

Sweden

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1. In Sweden two types of *guardianships/representations* can be used to empower and protect vulnerable adults, both regulated in the Children and Parent Code (1949:381) Ch. 11, 12, 14-16 and 19. The rules were reformed 1995, but still left in the Children and Parent Code, with small changes as late as in 2017. An act on *Continuing Powers of Attorney* (2017:310) was adopted 2017 and is a part of the civil code. The purpose of this legislation is to enable persons to make prior arrangements in case of future incapacity and to choose a trusted person as their future attorney. New rules about *ex lege representation* came also in force 2017, placed in Ch. 17 of the Children and Parent Code. The expectation is that the *ex lege* representation will reduce the need of guardianships and other arrangements. Non-statutory rules of *negotiorum gestio* exist.

Sweden has ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, both entered in force in 2009. Sweden has not yet entered the Hague Convention on the International Protection of Adults but in 2015 a commission of inquiry came to the conclusion that the Swedish parliament should approve an entry. The Nordic Family Law Convention 1931 contains private law provisions on guardianship in chapter III.

2. There are two types of legal representatives (guardianships) for adults that affect the legal capacity. One is more intrusive than the other. Hence, there are two different definitions of vulnerable adults. Or rather two different intensities of vulnerable adult.

Good man (in Swedish: god man) is the less intrusive judiciary protection and requires the consent of the adult in *need of help* both before being appointed and before every legal action in her name (Ch. 11 Sec. 4). A good man can, however, be appointed even if the adult in need cannot give his or her consent. To be assigned a good man the person must need help to safeguard her rights, manage her assets, or care for herself, due to illness, mental disorder, frailty or similar conditions. E.g. substance abuse or a case of prodigality. The least encroaching measures must be explored first. Maybe a power of attorney is sufficient.

The more intrusive one, administrator (in Swedish: *förvaltare*), requires for the adult not just to be in the situation described above and in *need of help* but to be completely *incapable* of doing so (Ch. 11 Sec. 7). An administrator could be assigned by the court without consent and the commitment is custom-made to suit the individual in her special needs. Just like a good man the least encroaching measures must be explored first and the commission should end or decrease as soon as it is excessive.

Continuing Powers of Attorney and *ex lege* representation can be used under the same condition as required to appointing an administrator (§ 1; Ch. 17 Sec. 1).

3. The legal effects of a good man for the person represented are somewhat small. The formal legal capacity remains unaffected since the person freely can act under the law. The good man is also, however, empowered to represent the person and should act on base of a consent (Ch. 11 Sec. 5). This means that the good man often should act more as a counsellor or mentor that helps the vulnerable adult than as a representative. There is however two exceptions for consent, if the person is practically unable to make decisions, and if the legal act concerns “daily life issues”. These two are both grey areas that have not been fully agreed on (as will be pointed out below, see under 4).

When it comes to an administrator this has to be assigned by a court and the administrator acts on a person’s behalf without the persons consent (Ch. 11 Sec. 9). The court must base the

decision on a medical certificate or other equivalent certificate (Ch. 11 Sec. 17, this is applicable in the decision of a good man as well if the person is not able to give consent). The administrator is eligible in all situations covered by the decision from the court and the vulnerable adult is deprived of her formal legal power to act under the law. She is to dispose over her own salary but this too can be appointed to the administrator if needed (Ch. 11 Sec. 8).

Neither a good man nor an administrator can represent the person in strictly personal matters e.g. make or revoke a will, consent to marriage, acknowledge paternity or use the right to vote. A vulnerable adult's capacity to make a will, and so on, will be determined in each case and is dependent on the understanding of the matter. In some actions, the good man or administrator needs permission from the chief guardian such as taking a loan, unusual gifts/donations, buying or selling realty etcetera (Ch 14). Every year the good men and the administrator needs to account for the equity and liabilities, and how the affairs have been managed (Ch. 12 Sec. 5 and 9, Ch. 14 Sec. 15).

As of 2017 there is an act on Continuing Powers of Attorney (CPA) which opened up an opportunity for people to make prior arrangements regarding whom the donor will have as an authorised representative in case that it is needed in the future and what kind of question the donor will be represented in (§§ 1, 2 and 5). CPAs are subject to the same formal requirements as testament, e.g. they have to be signed by the donor with two witness (§ 4). A CPA can be established and become effective without any involvement from the judicial system. It is also possible to include a clause that commands a confirmation by the court for the power of attorney to entry into force, and an obligation for the authorized representative to account and equity (§§ 9 and 23).

Ex lege representation gives close family members the right to assistance in daily financial tasks, such as buying food, paying rent, etc. Close family members are persons over 18 that are (in priority order) either a spouse or cohabitant, children, grandchildren, parents, siblings and siblings' children (Ch. 17 Sec. 2).

4. The Swedish Government has concluded that the adoption of CRPD did not mean a need for regulatory changes when it came to the types of representation practiced in Sweden. There is, however, an on-going discussion regarding the concept of a "good man" and its compliance with the CPRD, mainly article 12. Article 12 states that legal capacity is crucial for equality and that it includes both holding of the rights and the ability to act under the laws. The CPRD Committee underlines the fact that they want to change the decision-making paradigm from "best interest" towards "will and preferences". The Swedish law explicitly orders the good man to act in the person's best interest (Ch. 12 Sec. 3). For good men there is a possibility to act without consent if the person is considered to lack the ability of consent (Ch. 11 Sec. 5). Hence, there is a grey area concerning who is to decide that a person lacks the ability to consent. There is no guidelines regarding this assessment and there is no legal consequences if the good man does not seek the will and preferences of the person represented. There is also the grey area regarding the exceptions from consent in certain decisions for good men. The phenomenon has also recently been criticised in a report by the Swedish National Audit Office regarding the supervision of both good men and administrators.

5. The County Administration provides empirical data from 2015 to 2017 about valid guardianship in Sweden. According to the statistics the number of adults with a legal representative called good man increased from 58 288 (2015) to 68 619 (2017). The number of adults with a legal representative called administrator increased from 10 504 (2015) to 12 397 (2017). Since the reform regarding Continuing Powers of Attorney is somewhat new and are not registered, there is no compiled empirical data. This kind of arrangement seems, however,

to be used frequently by e.g. family law firms. The population of Sweden is approximately 10 million.