

Ms Alice White
Registrar of Wards of Court
Office of Wards of Court
15-24 Phoenix Street North
Smithfield
Dublin 7

Our ref:
STEP/Law Reform

Date:
21 March 2022

Matter: **Assisted Decision-Making (Capacity) (Amendment) Bill 2021: Draft General Scheme and Heads of Bill**

Dear Ms White

I am writing to you as the Chairperson of the Society of Trust and Estate Practitioners (“**STEP**”) Ireland.

STEP provides education, training, representation and networking for its members who are professionals specialising in trusts and estates, executorship, administration and related taxes. Its membership includes solicitors, accountants, tax practitioners, barristers, investment advisers, banking, pension and insurance professionals. STEP is a global organisation, the Irish branch of which, was formed in October 1998.

STEP Ireland has reviewed the provisions of the Draft General Scheme and Heads of Bill in relation to the Assisted Decision-Making (Capacity) (Amendment) Bill 2021 (the “**Heads of Bill**”) which was published on 22 November 2021. We are aware that a public consultation seeking submissions in relation to the Heads of Bill was announced on 20 December 2021. We understand that this closed for submissions on 17 January 2022. As the consultation largely took place over the Christmas period and before our volunteer committee members met in the New Year, unfortunately, we were unable to undertake a timely review and make submissions in relation to the Heads of Bill.

The legislation as currently drafted and as proposed in the Heads of Bill will have a significant impact on our members. As private client practitioners and trusted advisers, our members will frequently act for vulnerable persons, or their families in relation to all aspects of their affairs, but in particular in relation to Wardship.

We understand that in preparation for the implementation of Part 6 of the Assisted Decision-Making (Capacity) Act 2015 (the “**2015 Act**”) (which will ultimately be amended by the proposed Assisted Decision-Making (Capacity) Amendment Act) that the office of the Accountant of the Courts of Justice has begun to transfer assets of existing wards from long term into shorter term investments to enable investments to be encashed and transferred to the wards (with the assistance where required of a decision-making assistant or a co-decision-maker) or to a decision-making representative appointed by the Court on behalf of a ward when the ward is ultimately discharged from wardship. We are concerned about both the taxation implications of these disposals for the wards, and also whether such transfers are in the best interests of the wards in investment terms where the discharge of the ward is something out of their control, in particular:

- (a) We should be obliged if you could confirm the taxation implications of any transfer already made or any proposed transfers where wards may incur taxable charges on these transfers. For example, will there be any exemptions or other special tax treatment allowed for these charges which are not within the control of the ward or his/her committee; and

- (b) We would also like to understand how the investment decisions in respect of the funds of each ward are being taken. We understand that some wards may be discharged this summer after the commencement of the 2015 Act, and others may be waiting up to 3 years. Are investment decisions being taken having regard to the investment requirements of each individual ward?

We welcome the opportunity to understand better the approach of your office as outlined above and to meet with your office to discuss these issues further. My colleagues Aileen Keogan and Tracey O’Donnell are assisting me with this matter. If you have any queries in relation to the above, you might please contact Aileen and Tracey.

We look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Barry', with a long horizontal flourish extending to the right.

Barry Kennelly
Chairperson, Society of Trust & Estate Practitioners