



# House of Commons

## NOTICES OF AMENDMENTS

given up to and including

**Tuesday 15 January 2019**

*New Amendments handed in are marked thus ★*

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

### 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**This document includes all amendments tabled to date and includes any withdrawn amendments at the end.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 accordance with the Order of the Committee [15 January 2019].**

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

30

Schedule 1, page 12, line 29, at end insert new sub-paragraph—

“(da) in the case of a cared-for person aged 16 or 17 (unless that person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act) the responsible body is satisfied that no person with parental responsibility objects to the arrangements,”

***Member’s explanatory statement***

*This amendment makes provision enabling parents to object to care arrangements that give rise to their child’s deprivation of liberty.*

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**Mental Capacity (Amendment) Bill [Lords], continued**

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Steve McCabe

51

Schedule 1, page 12, line 40, at end insert—

“(h) the cared for person has access to an Approved Mental Capacity Professional”

***Member’s explanatory statement***

*This amendment is designed to probe that the responsible body could not authorise arrangements for the deprivation of liberty under Clause 15 if the cared for person does not have access to reasonable support and consideration by an Approved Mental Capacity Professional.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

21

Schedule 1, page 12, line 41, leave out paragraph 16 and 17

***Member’s explanatory statement***

*This amendment is consequential on Amendment 20.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

32

Schedule 1, page 13, line 46, at end insert—

“(aa) a determination made on an assessment in respect of the cared-for person as to whether the person’s capacity is likely to fluctuate, and”

***Member’s explanatory statement***

*This amendment requires that an assessment of whether a person’s capacity is likely to fluctuate is included within the initial capacity and medical assessments, and therefore seeks to ensure that fluctuating capacity is reflected in the care plan of the cared-for person.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

31

Schedule 1, page 13, leave out lines 47 and 48 and insert—

“(b) a determination made on an assessment by a registered medical practitioner in respect of the cared-for person that the person has a mental disorder.”

***Member’s explanatory statement***

*This amendment would require the medical assessment to be carried out by a registered medical practitioner.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

33

Schedule 1, page 14, line 2, after “appropriate” insert “skills,”

***Member’s explanatory statement***

*This amendment would require the person carrying out a medical or capacity assessment to have the appropriate skills to do so, as well as the appropriate experience and knowledge.*

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Mental Capacity (Amendment) Bill [*Lords*], *continued*

Caroline Dineneage

5

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 A1.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

22

Schedule 1, page 14, line 27, leave out from “means” to end of subparagraph (8)(b) and insert “the responsible body”

***Member’s explanatory statement***

*This amendment is consequential on Amendment 20.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

23

Schedule 1, page 14, line 41, leave out sub-paragraphs (3)(a) and (3)(b) and insert “to the responsible body”

***Member’s explanatory statement***

*This amendment is consequential on Amendment 20.*

Caroline Dineneage

6

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 A1.*

Barbara Keeley

Paula Sherriff

Thangam Debbonaire

Alex Norris

24

Schedule 1, page 15, line 14, leave out from “out” to end of subparagraph (1)(b) and insert “by the responsible body”

***Member’s explanatory statement***

*This amendment is consequential on Amendment 20.*

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Mental Capacity (Amendment) Bill [*Lords*], *continued*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

34

Schedule 1, page 15, line 34, at end insert—

“(3A) Where the person consulted under sub-paragraph (2) has parental responsibility for the cared-for person, the consultation shall seek to ascertain that person’s wishes and feelings in relation to the arrangements.”

***Member’s explanatory statement***

*This amendment introduces a requirement to consult parents about their child’s care arrangements.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

25

Schedule 1, page 15, line 39, leave out “or 16(d)”

***Member’s explanatory statement***

*This amendment is consequential on Amendment 20.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

35

Schedule 1, page 15, line 41, after “is” insert “employed by an organisation”

***Member’s explanatory statement***

*This amendment would prohibit the pre-authorisation review from being carried out by any person employed by an organisation involved in the day-to-day care of the cared-for person, or involved in providing any treatment to the cared-for person.*

Caroline Dinenage

7

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.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

36

Schedule 1, page 16, line 2, at end insert “or independent hospital.”

