

Your Guide to

# Making an Objection



**seirbhís tacaíochta  
cinnteoireachta**

decision support service

**IMPORTANT:** This guide does not constitute a statement of the law or the provisions under the Assisted Decision-Making (Capacity) Act 2015 (as amended) or any ancillary or related legislation. Please do not rely on it for legal advice.

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# 1 About this guide

# 1. About this guide

## What is this guide about?

At different times in our lives, we all need to make decisions. We make important decisions about our finances, property, employment, accommodation, healthcare and social supports.

Decision support arrangements are legally recognised arrangements made under the Assisted Decision-Making (Capacity) Act 2015 (as amended) (the Act) for people who need support to make certain decisions.

Co-decision-making agreements and enduring powers of attorney are two types of decision support arrangements which are registered with the Decision Support Service. We have specific guides on how to make these decision support arrangements which can be found on our website [decisionsupportservice.ie](http://decisionsupportservice.ie).

This guide tells you about what you need to know if you want to make an objection to either of these decision support arrangements.

## Who is this guide for?

This guide is for people who want to make an objection to a co-decision-making agreement or an enduring power of attorney. It is also a guide for people to find out more about making an objection.

## When should you read this guide?

We recommend that you read this guide before you make an objection to a co-decision-making agreement or an enduring power of attorney.

If you need some help understanding the information in this guide, it might be a good idea to ask someone you trust to read through it with you.

You may find it helpful to read some sections again when you are making an objection. You can also contact the Decision Support Service who will be able to assist you.

## Where can you get more information?

Our step-by-step guide to making an objection on our online portal is available on our website.

You can contact our Information Services Team on **(01) 211 9750**.

You can also ask a question on our website, through our online portal **myDSS** or by email to [queries@decisionsupportservice.ie](mailto:queries@decisionsupportservice.ie).

# **2** About the Decision Support Service

## 2. About the Decision Support Service

### What is the Decision Support Service?

The Decision Support Service was established under a law called the Assisted Decision-Making (Capacity) Act 2015 (as amended). We are part of the Mental Health Commission but have a separate role.

We provide an essential service for people who may need support to make certain decisions about their personal welfare, property and affairs.

This may include, for example, people with an intellectual disability, acquired brain injury, mental health difficulty or dementia.

The Decision Support Service also provides services for all people who want to plan for a time when they might not have decision-making capacity.

Some of our key functions include:

- promoting awareness and providing information about the Act
- regulating and registering decision support arrangements
- supervising the actions of decision supporters
- investigating complaints under the Act
- maintaining a panel of suitable persons who assist us in our functions

### What is capacity?

Capacity, or 'decision-making capacity' means your ability to make decisions. When we talk about capacity, we mean your ability to make a specific decision at a specific time.

Some people have capacity to make some decisions (for example, relating to their healthcare) but not others (for example, about their finances or selling a property). Some people need someone to help them to exercise their capacity, this may be by providing them with information, or helping them to communicate.

### What are decision support arrangements?

Decision support arrangements are legally recognised arrangements for people who need support to make certain decisions. This can include, for example, decisions about finances, property, employment, accommodation, healthcare and social supports.

There are five different decision support arrangements available. These arrangements are based on the different levels of support that a person requires to make a specific decision at a specific time.



Under these arrangements, people can be appointed as decision supporters. A decision supporter has the legal authority to help with certain decisions about a person's personal welfare, property and money matters. The type of support they can provide depends on the decision support arrangement in place.

A person's needs may change over time. The different levels of decision support arrangements available means they can be changed, cancelled or replaced by another type of arrangement, depending on the person's capacity and needs.

## What types of decision support arrangements are available?

There are three types of support arrangements for people who currently, or may shortly, face challenges when making certain decisions:

- decision-making assistance agreement
- co-decision-making agreement
- decision-making representation order

Each of these arrangements provide a different level of support, with a decision-making assistance agreement being the lowest and decision-making representation order being the highest.

There are also arrangements available for people who do not currently face difficulties when making decisions but wish to plan for a time when they might:

- advance healthcare directive
- enduring power of attorney

An advance healthcare directive can include decisions about a person's treatment decisions.

An enduring power of attorney can include decisions about the person's personal welfare, not including treatment, and their property and money matters.

