



Equality and Inclusion

Equality and Inclusion

Education and Training

Community Housing

Legal Capacity

Emergency Information

Convention on the Rights of
Persons with Disabilities

Accessibility

The Law

Contact

Legal Capacity

A legal guardian is appointed to make decisions on behalf of a ward. In extreme circumstances a ward may be declared "legally incompetent" in which case the guardian can then override the ward's decisions at his/her discretion. According to the Commission for Equal Rights of Persons with Disabilities, such measures are not required in many instances, and it is possible and even preferable to replace them with less limiting measures that are more respectful of the individual's autonomy, as detailed below.

In Israel, a "**legal guardian**" is an individual appointed by the court to make decisions on behalf of another person incapable of managing his/her affairs. An individual appointed a legal guardian is referred to as a "**ward**", and he/she usually has a disability. A corporation may also be appointed to serve as a legal guardian, usually when there are no family members willing to accept the appointment. A "guardian of the person" may be appointed to make personal decisions in matters such as medical treatment and household management. A "guardian of the property" may be appointed and granted fiduciary responsibility for the ward's funds and assets. A guardian is often appointed for both person and property matters.

About 40,000 individuals in Israel are currently wards with appointed legal guardians.

Another severe, yet rare, measure is to declare an individual "**legally incompetent**". In doing so, an individual's legal competency is limited – for example his/her ability to perform legal actions such as contracts or to bequeath property. This course of action is only taken with respect to persons with intellectual or mental disabilities, which means that the legal guardian or a representative of the Attorney General has the right to override the ward's legal actions. Furthermore, some legal actions by the ward require approval of the court and his/her actions are limited in accordance with certain laws.

In the spirit of the [UN Convention on the Rights of Persons with Disabilities](#), the government has approved proposed legislation to amend the law so that it will no longer be possible to declare persons with disabilities as legally incompetent.

Free choice and free will are the foundations of modern western culture. Adults are free to decide their fate, and are entitled to make decisions regarding their personal affairs.

These basic rights are denied from persons who are appointed a legal guardian. It should be emphasized that most guardians fulfill their responsibilities faithfully, but nonetheless a guardian should only be appointed in certain cases, and only after all alternative measures have been assessed and proven to be ineffective.

We believe that the appointment of a legal guardian places extreme limitations on an individual's freedom. Therefore, this measure should be avoided as much as possible, and should only be employed as a last resort and after less limiting alternatives have been seriously considered.

What other steps can be taken when an individual has difficulty managing his/her affairs?

Supported decision making – an advisor can be appointed to help the individual make an informed decision, without the authority to make a decision on behalf of the individual. This option, which is compatible with human rights criteria, is included in the [Convention on the Rights of Persons with Disabilities](#) but has not been legally enacted in Israel yet.

Appointing limited guardians – a limitation may include for example the appointment of a legal guardian who is only authorized to deal in certain issues, or who is appointed for a limited period of time.

Alternative limitations – for example, limitations on an individual's use of a bank account without appointing a legal guardian. Appointing limited guardians or imposing limitations on managing a bank account is at the discretion of the court. These measures can be applied in accordance with the current legal situation in Israel.

Continuing power of attorney – appointing a power of attorney according to which an individual grants power of attorney to a person who will be authorized to act with respect to certain matters and to make decisions on behalf of the individual, should he/she be in a condition in which they no longer have the capacity to comprehend these matters and to make decisions with respect to them. This measure is anchored in the [memorandum for proposed legislation to amend the Legal Competency and Guardianship Law](#), and has not yet been incorporated into Israeli law.

Advance instructions – instructions given by individuals when they are capable of managing their affairs regarding their wishes about future decisions to be made on their behalf in the event that, for any reason, they will not be able to exercise their legal capacity. This measure is found in the abovementioned memorandum to the proposed amendment that has not yet been enacted into law.

Even if a legal guardian is appointed, the following principles must be adhered to:

The individual's participation in the guardian appointment process – the individual shall be heard during the legal proceedings, and shall be granted the right to independent representation;

The guardian shall **involve the individual** in all decisions pertaining to the ward's life;

Strict oversight of guardians and their actions, regarding the ward's personal and property affairs.

These principles are anchored, among other places, in the [Convention on the Rights of Persons with Disabilities](#).

As stated, the Ministry of Justice has initiated a [memorandum for proposed legislation](#) to amend the current law regarding guardianship that will include many of the principles mentioned above. The memorandum for proposed legislation was approved in a decision of the Ministerial Committee for Legislative Affairs no/294, and will be advanced by the government for legislations by the Israeli parliament (Knesset).

It is the Commission's position that an individual's legal competence should not be limited. Furthermore, appointing a guardian to make decisions on behalf of the individual should be avoided as much as possible, regardless of the disability.

Alternatively, the individual should receive support and assistance in order to make autonomous decisions. Limitations can be imposed without appointing a guardian, for example on the individual's bank account. If there is no choice but to appoint a guardian, his/her authority should be determined relative to the ward's abilities, and should be as limited as much as possible in scope and duration. The need for a guardian should be re-evaluated from time to time. A guardian with authority for all the ward's affairs, personal and property, will only be appointed as a last resort, in the most severe cases, and with strict adherence to principles of participation in appointing the guardian and in the ward's involvement in decision making. It is the government's responsibility to tighten oversight of guardians and their actions, to ensure that they do not abuse their power and that they act according to human rights criteria.

For additional information:

- Legal Competency and Guardianship Law, 5722-1962
- Memorandum for proposed legislation to the Legal Competency and Guardianship Law (amendment no. ...) (continuing power of attorney, preliminary instructions and various provisions), 5772-2012
- Article 12 to the Convention on the Rights of Individuals with Disabilities, 2006

Share via  Facebook  Twitter