***Member’s explanatory statement***

*This amendment would ensure that the person conducting the pre-authorisation review does not have a prescribed connection with an independent hospital.*

Mental Capacity (Amendment) Bill [*Lords*], *continued*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

38

Schedule 1, page 16, line 4, after “if” insert “the cared-for person is aged 16 or 17 and in other cases if”

***Member’s explanatory statement***

*This amendment makes provision for an AMCP to be involved in all cases involving 16 and 17 year olds.*

Caroline Dineneage

8

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

***Member’s explanatory statement***

*This amendment is consequential on Amendment 9.*

Caroline Dineneage

9

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.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

37

Schedule 1, page 16, line 12, at end insert—

- “(c) the arrangements include the use of physical restraint, or
- (d) the arrangements include the use of sedating medication, or
- (e) a person interested in the cared-for person’s welfare has objected to the arrangements, or
- (f) the cared-for person owns or has the right to occupy a different property to the property in respect of which the arrangements apply, or
- (g) the cared-for person is receiving covert medication, or
- (h) the cared-for person is restricted from having contact with named persons, or
- (i) the cared-for person is being detained in a mental health establishment for the purposes of treatment of a mental disorder, or
- (j) there is a less restrictive option for the cared-for person’s care or residence available, or
- (k) the cared-for person, or a person interested in the cared-for person’s welfare, requests the review be by an Approved Mental Capacity Professional.”

***Member’s explanatory statement***

*This amendment provides for access to an Approved Mental Capacity Professional in specific circumstances.*

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Mental Capacity (Amendment) Bill [*Lords*], *continued*


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Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

39

Schedule 1, page 16, line 12, at end insert—

- “(c) the arrangements provide for the cared-for person to receive care or treatment, and it is reasonable to believe that the cared-for person does not wish to receive the specific kinds of care or treatment which the arrangements provide for, or
- (d) it is reasonable to believe that the cared-for person does not wish to receive care or treatment overall.”

***Member’s explanatory statement***

*This amendment broadens the criteria of objection in the Bill, so that it applies to objections to the kinds of proposed care or treatment to be given, or to an overall objection to care or treatment.*

Caroline Dinenege

10

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.*

Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

42

Schedule 1, page 16, line 38, leave out “if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so”

***Member’s explanatory statement***

*This amendment varies the role of the AMCP so that they must meet with the cared-for person in making their determination.*

Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

40

Schedule 1, page 17, line 2, at end insert—

“23A If the Approved Mental Capacity Professional determines that—

- (a) the authorisation conditions are not met, or
- (b) that the authorisation conditions are met but that—
  - (i) the cared-for person or a person interested in the cared-for person’s welfare objects to the arrangements, or
  - (ii) the cared-for person would wish to object to the arrangements but cannot communicate an objection

the Approved Mental Capacity Professional must notify the responsible body within 48 hours that a referral to the court is likely to be required.”

***Member’s explanatory statement***

*This amendment requires an AMCP to notify the responsible body within 48 hours if they determine that the authorisation conditions are not met, or an objection has been raised to the arrangements.*

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Mental Capacity (Amendment) Bill [*Lords*], *continued*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

26

Schedule 1, page 17, line 14, leave out “or 17(2)(b)(iii)”  
*Member’s explanatory statement*  
*This amendment is consequential on Amendment 20.*

Steve McCabe

48

Schedule 1, page 17, line 30, leave out “12 months” and insert “3 months”  
*Member’s explanatory statement*  
*This amendment is designed to encourage reviews and appropriate authorisation by making it harder to detain someone for such a lengthy initial period.*

Steve McCabe

49

Schedule 1, page 18, line 24, leave out “12 months” and insert “3 months”

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

44

Schedule 1, page 18, line 24, leave out from “less” to end of sub-paragraph (1)(b)  
*Member’s explanatory statement*  
*This amendment limits the period of renewal of any authorisation to twelve months.*

Steve McCabe

50

Schedule 1, page 18, line 25, leave out “3 years” and insert “6 months”  
*Member’s explanatory statement*  
*This amendment would limit renewal periods to a maximum of 6 months.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

27

Schedule 1, page 18, line 31, leave out paragraph 30(b)  
*Member’s explanatory statement*  
*This amendment makes provision for the responsible body to take on all functions relating to renewal of deprivation of liberty in cases relating to care homes.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

28

Schedule 1, page 19, line 5, leave out paragraphs 32 and 33  
*Member’s explanatory statement*  
*This amendment is consequential on Amendment 27*

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Mental Capacity (Amendment) Bill [*Lords*], *continued*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

45

Schedule 1, page 19, line 34, at end insert—

“(2) In varying an authorisation, the responsible body may also consider—

- (a) whether the cared-for person’s capacity is likely to fluctuate, and
- (b) whether any restrictions imposed are necessary to prevent harm to the cared-for person and proportionate to the likelihood of that harm, and are likely to continue to be necessary for the duration of the authorisation.”

