

## PART 9

## DIRECTOR OF THE DECISION SUPPORT SERVICE

## CHAPTER 1

*Appointment, functions and terms and conditions of Director***Appointment of Director**

94. (1) The Mental Health Commission shall appoint a person to be known as the Director of the Decision Support Service to perform the functions conferred on the Director by this Act.
- (2) The Director shall—
- (a) be appointed by the Mental Health Commission on the recommendation of the Public Appointments Service after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held, and
  - (b) have the appropriate experience, qualifications, training and expertise to enable him or her to efficiently and effectively perform the functions conferred on him or her.
- (3) A person is not eligible for appointment as the Director if he or she—
- (a) is a member of either House of the Oireachtas,
  - (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament, or
  - (c) is a member of a local authority within the meaning of the Local Government Act 2001.

**Functions of Director**

95. (1) The Director shall have, in addition to the functions assigned to him or her by any other provision of this Act, the following functions:
- (a) to promote public awareness of this Act and matters (including the United Nations Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006) relating to the exercise of their capacity by persons who require or may shortly require assistance in exercising their capacity;
  - (b) to promote public confidence in the process of dealing with matters which affect persons who require or may shortly require assistance in exercising their capacity;
  - (c) to provide information to relevant persons in relation to their options under this Act for exercising their capacity;
  - (d) to provide information to decision-making assistants, co-decision-makers, decision-making representatives, designated healthcare representatives and

attorneys in relation to the performance of their functions under this Act;

- (e) to supervise, in accordance with the provisions of this Act, compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions under this Act;
  - (f) to provide information in relation to the management of property and financial affairs to relevant persons and to decision-making assistants, co-decision-makers, decision-making representatives and attorneys;
  - (g) to provide information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons;
  - (h) to provide information and guidance to organisations and bodies in the State in relation to their interaction with decision-making assistants, co-decision-makers, decision-making representatives, attorneys and designated healthcare representatives;
  - (i) to identify and make recommendations for change of practices in organisations and bodies in which the practices may prevent a relevant person from exercising his or her capacity under this Act;
  - (j) to establish a website on the internet or provide, or arrange for the provision of, other electronic means by which to disseminate information to members of the public relevant to the performance of the Director's functions and which will, in the opinion of the Director, assist members of the public to understand the operation of this Act and the Director's role in relation thereto;
  - (k) to make recommendations to the Minister on any matter relating to the operation of this Act.
- (2) The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of his or her functions.
- (3) The Director, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall prescribe by regulations the fees to be paid to him or her and when they fall due in respect of—
- (a) the performance of functions,
  - (b) the provision of services, and
  - (c) the provision of information and guidance,
- by him or her under the Act.
- (4) Without prejudice to the generality of *subsection (3)*, the Director's power under that subsection to prescribe fees includes the power to provide for exemptions from the payment of fees, in different circumstances or classes of circumstances or in different cases or classes of cases.
- (5) In carrying out his or her functions, the Director may consult with any person who has any functions in relation to the care or treatment of a relevant person.

**Investigations by Director**

96. (1) The Director may investigate, either on his or her own initiative or in response to a complaint made to him or her by any person, complaints in relation to any action of a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person which may involve a breach of his or her functions as decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney, as the case may be, or a breach of a provision of this Act.
- (2) The Director may, to enable him or her to perform his or her functions under *subsection (1)*—
- (a) summon witnesses to attend before him or her,
  - (b) examine on oath the witnesses attending before him or her,
  - (c) require any such witness to produce to him or her any document in the power or control of the witness,
  - (d) by notice in writing, require any person to provide him or her with such written information as the Director considers necessary to enable him or her to carry out his or her functions.
- (3) The Director may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (4) The Director may seek resolution of complaints in such manner (including by any informal means) as the Director considers appropriate and reasonable.
- (5) The Director shall draw up procedures in relation to the making and investigation of complaints as he or she considers appropriate and shall cause the procedures to be published.
- (6) An investigation by the Director under this Act shall be conducted otherwise than in public.
- (7) A person who—
- (a) fails to comply with a requirement under this section,
  - (b) hinders or obstructs—
    - (i) the Director in the performance of his or her functions, or
    - (ii) one or more of the Director's staff duly authorised to act on behalf of the Director,
- shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

**Terms and conditions of Director**

97. (1) Subject to *subsection (2)*, the Director shall hold office for a term of 6 years and may

be re-appointed for a second or subsequent term.

- (2) The Director shall hold office on such terms and conditions as may be determined by the Mental Health Commission, with the consent of the Minister for Health given after consultation with the Minister for Public Expenditure and Reform, at the time of appointment or re-appointment.
- (3) A person appointed to be Director shall be a member of the staff of the Mental Health Commission.

