

Mental Capacity (Amendment) Bill [HL]

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 18th July 2018, as follows –

Clause 1	Schedule 2
Schedule 1	Clause 5
Clauses 2 to 4	Title.

[Amendments marked ★ are new or have been altered]

Amendment
No.

Schedule 1

BARONESS BARKER
BARONESS TYLER OF ENFIELD

- 55 Page 14, leave out lines 17 to 32 and insert –
- “23(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 –

Schedule 1 - continued

- (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.
- (4) The Secretary of State must by regulations prescribe a definition of “fluctuate” and “short” for the purposes of sub-paragraph (3)(a)(i), (ii), and (b) above.
- (5) 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.
- (6) There is a conflicting decision for the purposes of sub-paragraph (4)(b) if there is a valid decision of –
- (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.
- (7) 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

56 Page 14, leave out lines 30 to 32

57 Page 14, line 37, after “arrangements” insert “and anyone authorised under paragraph 17(2) of this Schedule”

58 Page 15, leave out lines 7 and 8

BARONESS THORNTON

58A Page 15, line 12, leave out from “of” to end of line 14 and insert “12 months or less.”

Schedule 1 - continued

BARONESS FINLAY OF LLANDAFF

- 58B** Page 15, line 15, after “has” insert “wholly or in part”
- 58C** Page 15, line 32, at end insert “evidence and any other relevant”
- 58D** Page 15, line 40, leave out “care home manager” and insert “registered professional responsible for the care plan”
- 58E** Page 16, line 1, after “has” insert “verified that the registered professional responsible for the care plan has”
- 58F** Page 16, leave out lines 13 and 14 and insert –
“(a) the registered professional responsible for the care plan, reporting to the responsible body, or”
- 58G** Page 16, line 15, leave out “, in any other case”
- 58H** Page 17, line 2, leave out “manager” and insert “registered professional responsible for the care plan”

BARONESS BARKER

BARONESS JOLLY

- 59** Page 17, line 2, at end insert –
“(6A) 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.”
- 60** Page 17, line 23, at end insert –
“(c) that a named officer is responsible for the training, conduct and performance of Approved Mental Capacity Professionals.”

BARONESS FINLAY OF LLANDAFF

- 61** Page 17, line 23, at end insert –
“(c) for a named person to be in charge of training and revalidation of Approved Mental Capacity Professionals,
(d) for honorary contracts with neighbouring local authorities and health bodies as required.”
- 61A** Page 17, line 27, at end insert “, which must include being a registered professional, with a minimum of three years clinical experience, in an area such as social work, nursing, speech and language therapy, occupational therapy or clinical psychology”

Schedule 1 - continued

BARONESS BARKER
BARONESS JOLLY

- 62 Page 17, line 33, at end insert –
“(d) prescribe the period of time within which an individual must be reapproved in order to continue to practise as an Approved Mental Capacity Professional.”

BARONESS FINLAY OF LLANDAFF

- 62A Page 18, line 15, after “proposing” insert “, arranging”

BARONESS FINLAY OF LLANDAFF
BARONESS HOLLINS
BARONESS BARKER
BARONESS JOLLY

- 63 Page 18, line 18, leave out “the manager is of the opinion” and insert “there is reason to believe”

- 64 Page 18, line 32, leave out “only”

BARONESS FINLAY OF LLANDAFF

- 65 Page 18, line 33, at end insert “or a person concerned with the welfare of the cared-for person has requested independent support for the cared-for person”

BARONESS HOLLINS
BARONESS BARKER
BARONESS JOLLY

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

BARONESS HOLLINS
LORD HUNT OF KINGS HEATH

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

BARONESS BARKER
BARONESS JOLLY

- 68 Page 19, leave out lines 2 and 3

BARONESS HOLLINS
LORD HUNT OF KINGS HEATH

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

- 70 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.”

Schedule 1 - continued

BARONESS BARKER
BARONESS JOLLY

71 Page 19, leave out lines 7 and 8

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

BARONESS HOLLINS
BARONESS BARKER
BARONESS JOLLY
LORD HUNT OF KINGS HEATH

73 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”

74 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 assist them in exercising rights of challenge if they wished to do so.”

BARONESS BARKER
BARONESS JOLLY

75 Page 19, leave out lines 38 to 42

BARONESS HOLLINS
LORD HUNT OF KINGS HEATH

76 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.”

