

Memorandum for Public Bill Committee on the application of Standing Order No. 83L of the Standing Orders of the House of Commons relating to Public Business to the Mental Capacity (Amendment) Bill as amended

Commons Stage Committee

The following is the Department's assessment of the Bill and amendments to the Bill made at Commons Committee Stage.

Summary

The amendments made to the Bill at Committee stage have no impact on the territorial extent or application of the Bill. All clauses and schedules to the Bill apply and extend only to England and Wales.¹

The above assessment is presented in tabular form below.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within the competence of the National Assembly for Wales?	Extends and applies to Scotland ?	Would corresponding provision be within the competence of the Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1 ²	Yes	Yes	No	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 1	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 2	Yes	Yes	No	No	Yes	No	Yes	No

Territorial application

1. The amendments made at Committee Stage apply as follows: all amendments made at Committee Stage apply to England and Wales only.
2. There are no changes to territorial application as a result of amendments made at Committee Stage.

¹ References in this statement to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

² New Clause inserted to the Bill during Committee

Subject matter and legislative competence of devolved legislatures

3. The amendments that apply to England and Wales deal, in general terms, with reform of the process in the Mental Capacity Act 2005 (“MCA”) for authorising arrangements enabling the care or treatment of people who lack capacity to consent to the arrangements, which give rise to a deprivation of their liberty. As noted in paragraph 1 of the Explanatory Notes.
4. In the opinion of the UK government, the subject matter of the Bill is within the devolved legislative competence of the Scotland and Northern Ireland legislatures (mental capacity is not a reserved matter within Schedule 5 to the Scotland Act 1998 and is not an excepted matter or a reserved matter within Schedule 2 or Schedule 3 to the Northern Ireland Act 1998) as noted in paragraph 82 of Annex A of the Explanatory Notes.

