



STATUTORY INSTRUMENTS.

S.I. No. 261 of 2023



**RULES OF THE SUPERIOR COURTS (ASSISTED DECISION-MAKING
(CAPACITY) ACT 2015) 2023**

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, the Succession Act 1965, section 27(3), the Assisted Decision-Making (Capacity) Act 2015, section 92(6) and section 130, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 15 day of May, 2023.

Donal O'Donnell (Chairperson)

George Birmingham

David Barniville

Elizabeth Dunne

Brian R. Murray

John A. Edwards

Máire Whelan

Richard Humphreys

Siobhán Phelan

Yvonne McNamara

Gráinne Larkin

Michele O'Boyle

Liam Kennedy

James Finn

Mary Cummins

John Mahon

I concur in the making of the following Rules of Court.



GIVEN under my Official Seal,
25 May, 2023.

SIMON HARRIS,
Minister for Justice.

S.I. No. 261 of 2023

RULES OF THE SUPERIOR COURTS (ASSISTED DECISION-MAKING
(CAPACITY) ACT 2015) 2023

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Assisted Decision-Making (Capacity) Act 2015) 2023, shall come into operation on the 25th day of May 2023.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2023.

2. On the date which is three years from the date on which Part 6 of the Assisted Decision-Making (Capacity) Act 2015 enters into force, the following provisions shall be deleted from the Rules of the Superior Courts:

- (a) Order 67;
- (b) Order 70A, rule 26(2);
- (c) Order 79, rule 26 (as substituted by these Rules);
- (d) Order 117A, rule 4(c);
- (e) Order 134A, rules 14(1) and (2);
- (f) Appendix K, Forms 1 to 18 inclusive.

3. The Rules of the Superior Courts are amended:

- (a) by the substitution for rule 6 of Order 9 of the following rule:

“6. Service on a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015) who is a defendant to an action, shall be in accordance with Order 15, rule 17.”;
- (b) by the substitution for paragraph (i) of rule 1 of Order 11 of the following paragraph:

“(i) the proceeding relates to a child or to a relevant person within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015 who is habitually resident in, or a citizen of, Ireland;”
- (c) by the substitution for rule 1 of Order 12 of the following rule:

“1. Appearances shall be entered in the Central Office, Four Courts, Dublin, except in the case of minor matters, when the appearance shall be entered in the Office of Wards of Court, or except as otherwise provided in these Rules.”;
- (d) by the substitution for rule 1 of Order 13 of the following rule:

“1.(1) Where no appearance has been entered, within the time allowed, to a summons or other originating document, for a defendant who is a child, the plaintiff shall, before further proceeding with the action against the said defendant, apply to the Master for an order that some proper person be assigned guardian ad litem of such defendant by whom he or she may appear and defend.

(2) Where no appearance has been entered, within the time allowed, to a summons or other originating document, where the plaintiff is aware or ought to be aware that the defendant is a person who lacks capacity to make the decisions necessary to conduct proceedings, within the meaning of section 3 of the Assisted Decision Making (Capacity) Act 2015, the plaintiff shall, before further proceeding with the action against the said defendant, apply to the Court for directions under Order 15, rule 17.”;

(e) by the substitution for rule 17 of Order 15 of the following rule:

“17.(1) In this rule, the “2015 Act” means the Assisted Decision-Making (Capacity) Act 2015, and expressions used have the meanings assigned to them by the 2015 Act.

(2) Where a decision-making representation order in respect of a relevant person authorises a decision-making representative to institute, prosecute or defend proceedings, the decision-making representative may institute, prosecute or defend such proceedings, and service of such proceedings on the decision-making representative shall be good and sufficient service.

(3) Where notification of lack of capacity has been accepted in respect of a registered enduring power of attorney made by a relevant person as the donor, which power includes authority to act on the donor’s behalf in relation to the institution, prosecution or defence of proceedings, the attorney may institute, prosecute or defend such proceedings, and service of such proceedings on the attorney shall be good and sufficient service.

(4) Where a registered enduring power under the Act of 1996, made by a relevant person as the donor, includes authority to act on the donor’s behalf in relation to the institution, prosecution or defence of proceedings, the attorney under the Act of 1996 may institute, prosecute or defend such proceedings, and service of such proceedings on the attorney under the Act of 1996 shall be good and sufficient service.

