New Amendments handed in are marked thus ★

★ Amendments which will comply with the required notice period at their next appearance

Amendments tabled since the last publication: 1 to 15 and NC1

PUBLIC BILL COMMITTEE

MENTAL CAPACITY (AMENDMENT) BILL [LORDS]

NOTE

This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in the order in which they relate to the Bill.

Caroline Dinenage

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.

Caroline Dinenage

★ Clause 5, page 4, line 25, leave out subsection (9)

Member’s explanatory statement

This amendment removes the privilege amendment inserted by the Lords.
“Meaning of deprivation of liberty
(1) After section 4 of the Mental Capacity Act 2005 insert—

“4ZA Meaning of deprivation of liberty
(1) In this Act, references to deprivation of a person’s liberty have the same meaning as in Article 5(1) of the Human Rights Convention and, accordingly, a person is not deprived of liberty in any of the circumstances described in subsections (2) to (4).

(2) A person is not deprived of liberty in a particular place if the person is free to leave that place permanently.

(3) A person is not deprived of liberty in a particular place if—
   (a) the person is not subject to continuous supervision, and
   (b) the person is free to leave the place temporarily (even if subject to supervision while outside that place).

(4) A person is not deprived of liberty if—
   (a) the arrangements alleged to give rise to the deprivation of liberty are put in place in order to give medical treatment for a physical illness or injury, and
   (b) the same (or materially the same) arrangements would be put in place for any person receiving that treatment.

(5) A person is free to leave a particular place for the purposes of subsections (2) and (3) even if the person is unable to leave that place provided that if the person expressed a wish to leave the person would be enabled to do so.”

(2) In section 64(5) of that Act (interpretation) for the words from “same” to the end substitute “meaning given by section 4ZA.”

Member’s explanatory statement
This New Clause provides the meaning of “deprivation of liberty” for the purposes of the Mental Capacity Act 2005.

Caroline Dinenage

★ Schedule 1, page 5, line 19, leave out “if a person objects to arrangements” and insert “in certain cases”

Member’s explanatory statement
This amendment is consequential on Amendment 9.

Caroline Dinenage

★ Schedule 1, page 8, line 19, leave out from “mainly” to “that” in line 21 and insert “through—
   (i) the provision of NHS continuing healthcare under arrangements made by a clinical commissioning group, or
Mental Capacity (Amendment) Bill [Lords], continued

(ii) in Wales, the provision of an equivalent to NHS continuing healthcare under arrangements made by a Local Health Board,”

Member’s explanatory statement

“NHS continuing healthcare” is defined, for England, by paragraph 8 of new Schedule AA1. This amendment provides that in the case of arrangements carried out through the equivalent of NHS continuing healthcare, in Wales, the responsible body is the Local Health Board making the arrangements.

Caroline Dinenage

★ Schedule 1, page 11, line 19, leave out from beginning to end of line 7 on page 12 and insert—

“13 (1) As soon as practicable after authorising arrangements, the responsible body must ensure that a copy of the authorisation record is given to—

(a) the cared-for person,
(b) any independent mental capacity advocate appointed under paragraph 39 to represent and support the cared-for person,
(c) any person within paragraph 39(5) in respect of the cared-for person (the “appropriate person”), and
(d) any independent mental capacity advocate appointed under paragraph 40 to support the appropriate person.

(2) As soon as practicable after authorising arrangements, the responsible body must take such steps as are practicable to ensure that the cared-for person and any other person listed in sub-paragraph (1) understands—

(a) the effect of the authorisation,
(b) the right to make an application to the court to exercise its jurisdiction under section 21ZA,
(c) the programme of regular reviews specified by the responsible body in accordance with paragraph 35(2),
(d) the right to request a review under paragraph 35(3)(b),
(e) the circumstances in which a referral will be made to an Approved Mental Capacity Professional under paragraph 35(4),
(f) the circumstances in which an independent mental capacity advocate should be appointed under paragraph 39, and
(g) the effect of there being an appropriate person in relation to the cared-for person.”

Member’s explanatory statement

This amendment substitutes a new paragraph 13 of the new Schedule AA1 to require that, as soon as practicable after arrangements are authorised, the responsible body must provide to the cared-for person and any other person listed in paragraph 13(1) a copy of the authorisation record and take steps to ensure that those people understand the matters described in paragraph 13(2).

Caroline Dinenage

★ Schedule 1, page 14, line 6, leave out “prescribed connection” and insert “connection, of a kind prescribed by regulations,”

Member’s explanatory statement

This amendment is to make it clear that a regulation making power is being conferred by paragraph 18(3) of the new Schedule AA1.
Caroline Dinenage

Schedule 1, page 15, line 4, leave out “prescribed connection” and insert “connection, of a kind prescribed by regulations,”

Member’s explanatory statement
This amendment is to make it clear that a regulation making power is being conferred by paragraph 19(4) of the new Schedule AA1.

Caroline Dinenage

Schedule 1, page 16, line 1, leave out “prescribed connection” and insert “connection, of a kind prescribed by regulations,”

Member’s explanatory statement
This amendment is to make it clear that a regulation making power is being conferred by paragraph 21(1)(b) of the new Schedule AA1.