You can find out more about decision support arrangements on our website [decisionsupportservice.ie](https://decisionsupportservice.ie).

# 3 About an objection

## What is an objection?

An objection is the action of raising a challenge or formally disagreeing at a stage in the registration process of a decision support arrangement. However, objections can only be made by specific persons in limited circumstances and for specific reasons.

There are criteria which you must meet in order to make an objection. These criteria relate to:

- your relationship to the person making the arrangement
- the reason for the objection
- the timeframe in which the objection must be made

## What arrangements can you object to?

You can object to the:

- registration of a co-decision-making agreement
- variation of a co-decision-making agreement. This means that the appointer and co-decision-maker apply to make changes to a registered co-decision-making agreement
- registration of an enduring power of attorney
- notification of an enduring power of attorney (to bring it into effect)

## What arrangements can you not object to?

You cannot make an objection to the Decision Support Service about:

- a decision-making assistance agreement
- a decision-making representation order. This is because this is a court process, and you may have an opportunity to raise your concerns in court
- an advance healthcare directive

## What if you are not allowed to make an objection?

If you have a concern but you do not meet the criteria for an objection, you can still contact us. If you have a concern about the suitability of the decision support arrangement or the supporter and the arrangement has been registered, you may also be able to make a complaint. You can find out more about how to make a complaint on our website.

# 4 Objecting to a co-decision-making agreement

This section explains what a co-decision-making agreement is and how to object to one.

## What is a co-decision-making agreement?

A co-decision-making agreement is an arrangement that lets a person who needs support to make decisions choose someone they know and trust to make certain decisions jointly with them. This means that they must make these decisions together. The person making the co-decision-making agreement chooses which decisions they need help with. The decisions can be about their personal welfare and their property and affairs.

The person making the co-decision-making agreement is called the **appointer**. The person the appointer chooses to make decisions with them is called the **co-decision-maker**. The co-decision-maker needs to agree to provide the appointer with this support.

The co-decision-maker can help the appointer to gather information and explain it to them. Together, the co-decision-maker and the appointer will look at the information and discuss the different options and outcomes. They must **jointly** come to a decision that respects the appointer's wishes.

The co-decision-maker can also support the appointer to let other people know about the decision they have made together.

Further information on co-decision-making agreements can be found on our website [decisionsupportservice.ie](https://decisionsupportservice.ie).

## Who can object to a co-decision-making agreement?

When an appointer and their co-decision-maker apply to register a co-decision-making agreement with us, they must tell certain people and give them a copy of the agreement. These people are called **notice parties**. A notice party can object to the co-decision-making agreement. This means they tell us they think there is a reason why it should not be made.

The appointer and their co-decision-maker must also tell their notice parties if they apply to change a registered co-decision-making agreement. This is called varying a co-decision-making agreement.

The following people are notice parties:

- the spouse, civil partner or co-habitant of the person making the agreement
- any adult children of the person making the agreement
- any other decision supporter for the person making the agreement

A person who is not a notice party cannot submit an objection to the registration or the variation of a co-decision-making agreement.

## 4. Objecting to a co-decision-making agreement

### When can you make an objection?

If you are a notice party, you can make an objection within five weeks of receiving notice of:

- the application for **registration** of a co-decision-making agreement
- the application for **variation** of a co-decision-making agreement, which occurs if the appointer wishes to make a change to their agreement

### On what grounds can you object to a co-decision-making agreement?

An objection to the registration or variation of a co-decision-making agreement must be based on one or more of the following grounds:

- The co-decision-making agreement does not meet legal requirements
- The appointer lacks capacity to make the co-decision-making agreement
- The appointer has the capacity to make the decisions in the co-decision-making agreement without support

- The appointer lacks capacity to make the decisions in the co-decision-making agreement even with the support of the co-decision-maker
- It is not the appointer's will and preference to make the co-decision-making agreement
- The co-decision-maker is not a suitable person
- The co-decision-making agreement contains a false statement
- Fraud, pressure, or undue influence was used to make the appointer enter into the co-decision-making agreement

### How do you make an objection to a co-decision-making agreement?

You can make an objection through our online portal **myDSS**.

If you do not have an account, you can create a basic account through our website. You just need an email address.

You can follow our simple step-by-step guide to completing an objection form, which is available on our website.