(5) Where a registered co-decision-making agreement in force in respect of an intending party or party to proceedings as the appointer provides for the making jointly by the appointer and a co-decision-maker of decisions concerning proceedings, the originating document or defence, and each subsequent document delivered on behalf of that party in such proceedings shall state

that the decision to issue and deliver same was made jointly by the appointer and co-decision-maker.

(6) Where any issue arises as to, or arising from, the capacity of any adult party to proceedings, the Court may, of its own motion having heard the parties, or on the application by motion on notice of any party, or person sufficiently interested, make such orders or give such directions concerning the further conduct of the proceedings as are necessary in the interests of justice.

(7) A ward of court may sue or defend by his or her committee.”;

(f) by the substitution for rule 21 of Order 15 of the following rule:

“21.(1) In all causes or matters to which a party is a child, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court by the next friend, guardian or guardian ad litem of the child, be of full force and effect.

(2) In all causes or matters to which a party is a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015), any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court by the person entitled to conduct or defend the proceedings in accordance with Order 15, rule 17, be of full force and effect.”;

(g) by the substitution for rule 35 of Order 15 of the following rule:

“35.(1) Notice of a judgment or order served pursuant to rule 31 on a child shall be served in the same manner as an originating summons in an action. At any time during the proceedings under any such order, the Court may require a guardian ad litem to be appointed for any child who has been served with notice of such order.

(2) Notice of a judgment or order served pursuant to rule 31 on a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015) shall be served in accordance with Order 15, rule 17. At any time during the proceedings under any such order, the Court may proceed in accordance with Order 15, rule 17 in respect of a relevant person who has been served with notice of such order.”;

(h) by the substitution for rule 13 of Order 19 of the following rule:

“13. Every allegation of fact in any pleading, not being a petition, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against a child, or a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015).”;

(i) by the substitution for rule 10 of Order 22 of the following rule:

“(1) In any cause or matter in which money or damages is or are claimed by or on behalf of a ward, a child, or a person in respect of whom a decision-making representation order has been made under section 38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force, suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, either before or at or after trial, shall, as regards the claims of any such ward, child or person, be valid without the approval of the Court.

(2) No money (which expression, for the purposes of this rule, includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any such cause or matter in respect of the claims of any such ward, child or person, whether by verdict or by settlement, compromise, payment into Court or otherwise, before or at or after the trial, shall be paid to the plaintiff, or to any person on behalf of the plaintiff, unless the Court shall so direct.

(3) All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the Court shall direct, and the said money or any part thereof may be so directed:

- (a) in the case of a child:
 - (i) to be paid into the High Court and to be invested or otherwise dealt with there; or
 - (ii) to be paid into or transferred to the Circuit Court of the district in which such plaintiff resides, or such other Circuit Court as the Court may think fit, or
- (b) in the case of a person in respect of whom a decision-making representation order has been made under section 38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force, to be paid:
 - (i) to the person or, where relevant, to his or her attorney; or
 - (ii) where relevant, to the person’s decision-making representative; or
 - (iii) into court, to abide any order of court made under the Assisted Decision-Making (Capacity) Act 2015.

The Forms Nos 9 and 10 in Appendix E may be used in cases to which they are applicable.

(4)(a) The directions referred to in paragraph (a) of sub-rule (3) may include any general or special directions that the Court may think fit to give, including (without prejudice to the generality of the above provision) directions as to how the money is to be applied or dealt with and as to any payment to be made, either

directly or out of the amount paid into court, and (in case of a transfer to the Circuit Court) either before or after it is transferred to the Circuit Court, to the plaintiff or to the next friend in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the child or otherwise, or to the plaintiff's solicitor in respect of costs.

- (b) The certificate of the birth of every such child plaintiff shall be produced to the Court, and the date of such birth shall be recited in the certificate or order of the Court.

(5) The proper officer of the Central Office shall on request from the County Registrar furnish to him free of charge copies of such documents as may be required by the Circuit Court in any cause or matter in which money shall have been paid or transferred under sub-rule (3)(a)(ii) or (3)(b)(iii).

(6) Money paid into or transferred to the Circuit Court under this rule for a child plaintiff shall (subject to any order or direction that may be given in the judgment or order for payment or transfer thereof) be held, invested, applied or otherwise dealt with for the benefit of such plaintiff in accordance with the Circuit Court Rules for the time being in force.

(7) Nothing in this rule shall prejudice the lien of a solicitor for costs.

