effectively.”,

and 25

(b) under the heading “*Other persons*” in Part I of the First Schedule, by the substitution of:

“A person who does not, in the opinion of the court, have sufficient mental or intellectual incapacity to serve as a juror.”

for 30

“A person who suffers or has suffered from mental illness or mental disability and on account of that condition either—

(a) is resident in a hospital or other similar institution, or

(b) regularly attends for treatment by a medical practitioner.”.

Amendment of Electoral Act 1992

83. Section 41 of the Electoral Act 1992 is amended by the deletion of paragraph (i).

Provisions regarding National Disability Authority Act 1999

84. (1) The Act of 1999 is amended—

(a) in section 8(2), by the insertion of the following paragraph after paragraph (c):

“(ca) to provide information and advice to the Irish Human Rights and Equality Commission, including the development and provision of statistical information if required, in order to assist it in carrying out its functions under section 10(2)(ha) of the Irish Human Rights and Equality Commission Act 2014;”,

(b) in section 27—

(i) by the insertion of the following subsection after subsection (1):

“(1A) A member of staff (other than a member of staff to whom section 27A applies) appointed to the Authority after the date of commencement of section 84(1)(b)(i) of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* shall be a civil servant in the Civil Service of the State.”,

and

(ii) by the insertion of the following subsection after subsection (2):

“(2A) The Authority shall be the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005) in relation to the members of its staff (including the Director).”,

and

(c) by the insertion of the following section after section 27:

“Further provisions regarding staff of Authority

27A. (1) (a) A person who immediately before the appointed day was a member of the staff of the Authority shall, on that day, continue to be a member of the staff of the Authority and shall hold a position in the Civil Service of the State.

(b) The Director of the Authority shall, on the appointed day, hold a position in the Civil Service of the State.

(2) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association and approved by the Minister with the consent of the Minister for Public Expenditure and Reform, a person referred to in subsection (1) shall on the appointed day be subject to such terms and conditions of service, including terms and conditions relating to remuneration, as are not less favourable than the terms and conditions of service, including terms and conditions relating to remuneration, to which the person was subject immediately before that day.

(3) The previous service in the Authority of a person referred to in subsection (1) shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the following:

- (a) the Redundancy Payments Acts 1967 to 2014;
 - (b) the Protection of Employees (Part-Time Work) Act 2001;
 - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
 - (d) the Organisation of Working Time Act 1997;
 - (e) the Terms of Employment (Information) Acts 1994 to 2014; 5
 - (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (g) the Unfair Dismissals Acts 1977 to 2015;
 - (h) the Maternity Protection Acts 1994 and 2004;
 - (i) the Parental Leave Acts 1998 to 2019;
 - (j) the Adoptive Leave Acts 1995 and 2005; 10
 - (k) the Carer’s Leave Act 2001;
 - (l) the Paternity Leave and Benefit Act 2016;
 - (m) the Parent’s Leave and Benefit Act 2019.
- (4) Subject to subsection (5), any superannuation benefits awarded to or in respect of a person referred to in subsection (1) and the terms relating to those benefits shall be no less favourable than those applicable to or in respect of that person immediately before the appointed day. 15
- (5) Subsection (4) shall not apply in respect of a provision in a scheme or arrangement in relation to superannuation in respect of which the consent or approval of the Minister for Finance, the Minister for Public Expenditure and Reform or any other Minister of the Government was required by or under any enactment but not obtained. 20
- (6) The pension payments and other superannuation liabilities of the Authority in respect of the persons referred to in subsection (1) become on the appointed day the liabilities of the Minister for Public Expenditure and Reform. 25
- (7) A person referred to in subsection (1) shall be subject to, and employed in accordance with, the Civil Service Regulation Acts 1956 to 2005 and the Ethics in Public Office Acts 1995 and 2001. 30
- (8) The Minister may make—
- (a) an order appointing a day to be the appointed day for the purposes of this section, or
 - (b) one or more orders appointing different appointed days for the purposes of this section in respect of different categories or grades of the staff of the Authority to whom subsection (1) applies, and in such case, a reference in this section to ‘appointed day’ in relation to a person means the day appointed under this paragraph in respect of the category or grade of staff to which the person belongs. 35

(9) In this section—

‘appointed day’ shall be construed in accordance with subsection (8);

‘recognised trade union or staff association’ means a trade union or staff association recognised by the Minister for the purposes of negotiations that are concerned with the remuneration or conditions of employment, or the working conditions of employees.”. 5

(2) (a) The National Disability Authority shall not, from the date of commencement of this subsection, make a scheme under section 28(1) of the Act of 1999.

