

Decision-making and Consent

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

HSE National Consent Policy

The HSE National Consent Policy 2017 Part 1 - General Principles, provides advice on making decisions if capacity is absent in a health or social care service.

A duty to maximise capacity

The guide recommends that the social care professional has a duty to maximise capacity – efforts must be made to support the individual in making decisions for themselves where this is possible, giving the time and support they need to maximise their ability to make decisions for themselves. There should be a presumption that each person has the capacity to make decisions and capacity should not be confused with your assessment of the reasonableness of the person's decision. The possibility of incapacity and the need to assess capacity should only be considered if, having been given all appropriate help and support, the person is unable to communicate a clear and consistent choice or is obviously unable to understand and use the information and choices provided.

Consulting with others

The national consent policy says that if making decisions where capacity is absent you should determine what is in the person's best interest, which is decided by reference to their values and preferences, if known. Part of the consideration will be the views of anyone the person asks to be consulted, the views of people who have a close ongoing personal relationship with the person such as family and friends or an advocate who may support the person in the decision making process. The role of those who assist is not to make the final decision but to provide greater insight into the persons known or previously held views and their

preferences. The consent policy says that legal advice should be sought in respect of refusal of any major intervention including surgery, prolonged detention or other restrictions on liberty.

**HSE Quality Improvement Division – National Consent Policy
webpage**

<https://www.hse.ie/eng/about/who/qid/other-quality-improvement-programmes/consent/>

HSE National Consent Policy 2017 pdf

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