(8) Subject to any order which may be made by the Court (whether on consent or otherwise) as to the costs of the plaintiff or plaintiffs in any such cause or matter, or as to the amount of such costs or the mode of payment thereof:

- (a) The costs of the plaintiff, or if more than one, of all the plaintiffs in any such cause or matter or incident to the claims therein or consequent thereon shall, as regards costs ordered to be paid to such plaintiff or plaintiffs by the defendant or any other party to such cause or matter be adjudicated by the Legal Costs Adjudicator as between party and party.
- (b) The costs (if any) of the plaintiff or if more than one of all such plaintiffs not ordered to be paid by or recoverable from any other party shall be adjudicated by the Legal Costs Adjudicator as between legal practitioner and client on notice to:
 - (i) in the case of a child, the General Solicitor, or
 - (ii) in the case of a person in respect of whom a decision-making representation order has been made under section 38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force, the person's decision-making representative.

- (c) If any portion of such costs be payable by any adult party to the cause or matter who is sui juris, the Legal Costs Adjudicator shall certify the amount of such portion and the portions payable by such ward, child or person. No costs other than those so certified shall be payable to the solicitor for any plaintiff in the cause or matter.
- (9) This rule shall apply mutatis mutandis to:
- (a) money recovered on a counterclaim;
 - (b) any action settled on behalf of a child before trial.
- (10) Whenever the rules of procedure or the provisions of a scheme relating to the operation of a Tribunal require any award proposed to be made to a child by the said Tribunal to be approved by the High Court, the following procedure shall apply:
- (a) An application for the approval of the Court shall be made by motion ex parte grounded upon an affidavit entitled

“IN THE MATTER OF THE [•] TRIBUNAL

and

IN THE MATTER OF AN APPLICATION RELATING TO A.B., A MINOR, OF [ADDRESS] BY C.D., ACTING AS NEXT FRIEND ON BEHALF OF THE SAID A.B.”

Such application shall be made to the President of the High Court or a Judge assigned by the President to hear such applications.
 - (b) When approving such an award the Court may appoint a person of full age to act as the child’s next friend and may authorise the next friend to accept the said award on behalf of the child.
 - (c) Where applicable, the provision of Order 22 rules 10(3) to (6) and rule 11 shall apply mutatis mutandis to awards made to children and approved in accordance with this rule.
- (11) In the case of applications for the approval by the Court of an assessment under section 35(2) of the Personal Injuries Assessment Board Act 2003 (in this sub-rule hereinafter referred to as “the 2003 Act”), the following procedure shall apply:
- (a) An application for the approval of the Court shall be made by motion ex parte by the next friend or other person entitled to apply on behalf of a child, ward, or person in respect of whom a decision-making representation order has been made under section

38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force.

- (b) The application shall be grounded upon an affidavit entitled

“IN THE MATTER OF THE PERSONAL INJURIES ASSESSMENT BOARD ACT 2003

and

IN THE MATTER OF AN APPLICATION RELATING TO A.B., A [WARD, CHILD OR PERSON WHO IS THE SUBJECT OF A DECISION-MAKING REPRESENTATION ORDER], OF [ADDRESS] BY C.D., ACTING AS [STATE CAPACITY] ON BEHALF OF THE SAID A.B.”

- (c) Such application shall be made to the President of the High Court or a Judge assigned by the President to hear such applications.
- (d) When approving such an assessment the Court may appoint a person of full age to act as next friend of a minor.
- (e) Where applicable, the provisions of rules 10(3) to (6) and rule 11 shall apply mutatis mutandis to assessments approved in accordance with this sub-rule in respect of the amount recoverable in accordance with section 38 of the 2003 Act.
- (f) The Registrar shall send by ordinary prepaid post or by e-mail to the Personal Injuries Assessment Board a certified copy of any order made pursuant to this sub-rule.
- (g) In the event of an order to pay issuing in accordance with section 38 of the 2003 Act, a copy thereof shall be sent forthwith by the Personal Injuries Assessment Board to the Registrar in the Central Office by ordinary prepaid post or by electronic mail.”;
- (j) by the substitution for rules 4 and 5 of Order 34 of the following rules:

