

PART 8

ADVANCE HEALTHCARE DIRECTIVES

**Definitions — Part 8**

82. In this Part—

“advance healthcare directive”—

- (a) in relation to a person who has capacity, means an advance expression made by the person, in accordance with *section 84*, of his or her will and preferences concerning treatment decisions that may arise in respect of him or her if he or she subsequently lacks capacity, and
- (b) in relation to a designated healthcare representative, means the advance expression referred to in *paragraph (a)* under which the representative was designated as such representative,

which has not been revoked pursuant to *section 84(7)*;

“applicable”, in relation to an advance healthcare directive, shall be construed in accordance with *section 85*;

“designated healthcare representative”, in relation to a directive-maker, means the named individual designated, pursuant to *section 87*, by the directive-maker, in his or her advance healthcare directive, to exercise the relevant powers;

“directive-maker”—

- (a) in relation to an advance healthcare directive, means the person who made the directive, and
- (b) in relation to a designated healthcare representative, means the person who made the advance healthcare directive under which the representative was designated as such representative;

“Minister” means the Minister for Health;

“relevant powers”, in relation to a designated healthcare representative, means—

- (a) the power conferred on the representative under *section 88(1)(a)*, and
- (b) the powers (if any) conferred on the representative in accordance with *section 88(1)(b)*;

“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;

“valid”, in relation to an advance healthcare directive, shall be construed in accordance with *section 85*;

“writing” includes voice and video recording and speech recognition technologies.

### **Purpose of this Part**

**83.** (1) The purpose of this Part is to—

- (a) enable persons to be treated according to their will and preferences, and
  - (b) provide healthcare professionals with information about persons in relation to their treatment choices.
- (2) A relevant person who has attained the age of 18 years and who has capacity is entitled to refuse treatment for any reason (including a reason based on his or her religious beliefs) notwithstanding that the refusal—
- (a) appears to be an unwise decision,
  - (b) appears not to be based on sound medical principles, or
  - (c) may result in his or her death.

### **Making of advance healthcare directives, etc.**

**84.** (1) A person who has attained the age of 18 years and who has capacity may make an advance healthcare directive.

- (2) A refusal of treatment set out in an advance healthcare directive shall be complied with if the following 3 conditions are met:
- (a) at the time in question the directive-maker lacks capacity to give consent to the treatment;
  - (b) the treatment to be refused is clearly identified in the directive;
  - (c) the circumstances in which the refusal of treatment is intended to apply are clearly identified in the directive.
- (3) (a) A request for a specific treatment set out in an advance healthcare directive is not legally binding but shall be taken into consideration during any decision-making process which relates to treatment for the directive-maker if that specific treatment is relevant to the medical condition for which the directive-maker may require treatment.
- (b) Where a request for a specific treatment set out in an advance healthcare directive is not complied with in a decision-making process referred to in *paragraph (a)*, the healthcare professional concerned, involved in that decision-making process, shall—
- (i) record the reasons for not complying with the request in the directive-maker’s healthcare record, and

- (ii) give a copy of those reasons as so recorded to the person's designated healthcare representative (if any) as soon as is practicable after they have been recorded but, in any case, not later than 7 working days after they have been recorded.
- (4) An advance healthcare directive shall be in writing.
- (5) (a) An advance healthcare directive shall contain the following:
  - (i) the name, date of birth and contact details of the directive-maker;
  - (ii) subject to *paragraph (b)*, the signature of the directive-maker, and the date that the directive-maker signed the directive;
  - (iii) the name, date of birth and contact details of the designated healthcare representative (if any);
  - (iv) the signature of the designated healthcare representative (if any) and the date that the representative signed the directive;
  - (v) the signatures of the 2 witnesses referred to in *subsection (6)(a)*.
- (b) An advance healthcare directive may be signed on behalf of the directive-maker by a person who has attained the age of 18 years and who is not one of the witnesses referred to in *subsection (6)(a)* if—
  - (i) the directive-maker is unable to sign the directive,
  - (ii) the directive-maker is present and directs that the directive be signed on his or her behalf by that person, and
  - (iii) the signature of the person is witnessed in accordance with *subsection (6)(b)*.
- (6) (a) The directive-maker, or the person signing on his or her behalf in accordance with *subsection (5)*, and the designated healthcare representative (if any) shall sign the advance healthcare directive in the presence of each other (where applicable) and in the presence of 2 witnesses—
  - (i) each of whom has attained the age of 18 years, and
  - (ii) of whom at least one is not an immediate family member of the directive-maker.
- (b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the directive-maker or the person signing on his or her behalf and the signature of the designated healthcare representative (if any) by applying his or her own signature to the advance healthcare directive.
- (7) (a) A directive-maker who has capacity may revoke his or her advance healthcare directive in writing.
- (b) Subject to *paragraph (c)*, a directive-maker who has capacity may, in writing, alter his or her advance healthcare directive.
- (c) An alteration referred to in *paragraph (b)* of an advance healthcare directive is of no effect unless it is signed and witnessed in accordance with *subsections (5)* and

