

Decision-making and Consent

– Supporting decision-making in the absence of a legal framework

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Best practise in the absence of a legal framework

The Assisted Decision-Making (Capacity) Act 2015 was signed into law in 2015. The new act sets out ways to assist a person who requires support with decision-making. The new act will also remove the legislation that establishes the Ward of Court System. The new legislation, although not yet commenced, informs best practise. The timeframe for the Assisted Decision-Making legislation to come into full effect remains unclear. There is currently no legal framework for making decisions where capacity is absent, apart from the soon to be repealed Ward of Court system.

Decision-making – current guidance and laws

The following policies, guidance documents and other areas of legislation can inform decision-making supports and best practise in different circumstances pending full commencement of the Assisted Decision-making (capacity) Act 2015.

1. Assisted Decision-making (Capacity) Act 2015
2. HSE National Consent policy 2017
3. HIQA - Supporting people's autonomy: a guidance document
4. HIQA Guidance for Designated Centres – Residents' Finances
5. Department of Social Protection – Appointment of Agents
6. HSE Private Patients' Property Accounts
7. The Medical Council Guide to Professional Conduct and Ethics
8. Data Protection Act 1988 -2003 and the General Data Protection Regulation (GDPR) 2016.

**9. Discussion Document: Sage Support and Advocacy Service –
Contracts of Care for Nursing Home Residents, Issues for Policy and
Practise**