BARONESS HOLLINS
BARONESS BARKER
BARONESS JOLLY

77 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, involving them in decisions, and assisting them to exercise rights of challenge if they wished to do so, without the support of an IMCA.”

Schedule 1 - continued

LORD HUNT OF KINGS HEATH
As an amendment to Amendment 77

- 78 At end insert –
- “(4) In this paragraph, “relevant rights” includes the right to make an application to the court and the right to request a review of the arrangements.
 - (5) The responsible body must ensure that cases are referred to the court when the cared-for person’s right to a court review is engaged.”

BARONESS HOLLINS
 LORD HUNT OF KINGS HEATH

- 79 Page 20, line 3, at end insert –
- “(5) 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.”

- 80 Page 20, line 3, at end insert –
- “(5) The responsible body must keep under review whether the appropriate person is undertaking their functions.
 - (6) If the responsible body finds that the appropriate person no longer fulfils the required functions, the responsible body must appoint another appropriate person or an IMCA.”

Clause 2

BARONESS MURPHY

- 81 Page 2, line 17, at end insert –
- “() Condition 1A is that the person authorising or effecting the steps which deprive P of liberty is satisfied that doing so will benefit P and that life-sustaining treatment or doing any vital act cannot reasonably be achieved without taking those steps.”

BARONESS FINLAY OF LLANDAFF

- 81A Page 2, line 34, after “manager” insert “or the person responsible for the care plan”

- 82 Page 3, line 9, at end insert –
- “() An authorisation under this section shall be valid for the period of seven days and may be eligible for renewal at the end of this and every subsequent seven day period up to a maximum period of 28 days beginning with the date of the first authorisation.”

Clause 2 - continued

BARONESS THORNTON

Baroness Thornton gives notice of her intention to oppose the Question that Clause 2 stand part of the Bill.

After Clause 2

BARONESS THORNTON
LORD HUNT OF KINGS HEATH

83 Insert the following new Clause—

“Restriction on power of attorneys and deputies

After section 29 of the Mental Capacity Act 2005 insert—

“29A Deprivation of liberty

Nothing in this Act authorises a donee of a lasting power of attorney or a deputy to consent on behalf of a person to arrangements which give rise to a deprivation of that person’s liberty.””

83A [*Withdrawn*]

Clause 3

BARONESS THORNTON

83B Page 3, line 33, at end insert—

“21ZB Presumption of P giving evidence

- (1) This section applies where an authorisation under Schedule AA1—
 - (a) has effect, or
 - (b) is to have effect from a date specified under paragraph 22 of that Schedule.
- (2) P shall be presumed to give evidence in Court of Protection proceedings.
- (3) This presumption may be rebutted, having regard to P’s rights, including by evidence that P—
 - (a) is not competent to give sworn evidence; or
 - (b) does not wish to provide evidence (in whichever form) to the court.
- (4) Evidence from P shall be secured in any form that the court and the parties consider appropriate having regard to P’s circumstances and may include the following—
 - (a) sworn evidence given orally in court;
 - (b) unsworn evidence given orally in court;
 - (c) unsworn evidence given outside of the court;
 - (d) a written statement;
 - (e) pre-recorded evidence.
- (5) The appropriate authority may make regulations outlining the measures that will be available to support P to give evidence in proceedings.”

Clause 3 - continued

Baroness Thornton gives notice of her intention to oppose the Question that Clause 3 stand part of the Bill.

After Clause 3

BARONESS THORNTON
LORD TOUHIG
BARONESS MURPHY
LORD HUNT OF KINGS HEATH

84

Insert the following new Clause –

“Advance consent to certain arrangements

- (1) The Mental Capacity Act 2005 is amended as follows.
- (2) After section 26 insert –

“Advance consent to arrangements giving rise to a deprivation of liberty

26A Advance consent to certain arrangements

- (1) “Arrangements” means arrangements enabling the care or treatment of a person which, if the person did not consent to those arrangements, would give rise to a deprivation of that person’s liberty.
- (2) “Advance consent” means consent given by an eligible person to specified arrangements being put in place at a later time in respect of that person.
- (3) An “eligible person” is a person aged 16 or over who has capacity to give consent to the arrangements mentioned in subsection (2).
- (4) The Secretary of State may by regulations prescribe other requirements which must be met for consent to be advance consent for the purposes of this section, including –
 - (a) the form in which advance consent must be given, and
 - (b) the level of detail about the arrangements which must be provided in the consent.
- (5) Advance consent comes to an end –
 - (a) at the end of the period specified by the eligible person when giving the advance consent,
 - (b) if no period is specified, at the end of such period as is prescribed in relation to arrangements of that kind in regulations made by the Secretary of State,
 - (c) if it is withdrawn at a time when the eligible person has capacity to do so, or
 - (d) if the eligible person does anything else clearly inconsistent with the advance consent remaining the person’s fixed decision.
- (6) A withdrawal of an advance consent (including a partial withdrawal) need not be in writing.