- (6) as if the alteration itself were an advance healthcare directive.
- (8) An advance healthcare directive made outside the State but which substantially complies with the requirements of this Part applicable to an advance healthcare directive shall have the same force and effect in the State as if it were made in the State.
- (9) The Minister may, for the guidance of persons wishing to make advance healthcare directives, specify forms of such directives, not inconsistent with this Part, that such persons may use or adapt in making their respective advance healthcare directives.
- (10) The Minister's power under *subsection (9)* may be exercised in such a way as to specify forms of advance healthcare directives to provide for particular circumstances or particular cases, as the Minister thinks appropriate.
- (11) The Minister may publish any forms of advance healthcare directives that he or she has specified under *subsection (9)* in such manner that he or she thinks appropriate, including by the use of a website on the internet.
- (12) The Minister may make regulations as respects advance healthcare directives, including regulations relating to—
- (a) requiring the directive-maker to give notice of the making of an advance healthcare directive—
    - (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,
  - and
  - (b) requiring the Director to establish and maintain a register of advance healthcare directives so notified to him or her.
- (13) In this section, “immediate family member” means—
- (a) a spouse, civil partner, or cohabitant,
  - (b) a child, son-in-law or daughter-in-law,
  - (c) a parent, step-parent, mother-in-law or father-in-law,
  - (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
  - (e) a grandparent or grandchild,
  - (f) an aunt or uncle, or
  - (g) a nephew or niece.

#### **Validity and applicability of advance healthcare directive**

- 85.** (1) An advance healthcare directive is not valid if the directive-maker—
- (a) did not make the directive voluntarily, or

- (b) while he or she had capacity to do so, has done anything clearly inconsistent with the relevant decisions outlined in the directive.
- (2) An advance healthcare directive is not applicable if—
  - (a) at the time in question the directive-maker still has capacity to give or refuse consent to the treatment in question,
  - (b) the treatment in question is not materially the same as the specific treatment set out in the directive that is requested or refused, or
  - (c) at the time in question the circumstances set out in the directive as to when the specific treatment is to be requested or refused, as the case may be, are absent or not materially the same.
- (3) An advance healthcare directive is not applicable to life-sustaining treatment unless this is substantiated by a statement in the directive by the directive-maker to the effect that the directive is to apply to that treatment even if his or her life is at risk.
- (4) (a) An advance healthcare directive is not applicable to the administration of basic care to the directive-maker.
  - (b) In *paragraph (a)* “basic care” includes (but is not limited to) warmth, shelter, oral nutrition, oral hydration and hygiene measures but does not include artificial nutrition or artificial hydration.
- (5) Where an ambiguity arises as to the validity or applicability of an advance healthcare directive—
  - (a) the healthcare professional concerned shall, in an effort to resolve the ambiguity—
    - (i) consult with the directive-maker’s designated healthcare representative (if any) or, if there is no designated healthcare representative, the directive-maker’s family and friends, and
    - (ii) seek the opinion of a second healthcare professional,and
  - (b) if, after the healthcare professional has complied with *paragraph (a)*, the ambiguity still has not been resolved, the healthcare professional shall resolve the ambiguity in favour of the preservation of the directive-maker’s life.
- (6) (a) Where a directive-maker lacks capacity and is pregnant, but her advance healthcare directive does not specifically state whether or not she intended a specific refusal of treatment set out in the directive to apply if she were pregnant, and it is considered by the healthcare professional concerned that complying with the refusal of treatment would have a deleterious effect on the unborn, there shall be a presumption that treatment shall be provided or continued.
  - (b) Where a directive-maker lacks capacity and is pregnant and her advance healthcare directive sets out a specific refusal of treatment that is to apply even if she were pregnant, and it is considered by the healthcare professional concerned

that the refusal of treatment would have a deleterious effect on the unborn, an application shall be made to the High Court to determine whether or not the refusal of treatment should apply.