“4. No special case in any cause or matter to which a child, or a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015), is a party, shall be set down for argument without leave of the Court, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such child or such relevant person, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No 26 in Appendix C, and in any case in which rule 4 applies, producing a copy of the order giving leave to enter the same for argument.”;
- (k) by the substitution for paragraph (6) of rule 17 of Order 52 of the following paragraph:
“(6) Applications for the appointment of guardians ad litem.”;
- (l) by the substitution for rule 6 of Order 55 of the following rule:
“6. At any time during the proceedings under any order, the Court or the Examiner may:
- (a) in the case of a child who has been served with notice of such order, require a guardian ad litem to be appointed, or
- (b) in the case of a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015) who has been served with notice of such order, proceed in accordance with Order 15, rule 17.”;
- (m) by the substitution for paragraph (3) of rule 1 of Order 63 of the following paragraph:
“(3) An order for the appointment of a guardian ad litem.”;
- (n) by the insertion immediately following Order 67 of the Order set out in Schedule 1 as Order 67A;
- (o) by the insertion immediately following sub-rule (2) of rule 26 of Order 70A of the following sub-rule:
“(2A) An application by the Authority under section 26(1)(b) of the 2010 Act for the sanction of the Court to dispense, for the purposes of the making of an adoption order, with the consent of a person who is the child’s mother or guardian or other person having charge of or control over the child shall, where the person whose consent is necessary is a relevant person (within the meaning of section 2 of the Assisted Decision-Making (Capacity) Act 2015), be made by motion on notice to the relevant person and/or any person who is required by Order 15, rule 17 to be served with, or notified of, the application”;
- (p) by the substitution in sub-rule (3) of rule 26 of Order 70A for “sub-rule (2)” of “sub-rule (2) or sub-rule (2A)”;
- (q) by the substitution for rule 3 of Order 71 of the following rule:
“3.(1) Every petition under the Act shall be accompanied by an affidavit made by the petitioner verifying the facts and matters stated in such petition of which he has personal knowledge and deposing as to his belief in the truth of the other facts and matters

alleged in the petition; and every such affidavit shall contain a denial of collusion with any persons or person.

(2) If the petitioner is a child, or a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015), or if for any special reasons the petitioner is unable to make such an affidavit, the Court or the Master may make an order allowing some other person named in order to make the affidavit verifying the petition and denying collusion. An application for such an order shall be grounded upon an affidavit setting out the facts by reason of which the application is made.”;

- (r) by the substitution for sub-rule (1) of rule 32 of Order 77 of the following sub-rule:

“(1) When money has been lodged in satisfaction of a claim under Order 22, payment shall be made by the Accountant to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto or, on the written authority of either such person, to his solicitor, upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, within the time limited by Order 22, rule 4, and upon a request or authority for payment of the same; such notification and request or authority to be in the Form No 11 in Appendix P; provided that no payment shall be made under this rule:

- (a) where a defence of tender before action has been pleaded,
- (b) where money has been lodged by one or more of several defendants, or
- (c) where the claim is made by or for the benefit of a ward, child or person in respect of whom a decision-making representation order has been made under section 38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force.”;

- (s) by the substitution for rules 26 and 27 of Order 79 of the following rules:

“XIII. Certain applications where capacity is in doubt

26. A grant of administration may be made to the committee of a ward of court, for his or her use and benefit.

27. Where an application is made under section 27(4) of the Succession Act 1965 for a grant of administration, and the applicant is the decision-making representative of a relevant person, appointed under the Assisted Decision-Making (Capacity) Act 2015, in circumstances where such relevant person could otherwise apply for a grant of administration, the applicant shall set out details of the order of the Circuit Court

under section 38 of the said Act of 2015 and of how such application is for such relevant person's use and benefit.”;

- (t) by the substitution for rule 4 of Order 91 of the following rule:

“4. Where a claimant under the said section 76 is a child or a person in respect of whom a decision-making representation order has been made under section 38(2)(b) of the Assisted Decision-Making (Capacity) Act 2015 and is in force, the provisions of Order 22, rule 10, shall apply to any sum in respect of which such claimant obtained an order under the said section in like manner as if such claimant had recovered such sum in an action against such vehicle insurer or vehicle guarantor.”;

- (u) by the substitution for rule 10 of Order 96 of the following rule:

“10. Where a relevant person (within the meaning of section 2(1) of the Assisted Decision-Making (Capacity) Act 2015) is a respondent, the provisions of Order 15, rule 17 shall, as far as applicable, apply to service on him.”;

(xxii) by the substitution for rule 12 of Order 134A of the following rule:

“12. In the case of an award to which section 13(8)(b) of the Act applies, where the Court has ordered under section 13(14) of the Act that the amount of an award to a beneficiary, or any part thereof, be paid into court, the Court may, of its own motion or on the application ex parte of the beneficiary concerned, if satisfied that there is no evidence before the Court as to the capacity of the beneficiary sufficient to justify the commencement of any proceedings under Part 5 of the Assisted Decision-Making (Capacity) Act 2015, order payment to the beneficiary of the whole or any part of the award (or any funds representing such award or any remaining part of it) which has been paid into court in accordance with section 13(14) of the Act.”;

- (v) by the insertion immediately following sub-rule (2) of rule 14 of Order 134A of the following sub-rules:

“(3) Where it appears to the Court, on an application made under section 13(14) of the Act, that it is appropriate that a beneficiary be the subject of proceedings under Part 5 of the Assisted Decision-Making (Capacity) Act 2015, the Court may, in addition to making an order determining the application, direct the Board or the Registrar to notify a person to whom section 36(1) of that Act applies relative to the beneficiary of the circumstances of the beneficiary, and to furnish such information to that person as the Court may direct.

(4) Where a decision-making representation order is made under section 38 (2)(b) of the Assisted Decision-Making (Capacity) Act 2015 in respect of the beneficiary, the Court may direct that any funds lodged in court in accordance with an order

made under section 13(14) of the Act be paid or transferred in accordance with the terms of the decision-making representation order.”, and

- (w) by the insertion in Appendix K of the forms in Schedule 2, immediately following Form No. 19.

Schedule 1
“Order 67A
Assisted Decision-Making (Capacity) Act 2015

I. Preliminary

Definitions

1. (1) In this Order:-

the “Act” means the Assisted Decision-Making (Capacity) Act 2015;

unless the context otherwise requires, each of the expressions defined in sections 2(1), 82, 104 and 109 of the Act has the same meaning when used in this Order as in the section concerned.

(2) In the event that any conflict shall arise between the provision of any rule of this Order and any other provision of these Rules, the provision of the rule of this Order shall prevail in respect of any proceedings under the Act.

Title of proceedings

2. (1) Every originating document in proceedings under the Act shall be entitled

“THE HIGH COURT

CAPACITY

and in the matter of the relevant person or person to whom the application relates.

(2) The originating document or notice of motion in proceedings under the Act shall in every case show on its face the provision of the Act under which the application is made and the name of every moving party.

II. Applications under Part 6 of the Act

Application for Discharge from Wardship

3. (1) Every application under section 54(1) of the Act to the Court for a declaration under section 55 of the Act in respect of a ward shall be commenced by notice of motion and supported by such affidavit or affidavits and other documents as are for the time being specified by practice direction.

(2) The application shall include the record number of the wardship proceedings and, where a declaration is sought under section 55(1)(b)(ii) of the Act, shall specify each relief sought in the proceedings under Part 5 of the Act, including any reliefs sought contingently upon a declaration being made.

(3) An application initiated by a person to whom section 54(1)(c) of the Act applies shall additionally include as a relief the consent of the Court to the making of the application by that person.

Service of Application

4. (1) Service of an application on a ward shall be effected by personal service by delivering to and leaving with the ward true copies of the application and any documents to be served therewith. The person effecting service shall, at the same time, insofar as is practicable having regard to the ward's communication skills, abilities and needs:

- (a) explain the nature and implications of the application, and
- (b) explain that the ward is permitted and encouraged to participate, and will be facilitated, in participating in the hearing of the application, and
- (c) record any response by the ward.

(2) The applicant shall notify the Registrar of Wards of Court of any special arrangements that may be required to facilitate the ward's participation in the hearing of the application to discharge from wardship.

(3) The provisions of these Rules as to substituted service shall not apply in the case of a ward unless the Judge otherwise directs.

(4) Save as otherwise directed or permitted by the Court, service on a ward or on a relevant person of any other application or document in proceedings under the Act shall be effected in accordance with sub-rule (1) and an affidavit of service on a ward or on a relevant person may be in the Form No 20 in Appendix K.

Reviews under sections 54(2) and 54(3) of the Act

5. (1) The Court shall cause every wardship matter to which section 54(2) of the Act applies (other than a wardship matter in which an application has been initiated under section 54(1) of the Act), to be listed before the Court not later than six months before the expiry of the period of three years mentioned in section 54(2) of the Act.