***Member’s explanatory statement***

*This amendment enhances safeguards around the variation of conditions by the responsible body. It indicates that the responsible body should consider whether the person’s capacity may fluctuate, and whether the restrictions which are proposed should be in place for the duration of the authorisation.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

29

Schedule 1, page 19, line 36, leave out from “body” to end of sub-paragraph (1)

***Member’s explanatory statement***

*This amendment is consequential on Amendment 27*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

43

Schedule 1, page 20, line 34, leave out “if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so”

***Member’s explanatory statement***

*This amendment varies the role of the AMCP so that they must meet with the cared-for person in making their determination.*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

41

Schedule 1, page 20, line 40, at end insert—

- “(d) determine whether an application to the Court of Protection is required; and
- (e) notify the responsible body, cared-for person, the appropriate person and any IMCA of that decision.”

***Member’s explanatory statement***

*This amendment requires an AMCP to determine whether an application to the Court of Protection is required, and notify the responsible body, cared-for person and others of this decision.*



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Mental Capacity (Amendment) Bill [*Lords*], *continued*

Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

46

Schedule 1, page 21, line 42, leave out sub-paragraphs (1) and (2), and insert—

“39 (1) The responsible body must take all reasonable steps to appoint an IMCA to represent and support the cared-for person if—

- (a) sub-paragraph (2) provides that an IMCA should be appointed, and
- (b) sub-paragraph (6) does not apply.

(2) An IMCA should be appointed if—

- (a) the cared-for person makes a request to the supervisory body to instruct an IMCA;
- (b) there is no appropriate person to represent and support the cared-for person;
- (c) the cared-for person is 16 or 17 years old;
- (d) there is an appropriate person to support and represent the cared-for person in relation to this Schedule and they make a request to the supervisory body to instruct an IMCA; or
- (e) there is reason to believe that the appropriate person would be unwilling or unable to assist the person in understanding or exercising the relevant rights under this Schedule without the support of an IMCA.

(3) A person is not an appropriate person to represent and support the cared-for person unless the responsible body is satisfied that the person—

- (a) is a suitable person to represent and support the cared-for person;
- (b) consents to representing and supporting the cared-for person;
- (c) will maintain contact with the cared-for person;
- (d) will represent and support the cared-for person in matters relating to or connected with this Schedule; and
- (e) is not engaged in providing care or treatment for the cared for person in a professional capacity.

(4) A person is not an appropriate person if there is reason to believe that the cared-for person does not wish, or would not wish, to be supported and represented by the proposed appropriate person.

(5) The ‘relevant rights’ under this Schedule include—

- (a) rights to request a review by an Approved Mental Capacity Professional;
- (b) rights to request a review under paragraph 35;
- (c) rights to information about the authorisation, assessments and its effects;
- (d) rights to apply to the Court of Protection under s21ZA.

(6) An IMCA should not be appointed if—

- (a) there is reason to believe that the cared-for person does not wish to be supported by an IMCA; and
- (b) there is reason to believe that the cared-for person does not wish to exercise rights to apply to the Court of Protection under s21ZA.

(7) The responsible body must keep under review whether an appropriate person is undertaking their functions. If the responsible body finds that the

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**Mental Capacity (Amendment) Bill [Lords], continued**

appropriate person no longer fulfils the required functions, the responsible body must appoint another appropriate person or IMCA.”

**Member’s explanatory statement**

*This amendment would amend the requirements for an IMCA to be appointed, so that advocacy is the default position. It also makes provision for appropriate persons to be appointed subject to certain conditions relating to how they discharge their role.*

Caroline Dineneage

11

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 A1.*

Caroline Dineneage

12

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 A1.*

Caroline Dineneage

13

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 A1 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 A1.*

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Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

16

Clause 2, page 2, line 12, at end insert “for a maximum period of 14 days”

**Member’s explanatory statement**

*This amendment will limit the duration of an emergency authorisation to 14 days.*

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**Mental Capacity (Amendment) Bill [Lords], continued**

Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

17

Clause 2, page 3, line 4, at end insert—

“(10) Where this section is relied on to deprive a cared-for person of his liberty, the person relying on this section must—

- (a) inform the cared-for person and any person with an interest in the cared-for person’s welfare of that fact;
- (b) keep a written record of the reasons for relying on this section;
- (c) supply a copy of the written record of reasons to the cared-for person and any person with an interest in the cared-for person’s welfare within 24 hours of the deprivation of liberty commencing; and
- (d) if any of the following apply, make an application to the Court of Protection immediately—
  - (i) the cared-for person objects to being deprived of his liberty;
  - (ii) a person with an interest in the welfare of the cared-for person objects to the cared-for person being deprived of his liberty; or
  - (iii) the donee of a lasting power of attorney or a court-appointed deputy objects to the cared-for person being deprived of his liberty.”

