

# Mental Capacity (Amendment) Bill [HL]

---

## AMENDMENTS TO BE MOVED ON REPORT

---

### Clause 2

LORD O'SHAUGHNESSY

Page 2, line 29, at end insert “or”

Page 2, line 32, leave out “which would” and insert “that”

Page 2, line 33, leave out from “liberty” to end of line 36

Page 2, line 40, leave out “or (c)”

Page 3, line 8, leave out “or (c)”

### Clause 5

LORD O'SHAUGHNESSY

Page 4, line 20, leave out “made by statutory instrument”

### Schedule 1

LORD O'SHAUGHNESSY

Page 5, line 26, at end insert –  
“Part 8 contains transitory provision.”

Page 6, line 2, leave out “18” and insert “16”

Page 6, line 4, leave out “is of unsound mind” and insert “has a mental disorder”

Page 6, line 42, after second “arrangements” insert “, in relation to a cared-for person aged 18 or over,”

Page 6, leave out line 45 and insert “care home arrangements,”

**Schedule 1 - continued**

Page 7, leave out lines 4 to 6 and insert –

“( ) in relation to Wales, the person who manages the care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), at the care home, by virtue of regulations made under section 28 of that Act;”

Page 7, line 7, at end insert –

““clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;”

Page 7, line 7, at end insert –

““English responsible body” has the meaning given by paragraph 10A;”

Page 7, line 13, at end insert –

““mental disorder” has the meaning given by section 1(2) of the Mental Health Act;”

Page 7, leave out lines 21 and 22

Page 7, line 22, at end insert –

““Welsh responsible body” has the meaning given by paragraph 10B.”

Page 9, leave out lines 9 to 11

Page 9, line 12, after “authority”” insert “, in relation to a cared-for person aged 18 or over,”

Page 9, line 12, at end insert –

- “(za) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
- (zb) if there is an individual development plan for the cared-for person –
  - (i) the local authority responsible for maintaining that plan, or
  - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;”

Page 9, line 13, after “if” insert “neither paragraph (za) nor paragraph (zb) applies and”

**Schedule 1 - continued**

Page 9, line 32, at end insert –

- “(4A) In paragraph 6(c), “responsible local authority”, in relation to a cared-for person aged 16 or 17, means –
- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
  - (b) if there is an individual development plan for the cared-for person –
    - (i) the local authority responsible for maintaining that plan, or
    - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;
  - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person is being provided with accommodation –
    - (i) under section 20 of the Children Act 1989, or
    - (ii) under section 76 of the Social Services and Well-being (Wales) Act 2014 (anaw 4), the local authority providing that accommodation;
  - (d) if none of paragraphs (a) to (c) applies and the cared-for 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 local authority that is responsible under the order for the care of the cared-for person;
  - (e) if none of paragraphs (a) to (d) applies, the local authority determined in accordance with sub-paragraph (5).”

Page 9, line 33, leave out “and (4)” and insert “, (4) and (4A)(e)”

Page 9, line 46, at end insert –

- “(7) In this paragraph –
- “Education, Health and Care plan” means a plan within the meaning of section 37(2) of the Children and Families Act 2014;
  - “individual development plan” means a plan within the meaning of section 10 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2).”

Page 9, line 46, at end insert –

- “10A “English responsible body” means –
- (a) a hospital manager of a hospital in England;
  - (b) a clinical commissioning group;
  - (c) a local authority in England.
- 10B “Welsh responsible body” means –
- (a) a hospital manager of a hospital in Wales;
  - (b) a Local Health Board;
  - (c) a local authority in Wales.”

Page 10, line 7, leave out “is of unsound mind” and insert “has a mental disorder”

**Schedule 1 - continued**

Page 10, line 9, at end insert—

- “11A The responsible body may authorise arrangements—
- (a) under paragraph 12, if the conditions in that paragraph are met,
  - or
  - (b) under paragraph 13 if—
    - (i) the arrangements are care home arrangements,
    - (ii) the responsible body decides that authorisation should be determined under that paragraph instead of under paragraph 12, and
    - (iii) the conditions in paragraph 13 are met.”

Page 10, leave out lines 10 and 11 and insert “The conditions in this paragraph are that—”

Page 10, line 23, after “review” insert “, arranged by the responsible body,”

Page 10, leave out line 33 and insert “The conditions in this paragraph are that—”

Page 11, line 1, after “review” insert “, arranged by the responsible body,”

Page 11, line 9, after second “statement” insert “in writing”

Page 11, line 18, at end insert “and”

Page 11, leave out lines 19 to 21

Page 11, line 32, leave out “paragraph 15” and insert “paragraphs 15 and 16”

Page 11, line 44, leave out “is of unsound mind” and insert “has a mental disorder”

Page 11, line 44, at end insert—

- “(1A) An assessment must be carried out by a person who appears to the relevant person to have appropriate experience and knowledge.
- (1B) But if the arrangements are care home arrangements and authorisation is being determined under paragraph 13, an assessment may not be carried out by a person who has a prescribed connection with a care home.
- (1C) Regulations made by the appropriate authority under sub-paragraph (1B)—
  - (a) may make provision about a connection of any kind (financial or otherwise), and
  - (b) may make different provision for assessments under paragraph 15(1)(a) and paragraph 15(1)(b).
- (1D) The “appropriate authority” means—

**Schedule 1 - continued**

- (a) where the assessment is in relation to an authorisation by an English responsible body, the Secretary of State, and
- (b) where the assessment is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.”