- (c) In determining an application under *paragraph (b)*, the High Court shall have regard to the following:
  - (i) the potential impact of the refusal of treatment on the unborn;
  - (ii) if the treatment that is refused were given to the directive-maker, the invasiveness and duration of the treatment and the risk of harm to the directive-maker;
  - (iii) any other matter which the High Court considers relevant to the application.
- (7) (a) Subject to *subsections (1) to (6)* and *paragraph (b)*, an advance healthcare directive shall be complied with unless, at the time when it is proposed to treat the directive-maker, his or her treatment is regulated by Part 4 of the Mental Health Act 2001 or he or she is the subject of a conditional discharge order under section 13A (inserted by section 8 of the Criminal Law (Insanity) Act 2010) of the Criminal Law (Insanity) Act 2006.
- (b) Notwithstanding *paragraph (a)*, where a refusal of treatment set out in an advance healthcare directive by a directive-maker relates to the treatment of a physical illness not related to the amelioration of a mental disorder of the directive-maker, the refusal shall be complied with.

#### **Effect of advance healthcare directive**

- 86.** (1) A specific refusal of treatment set out in an advance healthcare directive is as effective as if made contemporaneously by the directive-maker when he or she had capacity to make that decision.
- (2) (a) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has complied, or purportedly complied, with a refusal of treatment set out in an advance healthcare directive and who, at the time in question, had reasonable grounds to believe, and did believe, that the advance healthcare directive was valid and applicable.
  - (b) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has not complied with a refusal of treatment set out in an advance healthcare directive and who, at the time in question, had reasonable grounds to believe, and did believe, that the advance healthcare directive was not valid or applicable, or both.
- (3) Nothing in this Part shall be construed as imposing any civil or criminal liability on a healthcare professional who has, at the time in question, not acted in compliance with a refusal of treatment set out in an advance healthcare directive if—
- (a) he or she had, at that time, no grounds to believe that the directive existed, or
  - (b) he or she had, at that time, grounds to believe that the directive existed but—

- (i) had no immediate access to the directive or its contents, and
  - (ii) the urgency of the medical condition of the directive-maker was such that the healthcare professional could not reasonably delay taking appropriate medical action until he or she did have such access.
- (4) Nothing in this Part shall be construed as affecting any civil or criminal liability of a person that might otherwise arise under the common law or an enactment (other than this Act) as a result of a failure to comply with a valid and applicable advance healthcare directive.
- (5) Nothing in this Part shall be taken to affect—
- (a) the law relating to murder or manslaughter, or
  - (b) the operation of section 2 of the Criminal Law (Suicide) Act 1993.

### **Designated healthcare representative**

87. (1) (a) Subject to *subsection (2)*, a directive-maker may designate, in his or her advance healthcare directive, a named individual to exercise the relevant powers.
- (b) If the designated individual agrees to exercise the relevant powers, he or she shall sign the advance healthcare directive to confirm his or her willingness to do so in accordance with the known will and preferences of the directive-maker as determined by reference to the directive.
- (2) Subject to *subsection (3)*, an individual shall not be eligible to be a designated healthcare representative if—
- (a) the individual has not attained the age of 18 years,
  - (b) the individual has been convicted of an offence in relation to the person or property of the directive-maker or the person or property of a child of the directive-maker,
  - (c) a safety or barring order has been made against the individual in relation to the directive-maker or a child of the directive-maker,
  - (d) the individual is—
    - (i) the owner or the registered provider of a designated centre or mental health facility in which the directive-maker resides, or
    - (ii) a person residing with, or an employee or agent of, such owner or registered provider,
 unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
  - (e) the individual provides personal care or healthcare services to the directive-maker for compensation unless the individual is—
    - (i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or