(2) The Court may at any time give such directions as the Court considers necessary to enable it to make a decision under section 55 of the Act.

III. Hearing of applications under Part 6 of the Act

Powers of Court hearing Application for Discharge from Wardship

6. (1) On the return date of an application for discharge from wardship or on any adjournment from such date, the Court may proceed to hear and determine the application concerned. Where it considers it necessary to do so, the Court may give further directions and make such orders for the further conduct of the application as appear convenient for the determination of the matter in a manner which has regard to the guiding principles set out in section 8 of the Act and is otherwise just, expeditious and likely to minimise the costs of the proceedings.

(2) Every statement signed in accordance with section 38(11) of the Act shall be filed with the Registrar of Wards of Court.

(3) Where the Court has made a declaration under section 55(1)(b)(i) of the Act in relation to a ward, it may, without limitation of the Court's power of adjournment, adjourn the proceedings and direct the filing prior to the adjourned date of an affidavit:

- (a) exhibiting a signed copy of the co-decision-making agreement made by the ward;
- (b) verifying registration of the co-decision-making agreement or, as the case may be, confirming that the signed co-decision-making agreement complies with the requirements set out in Part 4 of the Act for the purposes of registration;
- (c) where it has not been possible to have a co-decision-making agreement signed and/or registered, setting out the efforts made to identify a suitable co-decision maker and explaining why it was not possible to obtain a suitable person to act in that capacity;
- (d) setting out any material change in circumstances which has arisen since the matter was most recently before the Court, or confirming that there has been no such change.

(4) Where the Court makes a decision-making representation order in circumstances where section 55(4) of the Act applies, it may direct the giving of notice to the Registrar of Wards of Court of the registration of any co-decision-making agreement in relation to the relevant person.

(5) Where the Court makes an order under section 55A(1) of the Act, that the capacity of the person the subject of the declaration be reviewed by the Circuit Court, it may make such consequential orders as it considers necessary to facilitate such review, which may, without limitation, include an order transferring the matter of the review to the Circuit Court for the appropriate county having regard to section 4(1) of the Act.

IV. Originating applications under the Act other than Part 6 or Part 10: general

Other originating applications under the Act

7. (1) Every originating application to the Court under the Act, other than an application under Part 6 or Part 10 of the Act, shall be commenced by originating notice of motion, in the Form No 21 in Appendix K.

(2) The originating notice of motion shall be grounded upon an affidavit sworn by or on behalf of the applicant which shall:

- (a) set out the grounds of the application and the material facts supporting such grounds;
- (b) confirm the existence of, and exhibit copies of any relevant assisted decision-making agreement, co-decision-making agreement, advance healthcare directive, enduring power of attorney or enduring power under the 1996 Act (including any variation of same) made by the person who is the subject of the

application, or any order under Part 5 of the Act concerning that person;

- (c) comply with the requirements of the Act and this Order.

Service of applications

8. (1) Unless the Court orders otherwise, or such person is himself or herself the applicant, the applicant shall serve copies of the originating notice of motion, grounding affidavit and any exhibits:

- (a) on the person who is the subject of the application and on any other person required in the circumstances to be served in accordance with Order 15, rule 17;
- (b) on any other person required by the Act to be served with the application concerned, and
- (c) on any other person directed by the Court to be served with the application concerned,

by serving a copy of the originating notice of motion, grounding affidavit (and any exhibits), in the manner permitted by law for service of a summons, on each such person not later than 14 days before the return date.

(2) Any person served with an application shall be at liberty to file and serve an affidavit replying to the application. Where all or any part of the application is opposed, the replying affidavit shall specify the part or parts of the application which are not opposed and those which are opposed and shall set out concisely the grounds of any opposition to the application and verify any facts relied on. A copy of such affidavit (and any exhibits thereto) shall be served on the applicant and on every other person served with the application not later than seven days before the return date.

Powers of Court hearing application

9. On the return date of an application under the Act (other than an application to discharge a person from wardship) or on any adjournment from such date, the Court may, if it does not hear and determine the application concerned on that date, and where it considers it necessary to do so, give such directions and make such orders for the further conduct of the application as appear convenient for the determination of the matter in a manner which has regard to the guiding principles set out in section 8 of the Act, where they are applicable, and is otherwise just, expeditious and likely to minimise the costs of the proceedings.