26B Effect of advance consent

- (1) If arrangements are proposed or put in place in respect of a person at a time when that person lacks the capacity to consent to them, the person will be taken to have consented to the arrangements if –

After Clause 3 - continued

- (a) the person has given advance consent to those arrangements, and
- (b) that advance consent is valid.
- (2) Accordingly, if subsection (1) applies in respect of arrangements, Schedule AA1 (Deprivation of liberty: authorisation of arrangements enabling care and treatment) does not apply to those arrangements.
- (3) An advance consent is not valid if—
 - (a) it has come to an end, or
 - (b) there are reasonable grounds for believing that circumstances exist which the person did not anticipate at the time of giving the advance consent and, if the person had anticipated them, would have affected the decision to give consent.
- (4) The court may make a declaration as to whether an advance consent—
 - (a) exists;
 - (b) is valid;
 - (c) has been given in respect of the particular arrangements which are proposed or have been put in place.
- (5) “Advance consent” and “arrangements” have the meaning given by section 26A.
- (6) In section 42 (codes of practice), in subsection (1), after paragraph (g) (but before the “and” following it) insert—
 - “(ga) with respect to the provisions of sections 26A and 26B (advance consent).”

BARONESS THORNTON
LORD HUNT OF KINGS HEATH

85 Insert the following new Clause—

“Unlawful deprivation of liberty

After section 4B of the Mental Capacity Act 2005 insert—

“4C Unlawful deprivation of liberty

- (1) This section applies where—
 - (a) arrangements are put in place by or on behalf of a private care provider enabling the care or treatment of a person,
 - (b) those arrangements give rise to a deprivation of that person’s liberty, and
 - (c) that deprivation of liberty is not authorised by—
 - (i) a provision of this Act,
 - (ii) a provision of Part 2 or 3 of the Mental Health Act, or
 - (iii) an order of a court.
- (2) The person may bring civil proceedings against the private care provider in relation to that deprivation of liberty.
- (3) It is a defence to a claim brought under subsection (2) that the private care provider reasonably believed that—
 - (a) the arrangements did not give rise to a deprivation of liberty, or
 - (b) the deprivation of liberty arising from the arrangements was authorised as mentioned in subsection (1)(c).
- (4) A “private care provider” means—

After Clause 3 - continued

- (a) a person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of residential accommodation, together with nursing or personal care in relation to a care home;
 - (b) a person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of a care home;
 - (c) a hospital manager of an independent hospital;
 - (d) any other person prescribed for the purposes of this section by regulations made by the Secretary of State after consulting the Welsh Ministers.
- (5) A public authority for the purposes of section 6 of the Human Rights Act 1998 is not a private care provider for the purposes of this section.
- (6) In this section—
- “care home” has the meaning given by section 3 of the Care Standards Act 2000;
 - “independent hospital” has the meaning given by paragraph 5(3) of Schedule AA1;
 - “hospital manager” has the meaning given by paragraph 7 of Schedule AA1.

4D Section 4C: proceedings and remedies

- (1) Proceedings under section 4C may be brought in the county court or the High Court.
- (2) Alternatively, if a decision as respects any other issue concerning the person bringing the proceedings is being sought from a court, proceedings under section 4C may be brought in the same court.
- (3) The proceedings must be brought before the end of—
 - (a) the period of one year beginning with the date on which the arrangements were first put in place, or
 - (b) such longer period as the court hearing the proceedings considers equitable having regard to all the circumstances.
- (4) In determining the amount of any award of damages on a claim under section 4C a court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the European Convention on Human Rights.””