If you cannot access a computer or set up an account online, we can help. You can contact us on **(01) 211 9750**, and we will help you set up your account or discuss different options.

As a notice party, the notice form you receive from the appointer and co-decision-maker will provide instructions on how to make an objection, the date by which the objection must be made, and the application reference number to be provided in the objection.

### When can you make an objection to a co-decision-making agreement?

A notice party has **5 weeks** from the date notice was given to submit an objection to the Decision Support Service. After this time, we can no longer receive an objection.

### Is there a fee for making an objection?

Yes, there is a fee of €12 to make an objection to a co-decision-making agreement. The fee is paid via the DSS online portal **myDSS** when you submit your objection.

### What happens after you submit an objection?

After the 5-week timeframe for submitting objections has passed, we will review any objection we receive. We will confirm whether:

- it was submitted by a valid notice party
- it was submitted within the 5-week timeframe
- it is based on a valid ground for an objection

If the objection meets these criteria, we will write to the appointer and their proposed co-decision-maker to tell them about the objection. We will give them an opportunity to respond to us and to provide any further information they would like to tell us.

We may also talk to other people that we think may have relevant information about the objection.

We will review the objection alongside any supporting evidence we receive to consider whether or not the objection is well founded.

This means, having considered all of the facts and evidence, we determine whether the objection is valid, well supported by evidence and not able to be addressed or rectified by the appointer or the co-decision-maker.

### What happens if your objection is well founded?

If we determine your objection to be well founded, we will notify the appointer and proposed co-decision-maker of our preliminary decision and the reasons we have formed this view.

The appointer and proposed co-decision-maker can ask us to review our preliminary decision. This is called an **internal review**.

They can request an internal review of our preliminary decision within **10 working days** for one or more of the following reasons:

## 4. Objecting to a co-decision-making agreement

- They do not agree with the way we considered the facts
- They do not agree with the way we applied the law
- They think we made an unreasonable decision
- They have further information they did not previously provide to us

Following the internal review process, we may decide to uphold or change our determination that the objection was well founded. If we change our determination, you will have the opportunity to request an internal review, as set out below.

If we determine the objection to be well founded, we must refuse to register or vary the co-decision-making agreement. We will notify you, as well as the appointer and proposed co-decision-maker. We will provide you with the reasons for our final decision.

The appointer or co-decision-maker may appeal our final decision to the Circuit Court. They must do this no later than **21 days** after we have notified them of our decision.

Following an appeal, the Circuit Court may make one of the following orders:

- require the Decision Support Service to remove the co-decision-making agreement from the Register

- confirm the decision of the Decision Support Service
- make another declaration or order that it considers appropriate

### What happens if your objection is not well founded?

If we determine the objection to be not well founded, we will notify you of our preliminary decision and the reasons we have formed this view. We will offer you the opportunity to ask us to review our preliminary decision. This is called an **internal review**.

You can ask us to review our preliminary decision within **10 working days** for one or more of the following reasons:

- You do not agree with the way we considered the facts
- You do not agree with the way we applied the law
- You think we made an unreasonable decision
- You have further information you did not previously provide to us

Following the internal review process, we may decide to uphold or change our determination that the objection was not well founded. If we change our determination, we will offer the appointer and co-decision-maker the opportunity to request an internal review, as set out above.



If we determine the objection to be not well founded, we will notify you, as well as the appointer and proposed co-decision-maker. We will provide you with the reasons for the decision and will proceed to register or vary the co-decision-making agreement, so long as it meets all other requirements.

You can appeal our final decision to the Circuit Court. You must do this no later than **21 days** after we have notified you of this decision.

Following an appeal, the Circuit Court may make one of the following orders:

- require the Decision Support Service to remove the co-decision-making agreement from the Register
- confirm the decision of the Decision Support Service
- make another declaration or order that it considers appropriate

## What happens if you withdraw your objection?

If you notify us that you wish to withdraw your objection, the objection will no longer be assessed by us.

However, we may use the information you provide us as part of our decision about whether or not to register or vary the co-decision-making agreement.

# 5 Objecting to an enduring power of attorney

This section explains what an enduring power of attorney is, and how to make an objection to one.