Caroline Dinenage

Schedule 1, page 16, line 8, leave out “or”

Member’s explanatory statement
This amendment is consequential on Amendment 9.

Caroline Dinenage

Schedule 1, page 16, line 12, at end insert—
“(c) the arrangements provide for the cared-for person to receive care or treatment mainly in an independent hospital, or
(d) the case is referred by the responsible body to an Approved Mental Capacity Professional and that person accepts the referral.”

Member’s explanatory statement
This provides for two additional situations where a pre-authorisation review must be carried out by an Approved Mental Capacity Professional.

Caroline Dinenage

Schedule 1, page 16, line 31, leave out “(whether or not paragraph 21(2) applies)”

Member’s explanatory statement
This amendment is consequential on Amendment 9.

Caroline Dinenage

Schedule 1, page 24, line 3, at end insert “in a hospital”

Member’s explanatory statement
This is to provide that only arrangements to enable medical treatment for mental disorder in a hospital (as opposed to medical treatment for mental disorder in any other setting) are excluded from being authorised under the new Schedule AA1.

Caroline Dinenage

Schedule 1, page 24, line 10, at end insert “in a hospital”

Member’s explanatory statement
This is to provide that only arrangements to enable medical treatment for mental disorder in a hospital (as opposed to medical treatment for mental disorder in any other setting) are excluded from being authorised under the new Schedule AA1.
Caroline Dinenage

Schedule 1, page 27, line 16, at end insert—
“(g) anything which has the same effect as something within any of paragraphs (a) to (f), under another England and Wales enactment.”

Member’s explanatory statement

If arrangements conflict with requirements, conditions or directions imposed or given under certain provisions of the Mental Health Act 1983 those arrangements cannot be authorised under the new Schedule AA1 of the Mental Capacity Act 2005. This amendment provides that arrangements which conflict with requirements, conditions or directions arising from an England and Wales enactment having the same effect as the provisions of the Mental Health Act listed in paragraph 54 also cannot be authorised under the new Schedule AA1.

Caroline Dinenage

Schedule 2, page 28, line 22, at end insert—
“3A (1) Section 36 (functions of independent mental capacity advocates) is amended as follows.
(2) In subsection (2)(a) leave out “(‘P’)” so that P” and insert “or support so that that person”.
(3) In subsection (2)(c) leave out “P’s wishes and feelings” and insert “the wishes and feelings of the person the advocate has been instructed to represent (“P”)
(4) After subsection (2)(d) insert—
“(da) in the case of an advocate instructed to support an appropriate person where paragraph 40 of Schedule AA1 applies, supporting that person to ascertain—
(i) what the wishes and feelings of the cared-for person who that appropriate person represents and supports would be likely to be and the beliefs and values that would be likely to influence the cared-for person;
(ii) what alternative courses of action are available in relation to the cared-for person who that appropriate person represents and supports;”.

3B (1) Section 38 (provision of accommodation by NHS body) is amended as follows.
(2) For subsection (2A) substitute—
“(2A) And this section does not apply if—
(a) an independent mental capacity advocate is appointed under paragraph 39 of Schedule AA1 to represent and support P, and
(b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the hospital or care home referred to in this section.”
(3) In subsection (3), in the opening words, after “arrangements” insert “mentioned in subsection (1)”.
(4) Omit subsection (10).

3C (1) Section 39 (provision of accommodation by local authority) is amended as follows.
Mental Capacity (Amendment) Bill [Lords], continued

(2) For subsection (3A) substitute—

“(3A) And this section does not apply if—

(a) an independent mental capacity advocate is appointed under paragraph 39 of Schedule AA1 to represent and support P, and
(b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the residential accommodation referred to in this section.”

(3) In subsection (4), in the opening words, after “arrangements” insert “mentioned in subsection (1)”.

(4) Omit subsection (7).”

Member’s explanatory statement
This amends the regulation making power in section 36 of the Mental Capacity Act 2005 to ensure that equivalent provision can be made for advocates who support a cared-for person’s “appropriate person” as for other advocates. It also makes other changes to that Act consequential on amendments made by Schedules 1 and 2 to the Bill.

Caroline Dinenage

★ Schedule 2, page 28, line 23, at end insert—

“4A In section 40 (exceptions)—

(a) in subsection (1), for “39(4) or (5), 39A(3), 39C(3) or 39D(2)” substitute “or 39(4) or (5)”;
(b) omit subsection (2).”

Member’s explanatory statement
This amendment is consequential on the amendments made to the Mental Capacity Act 2005 by Schedules 1 and 2 to the Bill.

ORDER OF THE HOUSE [18 DECEMBER 2018]

That the following provisions shall apply to the Mental Capacity (Amendment) Bill [Lords]:

Committal
1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee
2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 24 January 2019.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and up to and including Third Reading
4. Proceedings on Consideration and any proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on consideration and Third Reading.
Mental Capacity (Amendment) Bill [Lords], continued

Other proceedings

7. Any other proceedings on the Bill may be programmed.