



About this Guide

This is the first of a series of guides developed to assist people making a Capacity Application to the Circuit Court under the **Assisted Decision Making Capacity (ADMC) Act**.

This guide is for people who are thinking about making a Capacity Application on behalf of someone in their life who needs the support of another to make specific decisions. This person who requires support is known as the Relevant Person.

It provides you with some useful resources and information to help inform your decision on whether or not this is the right option for the Relevant Person.



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Before you make a Capacity Application



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Completing your Capacity Application forms



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Key Terms

There are some key terms you will encounter while you are making a Capacity Application. These are explained below.

Affidavit: A sworn statement setting out the facts and relevant documents to be considered by the court as part of a case.

Applicant: The person making the application. This can be the Relevant Person themselves or certain people who have a relationship with the Relevant Person.

Capacity: A person's ability to make decisions for themselves. This will be based on the person's ability to make a specific decision at a specific time.

More information

You should consider getting **legal advice** to get a better understanding of what is involved. **Support services** are also available.

Scan below for more info about Assisted Decision Making Capacity





Key Terms (Continued)

Capacity Application: An application to the Circuit Court for a determination (known as a declaration), that a person, known as a Relevant Person, lacks the ability (capacity) to make certain decisions.

Co-Decision Maker (CDM): A person who has the authority to make certain decisions, together with the Relevant Person, if they need support to make those decisions.

Decision Making Representative (DMR): A person appointed by the court, to make certain decisions on a Relevant Person's behalf, if they are unable to make them for themselves.

Declaration: In the context of the ADMC Act, a declaration is a formal statement made by the Court under a specific section of the Act.

Notice Party: A person, who is not directly involved, but is likely to be affected by a court application or court order.

Order: A written direction from a Judge requiring a person or organisation to do something.

Party: A person or organisation involved in a legal case.

Personal welfare decisions: In the context of the ADMC Act, these decisions include important matters for the Relevant Person such as their healthcare, accommodation and their participation in employment, education and social activities.

Property and affairs decisions: In the context of the ADMC Act, these decisions include important matters for the Relevant Person such as their property, their debts and taxes and applying for social services.

Relevant Person: The person whose capacity to make one or more decisions is, or may shortly be in question. Under the new law, a person's capacity must be assessed based on their ability to make a specific decision at a specific time.



Before you make a Capacity Application you should consider the following:

What have you tried?

Before making your Capacity Application, consider if there are any informal or less intrusive options that could be taken to provide the Relevant Person with support to make the decisions in your application.

Also consider if there are any more formal, legally recognised arrangements such as a decision making assistance agreement or co-decision making agreement that can be put in place to support the Relevant Person, without the need to attend court.

If you have considered all of these options and still believe that the Relevant Person lacks capacity to make certain decisions, you may want to make this application to the court.

Do you know someone suitable?

You should consider whether or not you know of someone suitable and willing to take on the role of a Decision Making Representative (DMR) or Co-Decision Maker (CDM) on behalf of the Relevant Person.

A suitable DMR must be capable of carrying out the functions of a DMR including interacting with, and providing annual reports to, the Decision Support Service.

If you do not know someone suitable to act as a DMR, they can be appointed from a Decision Support Service Panel.

More information on decision support arrangements

For information on the full range of decision support arrangements available, as well as information on the roles and responsibilities of decision supporters, please visit the [Decision Support Service](#) website.

The will and preference of the Relevant Person

You should speak with the Relevant Person and get their views on making this application, the decisions and the proposed DMR in question. If this is not possible, you should speak to their family and friends to gain an understanding of the Relevant Person's will and preference on these matters.

You should also consider any relevant beliefs or values that the Relevant Person has which may affect any of the decisions in question.



Before you make a Capacity Application you should consider the following:

Future decisions for the Relevant Person

Where possible, you should consider decisions that the Relevant Person may need to make in the near future, and not just decisions which need to be addressed now. By doing this, you may avoid having to make additional applications in future.

For example, if you are asking the Court to make an order to allow you access to a Relevant Person's Post Office Account in order to pay their electricity bills, then you may also need to ask the Court to allow you to deal with other specific utility services.

If you decide to make a Capacity Application, you will need to do the following:

Get a Capacity Assessment from a specified Healthcare Professional

A Capacity Assessment is a 'Functional Test' for capacity carried out by a specified healthcare professional. A Capacity Assessment must be submitted with your application. This is used by the court to confirm if the the Relevant Person has the ability to make certain decisions for themselves. A copy of this assessment should be attached to your supporting Affidavit ([Form 55I](#)) when you submit it to your Court Office.

The following healthcare professionals may provide Capacity Assessments: Medical Practitioners, Registered Occupational Therapists, Midwives; Nurses, Social Workers and Speech and Language Therapists.

The [Capacity Assessment template](#) and more information relating to [Capacity Assessments](#), can be found on the [ADMC section](#) of the Courts website.

Complete the necessary forms

To make a Capacity Application, you need to complete and submit the following two forms to your local Court Office: Capacity Application ([Form 55A](#)) and Statement of Particulars ([Form 55B](#)). Detailed guidance on how to complete these forms is included in Guide 2 of this series.

! Your Capacity Application must also be accompanied by a supporting Affidavit ([Form 55I](#)). This sets out the facts and relevant documents to be considered by the court to support your application. You can find this supporting Affidavit ([Form 55I](#)) on the Courts website.

All forms and a description of each is available on the [ADMC Section](#) of the courts website.



If you decide to make a Capacity Application, you will need to do the following:

Check if you need to get consent from the Court

There is a defined list of people who can make a Capacity Application to the court listed on page 1 of Statement of Particulars ([Form 55B](#)).

If you are not included in this list and have a genuine interest in the welfare of the Relevant Person, you will need to apply to the Circuit Court for consent (permission) to make a Capacity Application.

For more information on applying for consent please visit the [ADMC Section](#) of the Courts website.

Gather supporting documentation

Gather financial or medical information and any other relevant documents specific to the decisions in your application. For example, a copy of a nursing home bill or other bills that require payment.

You will need to provide details of this information in the relevant sections of the Statement of Particulars ([Form 55B](#)).

These documents will also have to be attached to your supporting Affidavit ([Form 55I](#)).



Court and legal requirements that you should be aware of:

The Voice of the Relevant Person

The Court will need to hear from the Relevant Person, where possible, before making a decision on your application in Court.

The Relevant Person is encouraged to attend and participate in the Court hearing.

If the Relevant Person cannot attend in person you can contact the Court Office to request alternative arrangements, for example attendance via video link.

The Relevant Person can be assisted by someone known as an advocate, who is approved by the Court to help them to understand and participate in the process.

Legal Advice and Support Services

Legal Matters can be complicated. You may wish to seek Legal Advice to better understand the process and options available to you before making a Capacity Application.

The Relevant Person and other Applicants may be entitled to free legal aid. The Relevant Person must be represented by a different legal practitioner to the Applicant.

You can find more information on where to access Legal Advice externally, Advocacy Services and the full range of Support Services available on the [Civil Law Support Services](#) section of the Courts website.

If you decide to make a Capacity Application, please see our guide to [Completing your Capacity Application forms](#).



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For more information about ADMC, please visit the [ADMC section](#) of the Courts website.