## What is an enduring power of attorney?

An enduring power of attorney is a legally recognised arrangement that lets a person plan ahead for a time when they may be unable to make certain decisions. It lets a person set out the types of decisions they may need someone to make and appoint someone they know and trust to make them on their behalf.

The person making an enduring power of attorney is called the **donor**. A donor usually chooses someone they know and trust as their **attorney**. Although this person is called an attorney, they do not have to be a lawyer and will usually be a person the donor trusts who knows them well.

In certain situations, the donor can choose a trust corporation to act as their attorney. This type of attorney is not common and there are specific rules that apply to trust corporations acting in this role.

The donor must have capacity at the time they make an enduring power of attorney. This means they need to show that they:

- Understand what an enduring power of attorney is and the types of decisions their attorney will make

- Remember relevant information about making the enduring power of attorney long enough to make a voluntary choice
- Understand the pros and cons of the different options available to them and the likely consequences of those options
- Can communicate their decision to make an enduring power of attorney and the powers they want to give their attorney
- Understand that they can change or cancel the enduring power of attorney at any time while they have capacity

The donor can give their attorney either a general authority to make decisions on their behalf in relation to personal welfare, and property and affairs or a more specific authority relating only to certain decisions. Either way, the attorney will only make decisions on the donor's behalf at a time in the future, if and when they lose capacity to make them themselves and only after the process for notifying the Decision Support Service has been completed.

The donor can choose to have more than one attorney but must specify how the attorneys will make decisions together on their behalf. The donor can also choose one or more people to be their replacement attorneys, if one or more of their attorneys was no longer able or willing to continue in their role for any reason.

## 5. Objecting to an enduring power of attorney

Further information on making an enduring power of attorney can be found on our website.

### Who can make an objection?

When a donor applies to register an enduring power of attorney with us, or an attorney notifies us to activate the enduring power of attorney, they must tell certain people and give them a copy of the arrangement. These people are called **notice parties**. A notice party can object to the enduring power of attorney. This means they tell us they think there is a reason why it should not be made or be activated.

The following people are notice parties:

- the donor (when the application is made by the attorney)
- any attorney in the arrangement (when the application is made by the donor)
- a spouse, civil partner or cohabitant (if any) of the donor
- any adult children of the donor
- any existing decision supporter for the donor
- an attorney for the donor for an enduring power of attorney made under the Powers of Attorney Act 1996
- any other person specified by the donor to be a notice party

If there are not at least two notice parties, the donor has to name two other people that they will tell about the arrangement.

Any person who shows that they have a real interest or expertise in the welfare of the donor can also object to the registration or notification of the enduring power of attorney. They will need to show us in what way they have an interest or expertise in the donor's welfare.

### When can you make an objection?

You can object to an enduring power of attorney up to five weeks after the date notice was given about:

- the application for **registration** of the enduring power of attorney,
- the application for **notification** of the enduring power of attorney, when the attorney notifies us in order to activate the enduring power of attorney

### On what grounds can you object to the registration of an enduring power of attorney?

An objection to the registration of an enduring power of attorney must be made on one or more of the following grounds:

- The enduring power of attorney does not meet legal requirements, in terms of the scope, content and accompanying statements, including statements of capacity
- Notice requirements for creating the enduring power of attorney were not followed
- The donor lacks capacity to make the enduring power of attorney
- The attorney is not a suitable person
- The enduring power of attorney contains a false statement
- Fraud, pressure, or undue influence was used to make the donor enter into the enduring power of attorney

## On what grounds can you object to the notification of an enduring power of attorney?

An objection to the notification of an enduring power of attorney must be based on one of the following grounds:

- the enduring power of attorney does not meet the legal requirements for notification
- notice requirements were not followed
- the donor has capacity, and the enduring power of attorney should not be brought into effect

- the notification contains a false statement

## How do you make an objection?

You can make an objection through our online portal **myDSS**.

If you do not have an account, you can create a basic account through our website. You just need an email address.

You can follow our simple step-by-step guide to completing an objection form, which is available on our website.

If you cannot access a computer or set up an account online, we can help. You can contact us on **(01) 211 9750**, and we will help you set up your account or discuss different options.

If you are a notice party, the notice form you receive will provide instructions on how to make an objection, the date by which the objection must be made, and the application reference number to be quoted in the objection.

