House of Commons
Tuesday 22 January 2019
PUBLIC BILL COMMITTEE PROCEEDINGS

MENTAL CAPACITY (AMENDMENT) BILL [LORDS]
[FIRST TO SIXTH SITTINGS]

GLOSSARY
This document shows the fate of each clause, schedule, amendment and new clause.

The following terms are used:

Agreed to: agreed without a vote.
Agreed to on division: agreed following a vote.
Negatived: rejected without a vote.
Negatived on division: rejected following a vote.
Not called: debated in a group of amendments, but not put to a decision.
Not moved: not debated or put to a decision.
Question proposed: debate underway but not concluded.
Withdrawn after debate: moved and debated but then withdrawn, so not put to a decision.
Not selected: not chosen for debate by the Chair.

FIRST AND SECOND SITTINGS

Caroline Dineage

Agreed to

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 proceedings on the Bill;
Mental Capacity (Amendment) Bill [Lords], continued

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

Caroline Dineage

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

Agreed to

Clause 1 agreed to.

Caroline Dinenage

Agreed to

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 19

Schedule 1, page 8, line 17, at end insert—
“(aa) if the arrangements are for the cared-for person to be accommodated in an independent hospital for the purpose of assessment or treatment for mental disorder, and that care is commissioned by a clinical commissioning group or Local Health Board, it is the clinical commissioning group or Local Health Board, that is the responsible body;”

Caroline Dinenage

Agreed to 2

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

Steve McCabe

Withdrawn after debate 47

Schedule 1, page 11, line 17, at end insert—
“(d) the arrangements are in the cared for person’s best interest,
(e) less restrictive options have been considered,
(f) appropriate weight has been given to the cared for person’s feelings and wishes as best as these can be determined.”
Caroline Dinenage

Agreed to on division

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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division

Schedule 1, page 12, line 12, leave out paragraph 14(b)

THIRD AND FOURTH SITTINGS

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division

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

Steve McCabe

Withdrawn after debate 51

Schedule 1, page 12, line 40, at end insert—
“(h) the cared for person has access to an Approved Mental Capacity Professional”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 21

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 33

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

Caroline Dinenage

Agreed to 5

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 22

Schedule 1, page 14, line 27, leave out from “means” to end of subparagraph (8)(b) and insert “the responsible body”
Mental Capacity (Amendment) Bill [Lords], continued

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 23

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

Caroline Dinenage
Agreed to 6

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 24

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 25

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 35

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

Caroline Dinenage
Agreed to 7

Schedule 1, page 16, line 1, leave out “prescribed connection” and insert “connection, of a kind prescribed by regulations,”
Mental Capacity (Amendment) Bill [Lords], continued

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 36

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 38

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

Caroline Dinenage

Agreed to 8

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

Caroline Dinenage

Agreed to 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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”
Mental Capacity (Amendment) Bill [Lords], continued

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”

Caroline Dinenage

Agreed to 10

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

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Not called 26

Schedule 1, page 17, line 14, leave out “or 17(2)(b)(iii)”

Steve McCabe

Withdrawn after debate 48

Schedule 1, page 17, line 30, leave out “12 months” and insert “3 months”
Mental Capacity (Amendment) Bill [Lords], continued

Steve McCabe
Schedule 1, page 18, line 24, leave out “12 months” and insert “3 months” Not called 49

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris
Schedule 1, page 18, line 24, leave out from “less” to end of sub-paragraph (1)(b) Negatived on division 44

Steve McCabe
Schedule 1, page 18, line 25, leave out “3 years” and insert “6 months” Not called 50

FIFTH AND SIXTH SITTINGS

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris
Schedule 1, page 18, line 31, leave out paragraph 30(b) Negatived on division 27

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris
Schedule 1, page 19, line 5, leave out paragraphs 32 and 33 Not called 28

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris
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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris
Schedule 1, page 19, line 36, leave out from “body” to end of sub-paragraph (1) Not called 29
Mental Capacity (Amendment) Bill [Lords], continued

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 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.
Mental Capacity (Amendment) Bill [Lords], continued

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

Caroline Dinenage

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

Agreed to 11

Caroline Dinenage

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

Agreed to 12

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.”

Schedule, as amended, agreed to.

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

Negatived on division 16

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

Clause agreed to.

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”

Clause agreed to.

Clause 4 agreed to.

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”)”.
Mental Capacity (Amendment) Bill [Lords], continued

(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).”

Caroline Dinenage

Agreed to

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).”

Schedule, as amended, agreed to.
Mental Capacity (Amendment) Bill [Lords], continued

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

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.”

Barbara Keeley
Paula Sherriff
Thangam Debbonaire
Alex Norris

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.”

Caroline Dinenage

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

Clause, as amended, agreed to.
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

(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.”

*Bill, as amended, to be reported.*