Page 11, line 46, leave out from “appears” to end of line 1 on page 12 and insert “to the relevant person”

Page 12, line 3, leave out “care home manager or responsible body” and insert “relevant person”

Page 12, line 9, at end insert –

- “( ) In this paragraph “relevant person” means –
  - (a) the care home manager, if the arrangements are care home arrangements and authorisation is being determined under paragraph 13, or
  - (b) the responsible body, in any other case.”

Page 12, line 11, at end insert “made on an assessment”

**BARONESS BARKER**

Page 12, line 12, at end insert “and that the arrangements will continue to be necessary and proportionate for the period of time for which the arrangements are sought.”

**LORD O'SHAUGHNESSY**

Page 12, line 12, at end insert –

- “( ) When making a determination under this paragraph regard must be had (amongst other matters) to the cared-for person’s wishes and feelings in relation to the arrangements.”

Page 12, line 15, after “arrangements” insert “and authorisation is being determined under paragraph 13”

Page 12, line 18, at end insert –

- “(2A) If the arrangements are care home arrangements and authorisation is being determined under paragraph 13, an assessment may not be carried out by a person who has a prescribed connection with a care home.
- (2B) Regulations made by the appropriate authority under sub-paragraph (2A) may make provision about a connection of any kind (financial or otherwise).
- (2C) The “appropriate authority” means –
  - (a) where the assessment is in relation to an authorisation by an English responsible body, the Secretary of State, and
  - (b) where the assessment is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.”

**Schedule 1 - continued**

## BARONESS BARKER

Page 12, line 18, at end insert –

- “(3) In order to determine that the arrangements are necessary and proportionate, the responsible body may specify that the deprivation of liberty under the arrangements is subject to a condition or set of conditions.
- (4) The body responsible for the place at which the cared-for person is deprived of their liberty must comply with any conditions set under sub-paragraph (3).
- (5) If due to a change of circumstances, the body responsible for the deprivation of liberty is unable to follow any conditions set under sub-paragraph (3), they must notify the responsible body within the period of two weeks of that becoming the case and this notification must be accompanied by a statement detailing which condition or conditions cannot be complied with and the reasons for this.
- (6) If an authorisation is given subject to conditions, not less than once in each six month period beginning with the day on which the authorisation takes effect, compliance with the conditions must be monitored by the responsible body.
- (7) After undertaking a monitoring exercise under sub-paragraph (6), the responsible body must produce a statement which sets out whether the authority responsible for the deprivation of liberty has complied with the conditions, and if so, whether they have done so –
  - (a) completely, or
  - (b) partially.
- (8) If there has been non-compliance with some or all of the conditions, the statement must be supported by evidence detailing which conditions have not been complied with and a statement of non-compliance may be served on –
  - (a) the cared-for person,
  - (b) the managing authority of the body responsible for the deprivation of liberty,
  - (c) the appropriate person,
  - (d) any Independent Mental Capacity Advocate.
- (9) The statement of non-compliance in sub-paragraph (8) must state the actions which must be taken, if any, to rectify the non-compliance.
- (10) Upon monitoring the conditions under sub-paragraph (6), the responsible body may –
  - (a) vary an existing condition, or
  - (b) remove an existing condition, or
  - (c) add a new condition, or
  - (d) do any combination of the above.

**Schedule 1 - continued**

- (11) Upon releasing a statement that all or some of the conditions relevant to authorisation have not been complied with, the responsible body may determine that the authorisation conditions have not been met and the authorisation of the arrangements may cease to apply.”

## LORD O'SHAUGHNESSY

Page 12, line 21, after second “arrangements” insert “and authorisation is being determined under paragraph 13”

Page 12, line 24, at end insert –  
 “(za) the cared-for person,”

Page 13, line 3, leave out from “must” to end of line 5 and insert “not be by –

- (a) a person who is involved –
  - (i) in the day-to-day care of the cared-for person, or
  - (ii) in providing any treatment to the cared-for person, or
- (b) a person who has a prescribed connection with a care home.”

