

# Mental Capacity (Amendment) Bill [HL]

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Schedule 1**

BARONESS HOLLINS  
BARONESS FINLAY OF LLANDAFF

*Re-tabled version of the amendment tabled by Baroness Hollins on sheet HL Bill 117(h)*

Page 12, line 24, at end insert –

“( ) the cared-for person,”

BARONESS HOLLINS

Page 13, line 10, after “person” insert “or those interested in their welfare”

Page 13, line 10, after “wish” insert “for them”

Page 13, line 14, after “person” insert “or those interested in their welfare”

Page 13, line 15, after “wish” insert “for them”

Page 13, line 15, at end insert –

- “(c) the responsible body receives a reasonable request for a review by an Approved Mental Capacity Professional from the cared-for person or anyone engaged in caring for them or interested in their welfare, or
- (d) there is reason to believe that it would be appropriate for the assessment to be carried out by an Approved Mental Capacity Professional.”

Page 14, line 7, at end insert –

*Rights to information and appeal*

- (1) This paragraph applies if the arrangements are authorised.

**Schedule 1 - continued**

- (2) The responsible body must take such steps as are practicable to ensure that the cared-for person and any appropriate person or IMCA representing and supporting them understand the outcome of the assessments, the reasons why the cared-for person is being deprived of their liberty and their rights to request an Approved Mental Capacity Professionals assessment, advocacy, review and to challenge the authorisation in court.
- (3) If an Independent Mental Capacity Advocate is appointed under Part 5, the advocate is to take such steps as are practicable to help the cared-for person and the appropriate person to understand the following matters –
  - (a) the effect of the authorisation;
  - (b) the purpose of the authorisation;
  - (c) the duration of the authorisation;
  - (d) any conditions to which the authorisation is subject;
  - (e) the reasons why the cared-for person met the qualifying requirements in question;
  - (f) the right to request an AMCP assessment;
  - (g) the outcome of a review of the arrangements;
  - (h) the relevant rights of the cared-for person;
  - (i) how the cared-for person may exercise relevant rights.
- (4) In this paragraph, “relevant rights” includes the right to make an application to Court and the right to request a review of the arrangements.
- (5) The responsible body must ensure that cases are referred to court when the cared-for person’s right to a court review is engaged.”

Page 14, line 7, at end insert –

“( ) The responsible body must ensure that the cared-for person, any appropriate person, and any Independent Mental Capacity Advocate supporting and representing them, are given copies of the authorisation record as soon as possible after authorisation is granted.”

Page 14, line 7, at end insert –

“( ) The responsible body must provide copies of the authorisation record to any persons consulted under paragraph 17 if they request a copy, unless there is a good reason not to do so.”

Page 18, line 33, at end insert “or if the responsible body has reason to believe that paragraphs 36 and 37 apply”

Page 19, line 1, leave out “should” and insert “must”

Page 19, leave out lines 2 to 5 and insert “requests to be supported by an IMCA”

**Schedule 1 - continued**

Page 19, leave out lines 6 to 11 and insert

“(3) An IMCA must be appointed if the relevant person is satisfied that being represented and supported by an IMCA is necessary to support and enable the cared-for person to understand the authorisation and their rights, or to exercise rights of challenge.”

Page 19, leave out lines 24 to 26 and insert –

“(a) the cared-for person does not object to being represented and supported by that person, and”

Page 19, leave out lines 27 to 31 and insert –

“(b) the person is both willing and able to help the cared-for person to understand their rights, involve them in decisions, and would assist them in exercising rights of challenge if they wished to do so.”

Page 19, leave out lines 38 to 42 and insert –

“(2) An IMCA must be appointed if the appropriate person makes a request to the relevant person for an IMCA to be appointed.”

Page 19, leave out lines 43 to 48 and insert –

“(3) An IMCA must be appointed if the appropriate person would have substantial difficulty helping the cared-for person to understand their rights, involve them in decisions, and exercise rights of challenge if they wished to do so, without the support of an IMCA.”

Page 20, line 3, at end insert –

“( ) The Appropriate Authority may by regulations make provision for how an IMCA is to discharge the functions of representing or supporting a cared-for person, including challenging decisions and facilitating a cared-for person’s involvement in relevant decisions and representing and supporting the cared-for-person or an appropriate person to exercise relevant rights.”

Page 20, line 3, at end insert –

“( ) The responsible body must keep under review whether the 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.”

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*24 August 2018*

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