(b) Paragraph (a) shall not affect the validity of any scheme made under section 28(1) of the Act of 1999 before the date of commencement of this subsection. 10

(3) In this section, “Act of 1999” means the National Disability Authority Act 1999.

Amendment of Disability Act 2005

85. The Disability Act 2005 is amended—

(a) in section 46(3), by the substitution of “members, within the meaning of section 3(1) of the Garda Síochána Act 2005, of the Garda Síochána” for “the Garda Síochána”, and 15

(b) in section 47, by the substitution of the following subsection for subsection (4):

“(4) If no compliance targets stand prescribed under subsection (3) in relation to a public body, the body shall ensure, unless there is good reason to the contrary, that— 20

(a) for the period from the date of commencement of *section 85(b) of the Assisted Decision-Making (Capacity)(Amendment) Act 2022* up to and including 31 December 2023, not less than 3 per cent of the persons employed by it are persons with disabilities,

(b) for the period from 1 January 2024 up to and including 31 December 2024, not less than 4.5 per cent of the persons employed by it are persons with disabilities, and 25

(c) on and from 1 January 2025, not less than 6 per cent of the persons employed by it are persons with disabilities.”.

Amendment of Irish Human Rights and Equality Commission Act 2014 30

86. The Irish Human Rights and Equality Commission Act 2014 is amended—

(a) in section 10(2)—

(i) by the substitution, in paragraph (e), of the words “the High Court, the Court of Appeal or the Supreme Court” for “the High Court or the Supreme Court” wherever they occur, and 35

(ii) by the insertion of the following paragraph after paragraph (h):

“(ha) without prejudice to the generality of paragraph (b) or (h), to promote and monitor the implementation in the State of the

Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006;”,

and

(b) in section 18—

(i) in subsection (1)—

5

(I) by the substitution of “functions,” for “functions, and” in paragraph (a),
and

(II) by the insertion of the following paragraph after paragraph (a):

“(aa) without prejudice to the generality of paragraph (a), appoint an
advisory committee to assist and advise it on matters relating to its
functions under section 10(2)(ha), and”,

10

and

(ii) by the insertion of the following subsection after subsection (3):

“(3A) In the case of an advisory committee referred to in subsection (1)(aa),
at least half of the number of persons appointed under subsection (3)
shall have, or have had, a disability within the meaning of section 2(1)
of the Disability Act 2005.”.

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Amendment of section 42 of Freedom of Information Act 2014

87. Section 42 of the Freedom of Information Act 2014 is amended by the insertion of the
following paragraph after paragraph (ea):

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“(eb) a record relating to an investigation under section 15, 30, 47, 76 or
88 of the Assisted Decision-Making (Capacity) Act 2015 that has
been, or is being, carried out by the Director of the Decision
Support Service or a person to whom he or she has delegated his or
her functions under section 98(2) of that Act.”.

25

An Bille um Chinnteoireacht Chuidithe
(Cumas) (Leasú), 2022

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do thabhairt tuilleadh éifeachta don Choinbhinsiún ar Chearta Daoine faoi Mhíchumas a rinneadh i Nua-Eabhrac an 13 Nollaig 2006; chun na críche sin agus chun críoch eile do leasú an Achte um Chinnteoireacht Chuidithe (Cumas), 2015; do leasú Acht na nGiúiréithe, 1976, an Achte Toghcháin, 1992, an Achte um Údarás Náisiúnta Míchumais, 1999, an Achte um Míchumas, 2005, an Achte fá Choimisiún na hÉireann um Chearta an Duine agus Comhionannas, 2014 agus an Achte um Shaoráil Faisnéise, 2014; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Leanaí, Comhionannais, Míchumais,
Lánpháirtíochta agus Óige a thíolaic,*

30 Bealtaine, 2022

Assisted Decision-Making (Capacity)
(Amendment) Bill 2022

BILL

(as initiated)

entitled

An Act to give further effect to the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006; for that and other purposes to amend the Assisted Decision-Making (Capacity) Act 2015; to amend the Juries Act 1976, the Electoral Act 1992, the National Disability Authority Act 1999, the Disability Act 2005, the Irish Human Rights and Equality Commission Act 2014 and the Freedom of Information Act 2014; and to provide for related matters.

*Presented by the Minister for Children, Equality,
Disability, Integration and Youth,*

30th May, 2022

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
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