## CHAPTER 2

### *Staff of Director of the Decision Support Service*

#### **Staff of Director of the Decision Support Service**

- 98.** (1) A person who is a member of the staff of the Director shall be a member of the staff of the Mental Health Commission and the provisions of Part 3 of the Act of 2001 shall apply to such staff.
- (2) The Director may delegate any of his or her functions to a specified member of the staff of the Mental Health Commission assigned for the time being to the Director (other than the power to delegate under this subsection and the functions specified in *section 103*), and, accordingly, references in this Act to the Director shall be construed, where appropriate having regard to any delegation made under this subsection, as including, as respects the matters so delegated, references to any person to whom such functions stand delegated.
  - (3) The Director may revoke a delegation made pursuant to *subsection (2)*.
  - (4) The Mental Health Commission shall appoint such number of persons to be members of the staff of the Director as may be approved by the Minister for Health with the consent of the Minister for Public Expenditure and Reform.
  - (5) The numbers and grades of staff to be appointed under this section and the conditions (including those relating to remuneration and allowances) of their appointment shall be determined by the Mental Health Commission with the approval of the Minister for Health given with the consent of the Minister for Public Expenditure and Reform.
  - (6) The Mental Health Commission may, from time to time, engage such specialist advisers as the Director may consider necessary to assist him or her in the discharge of his or her functions under this Act.
  - (7) Any fees due to an adviser engaged under *subsection (6)* shall be subject to the prior agreement of the Minister for Health, given with the consent of the Minister for Public Expenditure and Reform, and shall form part of the expenses of the Mental Health Commission.

## CHAPTER 3

*Special visitors, general visitors, court friends and panels***Special visitors and general visitors**

99. (1) The Director may, in accordance with this section, appoint a person to be a special visitor or general visitor.
- (2) A special visitor—
- (a) is a registered medical practitioner who has particular knowledge, expertise and experience as respects the capacity of persons, or
  - (b) is a person who, although not a registered medical practitioner, is, in the opinion of the Director, a person who has particular knowledge, expertise and experience as respects the capacity of persons.
- (3) A general visitor is a person who, in the opinion of the Director, is a person who possesses relevant qualifications, or has other relevant expertise or experience, to assist the Director in performing his or her supervisory function referred to in *section 95(1)(e)*.
- (4) An appointment of a person as a special visitor or general visitor shall be made subject to such terms and conditions (including those relating to remuneration and allowances) as the Minister for Health, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (5) The Director may direct a special visitor or general visitor to visit—
- (a) a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney for a relevant person, or
  - (b) a relevant person for whom there is a decision-making assistant, co-decision-maker, decision-making representative, designated healthcare representative or attorney, or in respect of whom an order has been made under *section 48*,
- and, subsequent to the visit, to submit to the Director a report on such matters concerning the person visited as the Director may specify in the direction.
- (6) Subject to *subsections (7) and (8)*, for the purposes of enabling the Director to perform his or her functions, he or she may direct a special visitor or general visitor to—
- (a) at any reasonable time, examine and take copies of any health, personal welfare or financial record held in relation to a relevant person by any person, body or organisation, and
  - (b) interview a relevant person in private or otherwise than in public.
- (7) *Subsection (6)* shall not entitle the Director to direct a general visitor to examine and take copies of any health record of a relevant person unless the general visitor is a registered medical practitioner.
- (8) Prior to taking an action pursuant to *paragraph (a) of subsection (6)*, the special

visitor or general visitor, as the case may be, shall seek the consent of the relevant person to the taking of such action, unless the Director dispenses with this requirement where—

- (a) there has been a declaration under *section 37(1)(b)* in respect of the person, or
  - (b) an enduring power of attorney has been registered in respect of the person.
- (9) A special visitor or general visitor shall not—
- (a) attempt to obtain information that is not reasonably required for the purposes referred to in *subsection (6)*, or
  - (b) use such information for a purpose that is not in accordance with this section.
- (10) A special visitor or general visitor shall take reasonable steps to ensure that any information obtained pursuant to this section is—
- (a) kept secure from unauthorised access, use or disclosure, and
  - (b) safely disposed of when he or she believes it is no longer required.
- (11) The Director shall, on an annual basis, carry out checks to ascertain if special visitors and general visitors are complying with *subsections (9) and (10)*.