V. Applications concerning advance healthcare directives (Part 8 of the Act)

Documents to be produced in applications concerning advance healthcare directives

10. (1) In any proceedings concerning an advance healthcare directive, under Part 8 of the Act, including, without limitation, applications under section 89(2) of the Act, the original or a true copy of the instrument creating the advance healthcare directive shall, if available, be exhibited to the grounding affidavit.

(2) If the instrument is not exhibited in accordance with sub-rule (1), -

- (a) the grounding affidavit shall explain why the instrument was not produced, and
- (b) any respondent or notice party filing an affidavit shall, if the instrument is available to him or her, exhibit same.

(3) In any application to the Court under Part 8 of the Act, the grounding affidavit shall additionally, in accordance with section 92(4) of the Act, 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;

and shall set out the grounds supporting such reasons and verify the material facts relied on as establishing such reasons.

Application for consent

11. (1) An application under section 92(2) of the Act for the consent of the Court to the making of an application under Part 8 of the Act shall be made by motion ex parte grounded on an affidavit of the applicant. The grounding affidavit, in addition to complying with the requirements of this Order, shall:

- (a) provide any information within the deponent's knowledge as to why the application under Part 8 of the Act concerning the relevant person concerned has not been made, or cannot be made, by a person mentioned in section 92(3) of the Act, and
- (b) exhibit drafts of the originating notice of motion or notice of motion and affidavit grounding the application intended to be made under Part 8 of the Act.

(2) The Court may adjourn any such application and may direct that it be made on notice to a person mentioned in section 92(3) of the Act identified in the Court's direction.

VI. Requirements for particular proceedings under the Act: proceedings under the Convention for the International Protection of Adults (Part 11 of the Act)

Applications in proceedings to which the Convention for the International Protection of Adults applies

12. (1) In any proceedings in which relief is sought from the Court in exercise of its functions as a judicial authority under the Convention for the International Protection of Adults, as conferred by Chapter 2 of Part 11 of the Act, the originating notice of motion or notice of motion shall specify the precise reliefs sought by reference to the Convention.

(2) In any proceedings to which sub-rule (1) applies, the grounding affidavit shall state the basis upon which the Court is alleged to have jurisdiction, and shall confirm whether any orders have been made under the Act, or any proceedings are pending before the Court or the Circuit Court under the Act, in respect of the person or measure to whom the application relates.

(3) In:

- (a) any proceedings in which measures of a temporary character are sought in accordance with Article 11(1) of the Convention;
- (b) any proceedings for a declaration of recognition under section 125 of the Act, or
- (c) any proceedings for a declaration of enforceability under section 127 of the Act,

the grounding affidavit shall

- (i) identify the Contracting State in which measures have been taken and exhibit a copy of any such measure if in writing and a certified translation thereof into Irish or English;
- (ii) where relevant, provide information on the nature of the measures taken by reference to section 112 of the Act.

(4) Any application to the Court to exercise jurisdiction under Part 11 of the Act in accordance with section 120 of the Act to disapply or modify an enduring power of attorney shall be made in accordance with rule 7.

(5) Any direction to the central authority in the State to make any communication in accordance with section 131, section 133 or section 134 of the Act may be notified to the central authority in the State by the transmission by the registrar of the Court to the central authority in the State, by registered post or by such other means including electronic means as are agreed by the registrar with the central authority in the State, of a copy of the Court's order including any such direction.

VII. General

Costs

13. The Court may make such order as to costs and expenses of and incidental to proceedings under the Act as shall seem right, including an order measuring the costs.

Notification in urgent cases

14. The Court may, in any case it considers urgent, direct that notification by electronic mail, telephone or other means, to a person or persons required to be served with a document or given notice, shall be sufficient in the circumstances.

Remote participation in hearings

15. Where a direction under section 11 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 for the time being directs or authorises the participation by a ward or by any other person in proceedings under the Act by way of remote hearing, there shall be served together with the originating document or motion on the ward or other person concerned details enabling such person's participation in the hearing by means of electronic communications technology.

Codes of practice

16. Where any code of practice published in accordance with section 91 or section 103 of the Act is alleged to be relevant to any application to the Court under the Act:

- (a) a copy of such code of practice authenticated as provided by the Act shall be produced on the hearing of the application concerned, or
- (b) a copy of such code of practice shall be exhibited and verified on affidavit.

