

Private Client

# Advance Care Directive

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In September 2009, the Law Reform Commission (LRC) published their Report on Bioethics: Advance Care Directives. The LRC recommended the introduction of a legislative framework governing Advance Care Directives, otherwise known as 'living wills', and a draft Mental Capacity (Advance Care Directives) Bill 2009 was proposed. It is hoped that this draft Bill will eventually be incorporated into the Mental Capacity Bill 2008 when enacted.

An Advance Care Directive allows a competent individual to plan their ongoing healthcare by stating their instructions as regards future medical and surgical interventions. These instructions are activated only in the event of future mental incapacity when the individual would otherwise be unable to communicate his or her wishes.

The legal status of Advance Care Directives in Ireland is currently unclear. Although they may be of persuasive value, medical professionals are not bound to adhere to their terms. The LRC recommended that Advance Care Directives become legally enforceable insofar as they are prohibitive in nature. An individual would be entitled to refuse medical or surgical treatment (including life sustaining treatment), but could not prescribe a course of treatment they would want to receive. There would be no requirement that such refusal be based on sound medical principles and the individual could refuse on religious or other grounds. However, the individual could not refuse basic or palliative care to include warmth, shelter, oral nutrition, hydration and hygiene measures.

The LRC also recommended that individuals be entitled to nominate a person to be their Health Care Proxy under the terms of their Directive. The authority granted to the Proxy may be limited to interpreting and ensuring compliance with the individual's instructions or extended to allow that Proxy full authority to make all medical decisions on the individual's behalf. The extent of the power granted to the Proxy is at the complete discretion of the individual.

An Advance Care Directive may be communicated verbally or in writing. However, if the instructions involve the refusal of life sustaining treatment, the LRC recommended that the Directive be in writing and witnessed. The LRC further suggested that the individual in such instances be encouraged to seek medical advice although this would not be mandatory. If there is any ambiguity in the terms of the instructions the LRC recommended a presumption in favour of preserving life. An Advance Care Directive would be revocable and could be overridden by a subsequent competent decision whether such decision is communicated verbally or in writing. Any indication by the individual giving a medical professional a reasonable belief that they have changed their mind should be taken as a revocation.

The LRC further proposed that a statutory Code of Practice be prepared by a multi-disciplinary working group. This Code would provide detailed guidance on Advance Care Directives for health care professionals including specific guidance on life sustaining treatment and 'Do Not Resuscitate' orders.

The draft Bill stipulates that a medical professional would not be legally liable for following the instructions contained in a Directive where they believe that Directive to be valid and applicable to the particular condition being treated. In the event of failure to adhere to the instructions in the Directive, the medical professional would have a full defence where he or she acted in good faith.

*For further information, or to prepare an Advance Care Directive, contact Mary McKeever of our Private Client Department.*

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