### **Court friends**

- 100.** (1) The Director may or, where *section 36(9)* applies, shall, in accordance with this section, appoint a person to be a court friend for a relevant person.
- (2) (a) A court friend for a relevant person is a person who assists the relevant person in relation to an application under *Part 5* in respect of which the relevant person is the subject.
- (b) The court, on the hearing of such application, may hear submissions from the court friend on behalf of the relevant person.
- (3) Subject to *subsections (4) and (5)*, for the purposes of assisting a relevant person in relation to an application under *Part 5*, a court friend may—
- (a) at any reasonable time, examine and take copies of any health, personal welfare or financial record held in respect of the relevant person by any person, body or organisation, and
  - (b) interview the relevant person in private or otherwise than in public.
- (4) *Subsection (3)* shall not entitle a court friend to examine and take copies of any health record of a relevant person unless the court friend is a registered medical practitioner.
- (5) Prior to taking an action pursuant to *paragraph (a) of subsection (3)*, the court friend shall seek the consent of the relevant person to the taking of such action, unless the Director dispenses with this requirement where—
- (a) there has been a declaration under *section 37(1)(b)* in respect of the person, or
  - (b) an enduring power of attorney has been registered in respect of the person.

- (6) A court friend shall not—
  - (a) attempt to obtain information that is not reasonably required for the purposes referred to in *subsection (3)*, or
  - (b) use such information for a purpose other than provided for in that subsection.
- (7) A court friend shall take reasonable steps to ensure that any information obtained pursuant to this section is—
  - (a) kept secure from unauthorised access, use or disclosure, and
  - (b) safely disposed of when he or she believes it is no longer required.
- (8) The Director shall, on an annual basis, carry out checks to ascertain if court friends are complying with *subsections (6) and (7)*.
- (9) A court friend for a relevant person shall assist and attend with the relevant person in court or, if the relevant person is not attending the hearing concerned, promote the interests and the will and preferences of the relevant person in court.
- (10) A court friend for a relevant person may attend and represent the relevant person at any meeting, consultation or discussion, in connection with an application under *Part 5* in respect of which the relevant person is the subject, at which the interests or the will and preferences of the relevant person are being considered, whether or not the relevant person is attending the meeting, consultation or discussion, as the case may be.
- (11) A court friend for a relevant person may be appointed for such term and subject to such conditions, and may be paid such remuneration and allowances, as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (12) *Subsections (2) to (10)* shall, with all necessary modifications, apply to a person who falls within *paragraph (b) of section 36(8)* in respect of a relevant person and to the application under *Part 5* which relates to the relevant person as those subsections apply to a court friend for a relevant person and to the application under *Part 5* which relates to the second-mentioned relevant person.

#### **Panels to be established by the Director**

**101.** The Director shall establish a panel of suitable persons willing and able to act as—

- (a) decision-making representatives for relevant persons in the circumstances to which *section 38(7)* applies,
- (b) special visitors,
- (c) general visitors, and
- (d) court friends.

## CHAPTER 4

*Reports by Director and codes of practice***Reports by Director**

- 102.** (1) The Director shall, not later than 31 March in each year, submit to the Mental Health Commission a report on the Director's activities in the immediately preceding calendar year or, if this Part commenced during that calendar year on a date other than 1 January, the period on and from that commencement to and including the immediately preceding 31 December.
- (2) The Mental Health Commission shall cause a copy of a report submitted to it pursuant to *subsection (1)* to be forwarded to the Minister for Health not later than 28 days after the date on which the Commission received the report.
- (3) The Director shall, within 2 years but not earlier than one year from the date of commencement of *Part 9*, submit to the Mental Health Commission a report—
- (a) on the effectiveness of the Director,
  - (b) on the adequacy of the functions assigned under this Act to the Director, and
  - (c) containing such recommendations (if any) that the Director thinks would improve his or her effectiveness or the adequacy of the functions assigned to the Director under this Act, or both.
- (4) The Mental Health Commission shall cause a copy of a report submitted to it pursuant to *subsection (3)* to be sent to the Minister for Health, not later than 28 days after it was so submitted or such longer period as the Minister for Health may permit in any particular case, together with any recommendations the Commission may wish to make in relation to it.
- (5) At the end of each 5 year period commencing on the date of commencement of *Part 9*, the Director shall submit to the Mental Health Commission and the Minister for Health a report reviewing the general performance of the objectives and functions of the Director in the previous 5 years.
- (6) The Director may make any other reports that he or she considers appropriate for drawing to the attention of the Mental Health Commission and the Minister for Health matters that have come to his or her notice and that, in his or her opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Mental Health Commission and the Minister for Health.
- (7) As soon as practicable after receiving a report under this section, the Minister for Health shall cause a copy of it to be laid before each House of the Oireachtas.