***Member’s explanatory statement***

*These amendment will ensure information is shared with the cared for person and any person of interest in the cared for person’s welfare and sets out when an application to the Court of Protection must be made immediately.*

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Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

18

Clause 3, page 3, line 14, leave out “whether Schedule AA1 applies to the arrangements” and insert “any issue in relation to the application of Schedule AA1”

***Member’s explanatory statement***

*This amendment seeks to clarify that all relevant issues pertaining to Schedule AA1 can be addressed by the Court of Protection, for example whether an IMCA should be appointed or an AMCP involved.*

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Caroline Dinenage

14

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”.

**Mental Capacity (Amendment) Bill [Lords], continued**

- (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.
- (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.*

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**Mental Capacity (Amendment) Bill [Lords], continued**

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Caroline Dinenage

15

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.*

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Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

52

☆ Clause 5, page 4, line 16, at end insert—

“(3A) Before the Secretary of State makes any regulations under subsection (3)(b) above, the Secretary of State must publish his or her consideration of the conclusions of the Independent Review of the Mental Health Act relevant to the deprivation of liberty in accordance with the provisions of the Mental Capacity Act 2005, and in particular Schedule AA1 of that Act.”

***Member’s explanatory statement****This amendment ensures that the Government cannot enact the provisions of this Bill until such a date as it has responded to the findings of the Independent Review of the Mental Health Act, specifically the interface between the Mental Health Act and the Mental Capacity Act.*Barbara Keeley  
Paula Sherriff  
Thangam Debbonaire  
Alex Norris

53

☆ Clause 5, page 4, line 16, at end insert—

“(3A) Before the Secretary of State makes any regulations under subsection (3)(b) above, the Secretary of State must—

(a) publish a full implementation strategy, outlining how local authorities and other responsible bodies will be resourced to process applications under this Act; and

(b) publish an updated Impact Assessment on the impact of the provisions of this Act.”

***Member’s explanatory statement****This amendment ensures that the Government cannot enact the provisions of this Bill until such a date as it has published an updated impact assessment, and set out an implementation strategy for the new system.*

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**Mental Capacity (Amendment) Bill [Lords], continued**

Barbara Keeley  
 Paula Sherriff  
 Thangam Debbonaire  
 Alex Norris

54

☆ Clause 5, page 4, line 16, at end insert—

“(3A) The Secretary of State may not make any regulations under subsection (3)(b) above, unless—

(a) the Secretary of State has—

(i) consulted on the Code of Practice,

(ii) published a Code of Practice,

(iii) laid that Code of Practice before Parliament, and

(b) that Code of Practice has been approved by a resolution of each House of Parliament.”

***Member’s explanatory statement***

*This amendment ensures that the Government cannot enact the provisions of this Bill until such a date as it has published a new Code of Practice, which has been approved in a vote in each House of Parliament.*

Caroline Dinenage

1

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

***Member’s explanatory statement***

*This amendment removes the privilege amendment inserted by the Lords.*

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Caroline Dinenage

NC1

To move the following Clause—

**“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

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**Mental Capacity (Amendment) Bill [Lords], continued**

- (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.*

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**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.

*Other proceedings*

7. Any other proceedings on the Bill may be programmed.
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**ORDER OF THE COMMITTEE [15 JANUARY 2019]**

That—

- (1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 15 January) meet—
  - (a) at 2.00 pm on Tuesday 15 January;
  - (b) at 11.30 am and 2.00 pm on Thursday 17 January;
  - (c) at 9.25 am and 2.00 pm on Tuesday 22 January;
  - (d) at 11.30 am and 2.00 pm on Thursday 24 January;
- (2) the proceedings shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 to 4; Schedule 2; Clause 5; new Clauses; new Schedules; remaining

**Mental Capacity (Amendment) Bill [*Lords*], *continued***

proceedings on the Bill;

- (3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 24 January.
-