BARONESS JOLLY
BARONESS BARKER
BARONESS TYLER OF ENFIELD

86

Insert the following new Clause—

“Requirements before commencement

- (1) Before all provisions of this Act other than those which come into force on its passing can come into force, the requirements under subsection (2) must be met.
- (2) The requirements are as follows—

After Clause 3 - continued

- (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.”

BARONESS JOLLY
BARONESS BARKER

87 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 in relation to the deprivation of liberty.
- (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.”

LORD HUNT OF KINGS HEATH

87A Insert the following new Clause –

“Requirements before commencement

Before any of the provisions of this Act other than those which come into force on its passing can come into force, the Secretary of State must commission separate independent reports on the following matters –

- (a) the introduction of a statutory definition for “unsound mind”, in the context of a deprivation of liberty, which clarifies the application of the Supreme Court’s acid test for confinement and is based upon consultation with health and social care professionals;
- (b) how to formalise the arrangements for giving advance consent for a deprivation of liberty, how to ensure that any authorised arrangements put in place respect any stipulations the cared-for person has made about his or her future care, and how to ensure that proper records are kept;
- (c) a strategy for enhancing access to, and funding towards, independent mental capacity advocates;

After Clause 3 - continued

- (d) whether a statutory duty should be placed upon appropriate persons or independent mental capacity advocates to make appeals on behalf of cared-for persons in cases where a cared-for person objects to the arrangements authorised under this Act or where the arrangements are unusually intrusive, and whether a statutory duty should be placed on a responsible body to refer a case to appeal where appropriate persons or independent mental capacity advocates have failed to do so;
- (e) how to support cared-for persons to participate in court proceedings relating to any arrangements under this Act;
- (f) the establishment of a tribunal with powers to consider cases relating to the authorisation of arrangements under this Act;
- (g) the availability of legal aid for all eligible persons challenging the authorisation of arrangements depriving them of liberty under this Act;
- (h) evaluating different proposals to replace the term “unsound mind” in the Code of Practice; and
- (i) setting out the short- and long-term cost implications of implementing the provisions of this Act for local authorities, the courts and the health service and evaluating different proposals to meet those costs.”

87B

Insert the following new Clause –

“Duties of the Care Quality Commission

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In section 4 (matters to which the Commission must have regard), after subsection (1)(g) insert –
 - “(h) the operation of the procedures which authorise arrangements giving rise to deprivation of liberty under the Mental Capacity Act 2005, as amended by the Mental Capacity (Amendment) Act 2018.
- (1A) In performing its functions under subsection (1)(h), the Care Quality Commission must monitor the following –
 - (a) the use of emergency measures under section 4B of the Mental Capacity Act 2005;
 - (b) the quality of evidence provided to meet the authorisation conditions under paragraph 11 of Schedule AA1 to the Mental Capacity Act 2005;
 - (c) the quality of assessments made under paragraph 15 of Schedule AA1 to the Mental Capacity Act 2005;
 - (d) the quality of determinations that the authorised arrangements are necessary and proportionate under paragraph 11 of Schedule AA1 to the Mental Capacity Act 2005;
 - (e) the evidence of skills, knowledge and expertise of those providing evidence in relation to deprivation of liberty safeguards under the Mental Capacity Act 2005;
 - (f) the availability of a conflict of interests register for those authorising arrangements under section 4B of, and paragraph 12 of Schedule AA1 to, the Mental Capacity Act 2005;

After Clause 3 - continued

- (g) the extent to which independent corroboration of consultation in accordance with paragraph 17 of Schedule AA1 to the Mental Capacity Act 2005 is being carried out;
- (h) the extent to which there are independent checks being made as to whether cared-for persons, including residents of care homes, are objecting to authorised arrangements in relation to deprivation of liberty safeguards under the Mental Capacity Act 2005;
- (j) the extent to which there are independent checks being made as to whether the authorisation of arrangements is compatible with the mental health legislation.””

BARONESS MEACHER
 BARONESS MURPHY
 BARONESS WATKINS OF TAVISTOCK
 BARONESS BARRAN

87C Insert the following new Clause –

“Non-application to individuals in domestic settings

This Act does not apply to individuals in domestic settings where possible deprivation of liberty is at issue.”