Proceedings heard on affidavit unless otherwise directed

17. Subject to any order or direction of the Court, all proceedings in the Court under the Act shall be heard and determined on affidavit.

VIII. Review of detention (Part 10 of the Act) and applications referred to in section 4(5) of the Act

Review under section 107 or section 108

18. (1) Any application to the Court under section 107 or section 108 of the Act shall be commenced by notice of motion and supported by such affidavit or

affidavits and other documents as are for the time being specified by practice direction.

(2) The Court shall cause every wardship matter in which a detention order has been made and no application has been made under section 107 or section 108 of the Act to be listed before the Court for the purpose of the giving of directions.

(3) In each case mentioned in sub-rule (2), the Court shall cause the matter to be assigned a date for hearing, on notice to the person concerned and such other persons as the Court directs.

(4) On the hearing date or on any adjournment from such date, the Court may proceed to hear and determine the matter. Where it considers it necessary to do so, the Court may give further directions and make such orders for the further conduct of the matter as appear convenient for the determination of the matter in a manner which has regard to the guiding principles set out in section 8 of the Act and is otherwise just, expeditious and likely to minimise the costs of the proceedings.

Proceedings for the care, treatment or detention of persons who lack capacity

19. (1) Subject to sub-rule (3), any application to the Court otherwise than under the Act in which relief is sought concerning the care, treatment or detention of a person (including any person whose discharge has been ordered under section 107(4) or section 108(4) of the Act) who is alleged to lack capacity may be made by originating notice of motion grounded on an affidavit.

(2) On the return date of an application to which sub-rule (1) applies, or on any adjournment from such date, the Court may proceed to hear and determine the application concerned. Where it considers it necessary to do so, the Court may give further directions and make such orders (including as to service) for the further conduct of the application as appear convenient for the determination of the matter in a manner which is just, expeditious and likely to minimise the costs of the proceedings.

(3) Where the Court is satisfied that the urgency of the case so requires, allow any application to which sub-rule (1) relates to be made ex parte, subject to such conditions, if any, as the Court considers just.

(4) All originating documents under this rule shall be issued out of the Central Office and all affidavits in applications under this rule shall be filed in the Central Office.”

Schedule 2

“FORMS IN PROCEEDINGS UNDER THE ASSISTED DECISION-
MAKING (CAPACITY) ACT 2015

Form No 20

HIGH COURT
CAPACITY

AFFIDAVIT OF SERVICE OF APPLICATION
FOR DISCHARGE FROM WARDSHIP

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015, PART 6

Record number:

In the matter ofof, a Ward of Court

Application of.....of, Applicant(s)

I, [name] of [address] aged 18 years and upwards, make oath and say as follows:—

1. On theday of20...., between the hours of and I personally served the Ward with notice of the application herein.
2. I effected such service at [set out the address at which service was effected] by showing him/her personally copies of the application and [specify documents served therewith].
3. I explained the nature and implications of the application to the Ward. [or explain efforts made to explain the nature and import of the application.]
4. I explained to the Ward that the Ward is permitted and encouraged to participate, and will be facilitated, in participating in the hearing of the Discharge Application. [or explain efforts made to explain same.]
5. The response of the Ward was [or state that the Ward made no response].
6. At the time of such service I was acquainted with the appearance of the Ward [or the Ward was identified to me by]

Sworn etc.

Form No. 21

HIGH COURT
CAPACITY

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 [OTHER THAN
PART 6 OR PART 10]

Record number:

In the matter ofof

Application of.....of, Applicant(s)

PLEASE NOTE that on theday of20... at o'clock,
....., the Applicant(s) [insert the name(s) of any other person(s)
joining in making the application]

will apply to the High Court for:
.....
.....

and for such other orders as the Court is empowered to make under said Act.

Dated 20.....

Signed_____

*Applicant(s)/*Solicitor for Applicant

To: Central Office

And to:, the person who is the subject of the application
of.....

And to:Notice Party
of.....

*Delete where inapplicable

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These rules amend the Rules of the Superior Courts by the insertion of a new Order 67A and the addition of Forms 20 and 21 to Appendix K to those rules to facilitate applications for discharge from wardship under Part 6 of the Assisted Decision-Making (Capacity) Act 2015 as amended as well as applications other than under Part 6 of the Act. These rules also include amendments to a number of Orders within the Rules of the Superior Courts, required as a result of the commencement of the said Act.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
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