- (ii) the primary carer of the directive-maker.
- (3) Where, subsequent to the designation of an individual as a designated healthcare representative—
- (a) the individual is convicted of an offence in relation to the person or property of the directive-maker or the person or property of a child of the directive-maker,
  - (b) a safety or barring order is made against the individual in relation to the directive-maker or a child of the directive-maker,
  - (c) the individual becomes—
    - (i) the owner or the registered provider of a designated centre or mental health facility in which the directive-maker resides, or
    - (ii) a person residing with, or an employee or agent of, such owner or registered provider,unless the individual is a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker,
  - (d) the individual provides personal care or healthcare services to the directive-maker for compensation where the individual is not—
    - (i) a spouse, civil partner, cohabitant, parent, child or sibling of the directive-maker, or
    - (ii) the primary carer of the directive-maker, or
  - (e) the individual is unable, for whatever reason, to exercise the relevant powers, that individual shall not, from the date on which he or she falls within any of *paragraphs (a) to (e)*, be permitted to exercise relevant powers.
- (4) A designated healthcare representative acts as the agent of the directive-maker when he or she exercises the relevant powers.
- (5) Unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the date on which an event specified in any of *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, be permitted to exercise relevant powers where the representative is the spouse of the directive-maker and—
- (a) the marriage is annulled or dissolved either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,
  - (b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

- (c) a written agreement to separate is entered into between the spouses, or
  - (d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.
- (6) Unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the date on which an event specified in *paragraphs (a) or (b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, be permitted to exercise relevant powers where the representative is the civil partner of the directive-maker and—
- (a) the civil partnership is annulled or dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other) either—
    - (i) under the law of the State, or
    - (ii) under the law of another state and is, by means of that annulment or dissolution not or no longer a subsisting valid civil partnership under the law of the State,
  - (b) a written agreement to separate is entered into between the civil partners, or
  - (c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.
- (7) Subject to *section 2(2)* and unless otherwise provided in the advance healthcare directive, a designated healthcare representative shall not, with effect from the expiry of the period referred to in this subsection, be permitted to exercise relevant powers where the representative is the cohabitant of the directive-maker and the cohabitants separate and cease to cohabit for a continuous period of 12 months.

### **Functions and scope of authority of designated healthcare representatives**

- 88.** (1) (a) A designated healthcare representative has, by virtue of this paragraph, the power to ensure that the terms of the advance healthcare directive are complied with.
- (b) A directive-maker may, in his or her advance healthcare directive, confer on his or her designated healthcare representative one or both of the following powers:
- (i) the power to advise and interpret what the directive-maker's will and preferences are regarding treatment as determined by the representative by reference to the relevant advance healthcare directive;
  - (ii) the power to consent to or refuse treatment, up to and including life-sustaining treatment, based on the known will and preferences of the directive-maker as determined by the representative by reference to the relevant advance healthcare directive.
- (2) Nothing in this Part shall be construed as imposing any civil or criminal liability on a designated healthcare representative who, in exercising his or her relevant powers, acted in good faith and in accordance with what, at the time in question, he or she

reasonably believed to be the will and preferences of the relevant directive-maker by reference to the relevant advance healthcare directive.

- (3) A designated healthcare representative shall—
  - (a) as soon as is practicable after making a relevant decision but, in any case, not later than 7 working days after making the decision, make and keep a record in writing of the decision, and
  - (b) produce that record for inspection at the request of—
    - (i) the directive-maker if he or she has regained capacity, or
    - (ii) the Director.
- (4)
  - (a) The Director shall receive and consider complaints and allegations in relation to the way in which a designated healthcare representative is exercising his or her relevant powers.
  - (b) The Director shall review any complaint referred to in *paragraph (a)* and, if satisfied that the complaint has substance, shall conduct an investigation into the matter.
  - (c) The Director may, following the completion of an investigation under *paragraph (b)*, decide to, as appropriate—
    - (i) take no further action, or
    - (ii) make an application to the court.
- (5) The court may determine an application under *subsection (4)(c)* by—
  - (a) if it is satisfied that the designated healthcare representative has behaved, is behaving or is proposing to behave in a manner outside the scope of his or her relevant powers, making an order prohibiting the representative from exercising those powers with effect from the date, or the occurrence of the event, specified in the order for the purpose, or
  - (b) if it is not so satisfied, declining to make any such order.
- (6)
  - (a) A designated healthcare representative may only exercise the relevant powers when and for so long as the directive-maker lacks capacity.
  - (b) A designated healthcare representative shall not delegate any of the relevant powers and, accordingly, any instrument purporting to effect such a delegation is void.
- (7) A directive-maker may designate, in his or her advance healthcare directive, a named individual to be the directive-maker's alternate designated healthcare representative if the original designated healthcare representative dies, or is unable, for whatever reason, to exercise the relevant powers, provided that the named individual is eligible to act as such under *section 87* at the time concerned, and, accordingly, the other provisions of this Part shall, with all necessary modifications, be construed to take account of any such advance healthcare directive.