BARONESS BARRAN
 BARONESS FINLAY OF LLANDAFF

87D★ Insert the following new Clause –

“Requirements before commencement: guidance for responsible bodies

- (1) Before any of the provisions of this Act other than those which come into force on its passing can come into force, the Secretary of State must publish a set of criteria for responsible bodies to apply before authorising arrangements under Schedule AA1 to the Mental Capacity Act 2005 to identify arrangements that it would be reasonable to believe may not either –
 - (a) take the best interests of the cared-for person into account; or
 - (b) reflect the least restrictive option which could be pursued.
- (2) If a responsible body considers that the criteria under subsection (1) apply to a particular case, then a pre-authorisation review in accordance with paragraph 18 of Schedule AA1 to the Mental Capacity Act 2005 must be carried out.”

BARONESS FINLAY OF LLANDAFF

87E★ Insert the following new Clause –

“Provision in the event of the holder of lasting power of attorney being unable to fulfil their functions under this Act

- (1) A donee of lasting power of attorney may nominate and apply to the Office of the Public Guardian for persons jointly or severally to take over their duties under this Act on a temporary or permanent basis in the event that the donee loses capacity.
- (2) Such a provision will only apply when there is no other donee registered with Office of the Public Guardian.

After Clause 3 - continued

- (3) In the event of a person registering objection with the Office of the Public Guardian to such a delegated decision being made, the Public Guardian will have the power to investigate the matter and refer it to the Court of Protection.”

BARONESS TYLER OF ENFIELD

87F★ Insert the following new Clause—

“Power to call for reports

- (1) The Mental Capacity Act 2005 is amended as follows.
 (2) In section 49(1) (power to call for reports), at end insert “, but does not apply to a person P in relation to any arrangements under Schedule AA1 to this Act.”

Clause 4

BARONESS TYLER OF ENFIELD
 BARONESS JOLLY

88 Page 4, line 5, leave out subsections (4) and (5) and insert—

- “(4) Regulations under this Act may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
 (5) Before laying a draft statutory instrument under this Act before either House of Parliament, the Secretary of State must consult such persons as the Secretary of State considers appropriate.”

After Clause 4

BARONESS THORNTON
 LORD TOUHIG
 LORD HUNT OF KINGS HEATH
 BARONESS JOLLY

89 Insert the following new Clause—

“Compatibility with European Convention on Human Rights

So far as it is possible to do so, all provisions under this Act must be read and given effect in a way which is compatible with Article 5 (Right to liberty and security) of the European Convention on Human Rights.”

BARONESS JOLLY

90 Insert the following new Clause—

“Training for care home managers

- (1) The Secretary of State must by regulations made by statutory instrument require local authorities to provide training for all care home managers who may be required to make a statement under paragraph 13 of Schedule AA1 to the Mental Capacity Act 2005.

After Clause 4 - continued

- (2) The regulations may prescribe which bodies are to provide the training under subsection (1), and the assessment to be used for participants to complete the training.
- (3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

BARONESS HOLLINS
BARONESS MEACHER

91 Insert the following new Clause—

“Training strategy

- (1) The Secretary of State must publish a training strategy to aid the effective implementation of this Act within six months of its passing.
- (2) In preparing the strategy under subsection (1) the Secretary of State must have regard to—
 - (a) the initial and ongoing training of all those on whom duties and responsibilities fall,
 - (b) how vulnerable individuals and their families might be involved in delivering training to those on whom duties and responsibilities fall, and
 - (c) how such a training programme will be effectively resourced.”

LORD TOUHIG
BARONESS TYLER OF ENFIELD
BARONESS JOLLY

92 Insert the following new Clause—

“Report to Parliament

- (1) The Secretary of State must commission two independent reports on the operation of deprivation of liberty as set out in this Act and its impact on those to whom it applies and their families.
- (2) The first report under subsection (1) must be laid before both Houses of Parliament within two years beginning with the date on which this Act comes into force and the second report must be laid after the period of four years beginning with the day on which the first report was laid.”

LORD HUNT OF KINGS HEATH

92A Insert the following new Clause—

“Transitional provision

The provisions of this Act do not apply to any deprivation of liberty safeguard applications made before sections 1, 2 and 3 of this Act come into force.”

Clause 5

BARONESS JOLLY
BARONESS BARKER
BARONESS TYLER OF ENFIELD

- 93** Page 4, line 14, after the first “section,” insert “section (*Requirements before commencement*)”
- 94** Page 4, line 20, at end insert –
“provided that the requirements under section (*Requirements before commencement*)(2) of this Act have been met.”

Mental Capacity (Amendment) Bill [HL]

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

18 October 2018