## When can you make an objection to an enduring power of attorney?

A notice party, or any other person with any interest in the donor's welfare, has **5 weeks** from the date notice was given to submit an objection to the Decision Support Service. After this time, we can no longer receive the objection.

## 5. Objecting to an enduring power of attorney

### Is there a fee for making an objection?

Yes, there is a fee of €12 to make an objection to an enduring power of attorney. The fee is paid via the DSS online portal when you submit your objection.

### What happens after you submit an objection?

After the 5-week timeframe for submitting objections has passed, we will review any objection we receive. We will confirm whether:

- it was submitted by a valid party
- it was submitted within the 5-week timeframe
- it is based on a valid ground for objection

If the criteria are met, we will write to the attorney and the donor, as appropriate, to tell them about the objection. We will give them an opportunity to respond to us and to provide any further information they would like to tell us.

We may also talk to other people that we think may have relevant information about the objection.

We will review the objection alongside any supporting evidence we receive to consider whether or not the objection is well founded. This means, having considered all of the facts and evidence, we determine whether

the objection is valid, well supported by evidence and not able to be addressed or rectified by the donor or attorney.

### What happens if your objection is well founded?

If we determine your objection to be well founded, we will notify the donor and attorney of our preliminary decision and the reasons we have formed this view.

We will offer the donor and attorney an opportunity to ask us to review our preliminary decision. This is called an **internal review**.

They can ask us to review our preliminary decision within **10 working days** for one or more of the following reasons:

- They do not agree with the way we considered the facts
- They do not agree with the way we applied the law
- They think we made an unreasonable decision
- They have further information they did not previously provide to us

Following the internal review process, we may decide to uphold or change our determination that the objection was well founded. If we change our determination, you will have the opportunity to request an internal review, as set out below.

If we determine the objection to be well founded, we must refuse to register the enduring power of attorney or refuse to activate it. We will notify you, as well as the attorney and donor, as appropriate. We will provide you with the reasons for our final decision.

The donor or attorney may appeal our final decision to the Circuit Court. They must do this no later than **21 days** after we have notified them of this decision.

Following an appeal, the Circuit Court may make one of the following orders:

- declare the objection to be not well founded and require the Decision Support Service to consider whether the enduring power of attorney should be registered, taking the court's declaration into account
- declare the objection to be not well founded and require the Decision Support Service to consider whether the enduring power of attorney should be activated, taking the court's declaration into account
- confirm the decision of the Decision Support Service
- make another declaration or order that it considers appropriate

## What happens if your objection is not well founded?

If we determine that the objection is not well founded, we will inform you of our preliminary decision and the reasons we formed that view. We will offer you the opportunity to ask us to review our preliminary decision. This is called an **internal review**.

You can ask us to review our preliminary decision within **10 working days** for one or more of the following reasons:

- You do not agree with the way we considered the facts
- You do not agree with the way we applied the law
- You think we made an unreasonable decision
- You have further information you did not previously provide to us

Following the internal review process, we may decide to uphold or change our determination that the objection was not well founded. If we change our determination, we will offer the donor and attorney the opportunity to request an internal review, as set out above.

## 5. Objecting to an enduring power of attorney

If we determine the objection to be not well founded, we will notify you, as well as the donor and attorney. We will provide you with the reasons for the final decision and will proceed to register or accept the notification of the enduring power of attorney, so long as it meets all other requirements.

You can appeal our final decision to the court. You must do this no later than **21 days** after we have notified you of this decision.

Following an appeal, the court may make one of the following orders:

- require the Decision Support Service to remove the registered enduring power of attorney from the Register
- require the Decision Support Service to cancel our acceptance of the notified enduring power of attorney and remove it from the Register
- confirm the decision of the Decision Support Service
- make another declaration or order that it considers appropriate

### What happens if you withdraw your objection?

If you notify us that you wish to withdraw your objection, the objection will no longer be assessed by us.

However, we may use the information you provide us as part of our subsequent decision about whether or not to register or accept the notification of the enduring power of attorney.

### Where can I get more information?

Further information on making an objection is available on our website [decisionsupportservice.ie](https://decisionsupportservice.ie).

You can contact our Information Services Team on **(01) 211 9750**.

You can also ask a question on our website, or by email to [queries@decisionsupportservice.ie](mailto:queries@decisionsupportservice.ie)







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