## BARONESS BARKER

Page 13, line 15, at end insert –

- “(c) relatives of the cared-for person, or those with a genuine relationship with the cared-for person, object to the care or treatment arrangements, or
  - (d) the cared-for person is prohibited from making contact with named persons, or
  - (e) the cared-for person is subject to high levels of restraint, or
  - (f) the care home manager or responsible body considers the case to be exceptional, or
  - (g) the arrangements are to secure an assessment or appropriate medical treatment, or both, for mental disorder in hospital, or
  - (h) the arrangements include the prescription or the administration (or both) of covert medication.
- (3) For the purposes of sub-paragraph (2)(c), a person with a “genuine relationship” with the cared-for person may be a relative, friend, carer, or anyone who can be reasonably expected to be concerned for the welfare of the cared-for person.
- (4) For the purposes of sub-paragraph (2)(h), “covert medication” is medication administered with the intention to disguise it in order to achieve the cared-for person’s compliance.
- (5) For the purposes of sub-paragraph (2)(g), the appropriateness of treatment for mental disorder in hospital must be determined in accordance with the provisions of the Mental Health Act 1983.”

**Schedule 1 - continued**

## LORD O'SHAUGHNESSY

Page 13, line 15, at end insert –

- “( ) Regulations made by the appropriate authority under sub-paragraph (1)(b) may make provision about a connection of any kind (financial or otherwise).
- ( ) The “appropriate authority” means –
  - (a) where the pre-authorisation review is in relation to an authorisation by an English responsible body, the Secretary of State, and
  - (b) where the pre-authorisation review is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.”

Page 13, line 27, after first “any” insert “other”

Page 13, line 28, leave out from “action,” to end of line 30 and insert “if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so.”

Page 15, line 16, at end insert –

- “26A The responsible body may renew an authorisation –
  - (a) under paragraph 27, if the conditions in that paragraph are met, or
  - (b) under paragraph 28 if –
    - (i) the authorisation relates to care home arrangements,
    - (ii) the responsible body decides that renewal should be determined under that paragraph instead of under paragraph 27, and
    - (iii) the conditions in paragraph 28 are met.”

Page 15, leave out lines 17 and 18 and insert “The conditions in this paragraph are that –”

Page 15, leave out lines 28 and 29 and insert “The conditions in this paragraph are that –”

Page 15, line 42, after second “statement” insert “in writing”

Page 16, line 12, leave out from “means” to end of line 15 and insert “the responsible body unless, in relation to care home arrangements, the responsible body decides the care home manager should be the reviewer for the purposes of this paragraph.”

## BARONESS THORNTON

Page 16, leave out lines 37 and 38



**Schedule 1 - continued**

LORD O'SHAUGHNESSY

Page 17, line 13, after first “any” insert “other”

Page 17, line 14, leave out from “action,” to end of line 16 and insert “if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so.”

Page 18, line 13, leave out “Notification by Care Homes and”

Page 18, leave out lines 14 to 24

Page 18, line 27, leave out from “arrangements” to end of line 33 and insert “are authorised or are being proposed.”

Page 18, leave out lines 36 to 39

Page 19, line 4, leave out “relevant person” and insert “responsible body”

Page 19, line 8, leave out second “and” and insert “unless”

Page 19, line 9, leave out “relevant person” and insert “responsible body”

Page 19, line 10, after “would” insert “not”

Page 19, line 15, leave out “relevant person” and insert “responsible body”

Page 19, line 29, leave out “relevant person” and insert “responsible body”

Page 19, line 41, leave out “relevant person” and insert “responsible body”

Page 19, line 46, leave out “relevant person” and insert “responsible body”

Page 23, line 18, leave out from “treatment” to end of line 19 and insert “is to be read in accordance with paragraph 49;”

Page 23, leave out lines 20 to 23

Page 23, leave out lines 25 and 26 and insert—

“(a) “medical treatment” has the same meaning as in the Mental Health Act (see section 145(1) and (4)), but”

**Schedule 1 - continued**

Page 24, line 22, at end insert –

“PART 8

TRANSITORY PROVISION

- 52 Until the repeal of section 324 of the Education Act 1996 made by paragraph 4(1) and (9) of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2) comes fully into force –
- (a) paragraph 10(1)(zb) has effect as if there were substituted –
    - “(zb) if the cared-for person has an individual development plan or a statement of special educational needs –
      - (i) the local authority responsible for maintaining that plan or statement, or
      - (ii) in the case of an individual development plan which is not maintained by a local authority, the local authority whose area the cared-for person is in;”,
  - (b) paragraph 10(4A)(b) has effect as if there were substituted –
    - “(b) if the cared-for person has an individual development plan or a statement of special educational needs –
      - (i) the local authority responsible for maintaining that plan or statement, or
      - (ii) in the case of an individual development plan which is not maintained by a local authority, the local authority whose area the cared-for person is in;”, and
  - (c) paragraph 10(7) has effect as if at the end there were inserted –
    - ““statement of special educational needs” means a statement within the meaning of section 324 of the Education Act 1996.””

# Mental Capacity (Amendment) Bill [HL]

---

AMENDMENTS  
TO BE MOVED  
ON REPORT

---

*14 November 2018*

---