

# 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 BARKER  
BARONESS JOLLY

Page 10, line 8, after “necessary” insert “to avoid serious risk to the cared-for person”

Page 10, line 8, after “proportionate” insert “because no less intrusive arrangement is available”

Page 11, line 13, at end insert –

“( ) that the cared-for person and persons involved in their care have been informed of the proposed arrangement and any possible alternatives.”

Page 12, line 8, after “condition” insert “or circumstances”

Page 12, line 12, at end insert –

“( ) The determination must be made with regard to the availability of less restrictive alternatives to the arrangements, including other places of residence or care arrangements, and any alternatives preferred by the cared-for person.”

Page 13, line 15, at end insert –

“( ) there is reason to believe that it would be appropriate for the assessment to be carried out by an Approved Mental Capacity Professional.”

Page 13, line 21, at end insert –

“(c) consider whether an application should be made to the Court of Protection, having regard to the rights of the cared-for person under Article 5 and Article 8 of the European Convention in Human Rights.”

**Schedule 1 - continued**

BARONESS BARKER  
BARONESS TYLER OF ENFIELD

Page 14, line 17, leave out paragraph 23 and insert –

- “(1) An authorisation ceases to have effect –
- (a) at the end of the period of 12 months beginning with the day it first had effect,
  - (b) at the end of such shorter period determined by the responsible body at the time it determines that the conditions for authorisation are met,
  - (c) on such earlier date than the date given by paragraph (a) as the responsible body may from time to time determine,
  - (d) if the authorisation is renewed in accordance with paragraph 37, at the end of the renewal period, or
  - (e) when a suspension comes to an end as described in paragraph 41(2)(b).
- (2) An authorisation also ceases to have effect if, at any time, the responsible body believes or ought reasonably to suspect –
- (a) that the cared-for person has, or has regained, capacity to consent to the arrangements which are authorised,
  - (b) that the cared-for person is no longer of unsound mind, or
  - (c) that the arrangements are no longer necessary and proportionate.
- (3) But an authorisation does not cease to have effect for the reason described in sub-paragraph (2)(a) if –
- (a) the capacity assessment which was relied on in determining that the condition in paragraph 14(a) is met states –
    - (i) that the cared-for person’s capacity to consent to arrangements is likely to fluctuate, and
    - (ii) that any periods during which the person is likely to have capacity to consent is likely to last only for a short period of time, and
  - (b) the responsible body reasonably believes that the gaining or regaining of capacity will last only for a short period of time.
  - (c) the Secretary of State shall by regulations prescribe a definition of ‘fluctuate’ and ‘short’ for the purposes of (i), (ii), and (b) above.
- (4) In a case where –
- (a) an authorisation relates to arrangements which provide for the cared-for person to reside in, or to receive care or treatment at, a specified place, and
  - (b) at any time, the responsible body believes or ought reasonably to suspect that there is a conflicting decision about the cared-for person residing in, or receiving care or treatment at, that place,
- the authorisation ceases to have effect in so far as it relates to those arrangements.
- (5) There is a conflicting decision for the purposes of sub-paragraph (4)(b) if there is a valid decision of –

**Schedule 1 - continued**

- (a) a donee of a lasting power of attorney granted by the cared-for person, or
  - (b) a deputy appointed for the cared-for person by the court, that the cared-for person should not reside in, or (as the case may be) receive care or treatment at, the specified place.
- (6) If at any time an authorisation relates to arrangements which conflict with requirements arising under legislation relating to mental health, the authorisation ceases to have effect in so far as it relates to those arrangements.

BARONESS BARKER  
BARONESS JOLLY

Page 17, line 2, at end insert –

“( ) The care home manager must report to the responsible body any request for a review which is deemed unreasonable. An Approved Mental Capacity Professional must maintain a record of requests which have been refused.”

Page 18, line 18, leave out “the manager is of the opinion” and insert “it is reasonable to believe that”

Page 18, line 32, leave out “only”

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 2, leave out paragraph (a)

Page 19, line 7, leave out paragraph (a)

Page 19, line 10, leave out “would be in the cared for person’s interest” and insert “is necessary to enable the person to understand the authorisation and their rights.”

Page 19, line 23, leave out sub-paragraph (6) and insert –

- “(6) A person is not to be regarded as a suitable person unless –
- (a) the cared-for person does not object to being represented by that person, and
  - (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, line 38, leave out sub-paragraph (2)

**Schedule 1 - continued**

Page 19, line 43, leave out sub-paragraph (3) and insert—

- “(3) An IMCA should 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.”

**After Clause 3**

BARONESS JOLLY  
BARONESS BARKER

Insert the following new Clause—

**“Requirements before commencement**

- (1) Before all sections of this Act can come into force, the requirements under subsection (2) must be met.
- (2) The requirements are as follows –
  - (a) The Secretary of State must publish an updated code of practice giving guidance for decisions made under the Mental Capacity Act 2005, including the provisions of the Mental Capacity Act 2005 that are amended by this Act; and
  - (b) The Secretary of State must publish a response to the Independent Review of the Mental Health Act, chaired by Professor Sir Simon Wessely.
- (3) The Secretary of State must lay a copy of the publications required by subsection (2) before both Houses of Parliament.”

Insert the following new Clause—

**“Review**

- (1) The Secretary of State must undertake a review of the provisions in this Act, and produce a report of its findings.
- (2) The review under subsection (1) must make reference to—
  - (a) whether the provisions in this Act have successfully improved the process in the Mental Capacity Act 2005 for authorising arrangements enabling the care or treatment of people who lack capacity to consent to the arrangements; and
  - (b) whether action needs to be taken to ensure that the process referred to in paragraph (2)(a) is further improved.
- (3) The Secretary of State must lay a copy of the report before both Houses of Parliament within one year from the day that this Act comes into force.”

**Clause 5**

BARONESS JOLLY  
BARONESS BARKER

Page 4, line 14, after the first “section” insert “section 3A”

Page 4, line 20, at end insert “provided that the requirements under section 3A(2) of this Act have been met.”

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*30 August 2018*

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