**Role of courts**

- 89.** (1) On an application (being an application that does not involve considerations relating to life-sustaining treatment) made to it by any interested party, the court may make a declaration as to whether—
- (a) an advance healthcare directive is valid,
  - (b) an advance healthcare directive is applicable, or
  - (c) a designated healthcare representative is acting in accordance with the relevant powers.
- (2) On an application (being an application that involves considerations relating to life-sustaining treatment) made to it by any interested party, the High Court may make a declaration as to whether—
- (a) an advance healthcare directive is valid,
  - (b) an advance healthcare directive is applicable, or
  - (c) a designated healthcare representative is acting in accordance with the relevant powers.
- (3) Whilst awaiting a decision of the High Court relating to an application under *subsection (2)*, nothing in the advance healthcare directive concerned shall be construed to prevent a person from—
- (a) providing life-sustaining treatment to the directive-maker, or
  - (b) doing any act which he or she reasonably believes to be necessary to prevent—
    - (i) a serious deterioration in the health of the directive-maker, or
    - (ii) if the directive-maker is a pregnant woman, a deleterious effect on the unborn.

**Offences in relation to advance healthcare directives**

- 90.** (1) A person who uses fraud, coercion or undue influence to force another person to make, alter or revoke an advance healthcare directive 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
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (2) A person who knowingly creates, falsifies or alters, or purports to revoke, an advance healthcare directive on behalf of another person without that other person's consent in writing when the other person has the capacity to do so 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

- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (3) 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, alter or revoke an advance healthcare directive.

### **Codes of practice**

#### **91. (1)** In this section—

“body concerned”, in relation to a person concerned, means the body responsible for hearing complaints about failures to maintain professional standards in respect of the profession practised by the person concerned;

“code of practice” includes part of a code of practice and, in relation to a code of practice published under *subsection (3)*, means such code as is in force from time to time under this section;

“person concerned”, in relation to a code of practice, means a person for whom the code is providing guidance;

“working group” means the working group established under *subsection (2)*.

- (2) The Minister shall establish a multidisciplinary working group of suitable persons willing and able to make recommendations to the Director in relation to codes of practice.
- (3) The Director may prepare and publish a code of practice, based (whether in whole or in part) on recommendations made to him or her by the working group as to the contents of the code, for the purposes of the guidance of designated healthcare representatives or healthcare professionals, or both, or with respect to such other matters concerned with this Part as the Director thinks appropriate.
- (4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (3)*—
  - (a) make available, to the persons whom the Director considers appropriate having regard to the matters to which the code relates, in such manner as the Director considers appropriate, a draft of the code,
  - (b) invite the persons to whom he or she has made the draft available to make representations in writing on it to the Director within a period determined by the Director, being a period of not less than 30 days from the date of making the draft available to those persons,
  - (c) consider, jointly with the working group, the representations (if any) received, and
  - (d) make, after consultation with the working group, any modifications that he or she considers appropriate to the draft.

