

Health officials must rally to meet challenges of 2015 Capacity Act

DSS Director: urgent that Department of Health recognises its distinct responsibilities to ensure reforming legislation delivers on its potential

Tuesday, July 7th: The director of a new support service for people with decision-making capacity difficulties says that it is critically important that the Department of Health mobilises in a coordinated way to meet the challenges presented by new legislation.

Áine Flynn, who is the Director of the Decision Support Service (DSS), is urging the Department to appoint a single point of contact with a mandate to ensure effective preparations are in place for commencement of the Assisted Decision-Making (Capacity) 2015.

“This legislation is a creature of the Department of Justice and Equality but it is a matter of increasing urgency that the Department of Health engages with its distinct responsibilities to ensure that the 2015 Act delivers on its potential.”

Ms. Flynn said that the 2015 Act is a hugely significant piece of human rights-based legislation with implications for the health and social care sector in particular.

The 2015 Act provides a modern statutory framework for supported decision-making. It will replace the wards of court system which presently operates under the Lunacy Regulation (Ireland) Act 1871. It introduces guiding principles inspired by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), emphasising autonomous decision-making and respect for individual will and preferences.

Although fully enacted, the 2015 Act is not yet operational and the government has acknowledged that full commencement is essential to compliance with the UNCRPD, ratified by Ireland over two years ago. Ms. Flynn has welcomed the commitment to commence the 2015 Act in the current programme for government, and the promised establishment of a Joint Oireachtas Committee to monitor the implementation of the UNCRPD.

“It is expected that the 2015 Act will effect enormous change in the lives of people with decision-making capacity difficulties,” she said. “This will include adults with intellectual disability, acquired brain injury, mental health difficulties and dementia. Estimates suggest that as many as 220,000 adults will potentially benefit from the reforms.

“While the establishment of the DSS is a critical component of the 2015 Act, there is much more involved if we are to be properly prepared for its full commencement,” she added. “Access to the protections and supports under the Act must be a new feature of care. Capacity must be assessed in a uniform way. Standards and policies must be consistent with the guiding principles of the Act and regulators across the health and social care sector will have to monitor for compliance. There are clear implications for the Department of Health and its agencies in terms of preparation, training and resources.”

Ms. Flynn noted that a small dedicated team within the HSE has undertaken important preparatory work but that certain important outstanding matters are outside the remit of the HSE and fall to the Department of Health.

Ms. Flynn stated that the Act introduces important new tools for advance planning by all adults, including advance healthcare directives. “We all have a right to be involved in decisions about our healthcare and treatment choices but if we become incapacitated, healthcare professionals may

have little knowledge of our wishes and priorities.” Ms Flynn said that the current pandemic has highlighted the importance of advance healthcare planning to enable everyone to articulate their wishes with regard to future medical treatment.

“Under the 2015 Act, the Minister for Health may make regulations to provide for a register of advance healthcare directives to be maintained by the DSS,” she added. “This register cannot be established in the absence of such regulations. Therefore, in order to provide an optimal service, we hope that the Department of Health will deliver regulations as soon as possible to ensure the register is incorporated into our IT system which is currently under development.”

Meanwhile, the Chairman of the Mental Health Commission, John Saunders, said that unless adequate funding is allocated in the next budget, they will not be in a position to commence the DSS until at least 2023, more than seven years after the introduction of the legislation that provided for it. The remit of the Mental Health Commission was expanded to allow for the establishment of the DSS.

“We have had positive engagement recently with the Department of Justice and Equality, which funds the DSS,” he said. “We have presented to the Department a draft time-bound, costed project plan and this has been favourably received. However, unless adequate funding is allocated in the coming budget, ultimately the DSS will not commence operations until after 2022.

“We are now approaching four-and-a-half years since the legislation was signed into law. It is critically important that those who will be most affected by the Act are provided with a clear roadmap for full commencement so we can all be assured, and continue with the job of getting the service ready for operation.”

Approximately one third of the allocation applied for in the estimates process was awarded to the DSS in the last two budgets.

Ends

Notes to the Editor

What is the Decision Support Service (DSS)?

The DSS is an essential service for all adults who have difficulties with decision-making capacity. This may include people with an intellectual disability, mental illness or acquired brain injury, as well as people with age-related conditions who may need supports to make decisions.

The DSS is provided for under the Assisted Decision Making (Capacity) Act 2015. The 2015 Act is a significant piece of reforming human rights legislation which provides a modern statutory framework for supported decision-making. The supports provided for, and monitored by the DSS, will help to ensure that people are afforded the fundamental human rights to make their own decisions as far as possible about their personal welfare, property and affairs and finances.

Estimates suggest that there could be as many as 220,000 people living in Ireland who have capacity-related difficulties and who may become users of the DSS. Based on the above figure, it is estimated that one in 20 adults could have an active arrangement registered with the DSS, and that one in every two people will interact with the DSS in their lifetime.

What is the relation of the DSS to the Mental Health Commission?

Under the provisions of the 2015 Act, the remit of the Mental Health Commission was extended to include the establishment of the DSS.

The DSS is now one of four functions of the Commission. Although it is not confined to mental health, the DSS has found a natural home in the Commission as it (the Commission) has vital experience of setting up innovative structures under reforming legislation to deliver on a human rights agenda. The Director of the DSS, Áine Flynn, sits on the Executive (SMT) of the Commission.