**Codes of practice**

- 103.** (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 or approved of under *subsection (2)*, means such code as may be 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.

(2) The Director may—

- (a) prepare and publish a code of practice,
- (b) request another body to prepare a code of practice, or
- (c) approve of a code of practice prepared by another body, whether or not pursuant to a request referred to in *paragraph (b)*,

for the purposes of one or more of the following:

- (i) the guidance of persons, including healthcare professionals, assessing whether a person lacks capacity in relation to any matter;
  - (ii) the guidance of decision-making assistants;
  - (iii) the guidance of co-decision-makers;
  - (iv) the guidance of decision-making representatives;
  - (v) the guidance of attorneys;
  - (vi) the guidance of special visitors;
  - (vii) the guidance of general visitors;
  - (viii) the guidance of court friends;
  - (ix) the guidance of healthcare professionals as respects the circumstances in which urgent treatment may be carried out without the consent of a relevant person and what type of treatment may be provided;
  - (x) the guidance of persons acting as advocates on behalf of relevant persons;
  - (xi) the guidance of other persons (including healthcare, social care, legal and financial professionals) acting on behalf of relevant persons;
  - (xii) with respect to such other matters concerned with this Act as the Director thinks appropriate.
- (3) Where the Director is minded to exercise his or her power under *subsection (2)(a)* or *(b)*, he or she shall consult with such persons as the Director considers appropriate having regard to the matters to which it is intended that the code, when it is prepared, will relate and such persons may include any of the following:
- (a) the Health Service Executive;
  - (b) the Health Information and Quality Authority;

- (c) the National Disability Authority;
  - (d) the Citizens Information Board;
  - (e) representatives of professional bodies in the healthcare, social care, legal and financial sectors;
  - (f) representatives of healthcare, social care, legal and financial professionals.
- (4) The Director shall, before publishing a code of practice pursuant to his or her power under *subsection (2)(a)* or approving of a code of practice pursuant to his or her power under *subsection (2)(c)*—
- (a) make available, to the persons whom the Director considers appropriate having regard to the matters to which the code relates (which may be any of the persons who fall within *paragraphs (a) to (d)* of *subsection (3)*), 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 the representations (if any) received, and
  - (d) make any modifications that he or she considers appropriate to the draft.
- (5) The Director shall not publish or approve of a code of practice under *subsection (2)* except with the consent of—
- (a) if the code does not relate to healthcare matters, the Minister after consultation with the Mental Health Commission and the Minister for Health, and
  - (b) if the code relates (whether in whole or in part) to healthcare matters, the Minister for Health after consultation with the Minister and the Mental Health Commission.
- (6) Where the Director publishes or approves of a code of practice under *subsection (2)*, 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 keep posted, on the Internet website of the Director established under *section 95(1)(j)* or by the other electronic means referred to in *section 95(1)(j)* a copy of each code of practice published or approved of under *subsection (2)*, as the code is in force from time to time, on and from the date on which the code has effect.
- (8) The Director shall arrange for that part of the Internet website 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—
- (a) amend or revoke a code of practice published under *subsection (2)*, or
  - (b) withdraw approval of any code of practice approved of under *subsection (2)*.
- (10) *Subsections (3) to (5)* shall, with all necessary modifications, apply to a code of practice that the Director proposes to amend or revoke, or withdraw his or her approval of, under *subsection (9)* as *subsections (3) to (5)* apply to a code of practice that the Director proposes to publish or approve of under *subsection (2)*.
- (11) Where the Director amends or revokes, or withdraws his or her approval of, a code of practice published or approved of under *subsection (2)*, the Director shall cause a notice to that effect to be published in *Iris Oifigiúil* and on the Internet website or by other electronic means referred to in *section 95(1)(j)* specifying—
- (a) the code to which the amendment, revocation or withdrawal of approval, 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, revoked or approval is withdrawn, as the case may be, and
  - (c) the date from which the amendment, revocation or withdrawal of approval, 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 or approved of under *subsection (2)* 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 or approved of under *subsection (2)* 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 or approved of under *subsection (2)*,  
or
  - (b) a failure to comply with a code of practice published or approved of under *subsection (2)*,
- 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.
- (15) To the extent that a code of practice published or approved of under *subsection (2)* is for the purposes of court friends, the provisions of the code shall, with all necessary modifications, apply to a person who falls within *paragraph (b)* of *section 36(8)* in respect of a relevant person as those provisions apply to a court friend for a relevant person.
- (16) A code of practice published or approved of under *subsection (2)* shall not relate to any of the provisions of *Part 8*.