- (5) The Director shall not publish a code of practice under *subsection (3)* except with the consent of the Minister.
- (6) Where the Director publishes a code of practice under *subsection (3)*, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* and such notice shall specify—
  - (a) the persons or classes of persons for whom the code is providing guidance,
  - (b) the date from which the code has effect, and
  - (c) the place where a copy of the code may be viewed, inspected or purchased.
- (7) The Director shall publish, on the website on the internet or by the other electronic means referred to in *section 95(1)(j)*, a copy of each code of practice published under *subsection (3)*, as each such code is in force from time to time, on and from the date on which each such code has effect.
- (8) The Director shall arrange for that part of the website on the internet or other electronic means referred to in *section 95(1)(j)*, which contains a code of practice pursuant to *subsection (7)* to ordinarily be accessible by members of the public.
- (9) Subject to *subsection (10)*, the Director may, after consultation with the working group, amend or revoke a code of practice published under *subsection (3)*.
- (10) *Subsections (4) and (5)* shall, with all necessary modifications, apply to a code of practice that the Director proposes to amend or revoke under *subsection (9)* as *subsections (4) and (5)* apply to a code of practice that the Director proposes to publish under *subsection (3)*.
- (11) Where the Director amends or revokes a code of practice published under *subsection (3)*, the Director shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—
  - (a) the code to which the amendment or revocation, as the case may be, relates and, if applicable, particulars of the amendment,
  - (b) the persons or classes of persons in respect of whom the code is so amended or revoked, as the case may be, and
  - (c) the date from which the amendment or revocation, as the case may be, shall have effect.
- (12) A document bearing the seal of the Mental Health Commission and purporting to be a code of practice published under *subsection (3)* or, where such a code has been amended under this section, the code as so amended, shall be admissible in any legal proceedings.
- (13) A person concerned shall have regard to a code of practice published under *subsection (3)* when performing any function under this Act in respect of which the code provides guidance.
- (14) Where it appears to a court, tribunal, or body concerned, conducting any proceedings that—

- (a) a provision of a code of practice published under *subsection (3)*, or
  - (b) a failure to comply with a code of practice published under *subsection (3)*,
- is relevant to a question arising in the proceedings, the provision or failure, as the case may be, shall be taken into account in deciding the question.

**Persons who may make applications to relevant court under this Part, etc.**

- 92.** (1) An application to the relevant court under this Part (other than an application by the directive-maker concerned) shall be made on notice to—
- (a) the directive-maker,
  - (b) the persons referred to in *paragraphs (c) to (i)* of *subsection (3)* (other than any such person who is the applicant), and
  - (c) such other persons as may be specified in rules of court.
- (2) Subject to *subsection (3)*, an application to the relevant court under this Part shall not be made unless the person making the application has received the consent of the court to the making of the application, which consent may be sought by way of an *ex parte* application.
- (3) *Subsection (2)* shall not apply to an application to the relevant court under this Part made by—
- (a) the directive-maker,
  - (b) the Director,
  - (c) a spouse or civil partner of the directive-maker,
  - (d) the cohabitant of the directive-maker,
  - (e) a decision-making assistant for the directive-maker,
  - (f) a co-decision-maker for the directive-maker,
  - (g) a decision-making representative for the directive-maker,
  - (h) an attorney for the directive-maker,
  - (i) a designated healthcare representative for the directive-maker, or
  - (j) a person specified for that purpose in an existing order of the court under this Part where the application relates to that order.
- (4) An application to the relevant court under this Part (including an *ex parte* application under *subsection (2)*) shall state—
- (a) the applicant's connection with the directive-maker,
  - (b) the benefit to the directive-maker sought to be achieved by the application, and
  - (c) the reasons why the application is being made, in particular—
    - (i) the reason why the benefit to the directive-maker sought to be achieved has

failed to be achieved in any other appropriate and practicable manner taken prior to the making of the application, and

- (ii) the reason why, in the opinion of the applicant, no other appropriate and practicable manner to achieve that benefit remains to be taken prior to the making of the application.

- (5) In every application to the relevant court under this Part, the applicant shall inform the court of the existence of—

- (a) any decision-making assistance agreement, co-decision-making agreement, power of attorney (whether an enduring power or otherwise and whether or not the power is registered) or advance healthcare directive created by the directive-maker, and
- (b) any decision-making order or decision-making representation order in respect of the directive-maker,

which, to the applicant's knowledge, still has any force or effect.

- (6) Rules of court shall make provision—

- (a) as to the manner and form in which proceedings under this Part are to be commenced,
- (b) as to the persons entitled to be notified of, and be made parties to, such proceedings, and
- (c) as to what may be received as evidence in such proceedings and the manner in which it is to be presented.

- (7) Hearings of applications under this Part shall—

- (a) be conducted with the least amount of formality consistent with the proper administration of justice, and
- (b) be heard and determined otherwise than in public.

- (8) In this section “relevant court” means the court or the High Court, as appropriate.

### **Review of this Part**

- 93. The Minister shall cause a review of the functioning of this Part to be carried out before the fifth anniversary of the date of commencement of this Part.