

Mental Capacity (Amendment) Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 19th November 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

LORD O'SHAUGHNESSY

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

BARONESS TYLER OF ENFIELD

- 2** Page 5, line 33, at end insert –
“(1A) For the purpose of paragraph 2(1)(b), arrangements which give rise to the deprivation of the cared-for person’s liberty are those in which –
(a) the cared-for person is subject to confinement in a particular place for a not negligible period of time; and
(b) the cared-for person has not given valid consent to their confinement.
(1B) For the purpose of paragraph 2(1A)(a), a cared-for person is subject to confinement where –
(a) the cared-for person is prevented from removing himself or herself permanently in order to live where and with whom he or she chooses; and
(b) the dominant reason for the deprivation of liberty is the continuous supervision and control of the cared-for person, and not treatment for their underlying condition.”

Schedule 1 - continued

BARONESS MEACHER
BARONESS MURPHY

- 3 Page 5, line 33, at end insert –
- “(1A) This Schedule does not apply to deprivation of liberty processes in a domestic setting, arrangements for which must be undertaken under the Care Act 2014.
- (1B) This Schedule does not apply to deprivation of liberty processes where a dominant reason for the deprivation of liberty is the treatment of an underlying condition covered by the Mental Health Act 2007, except in exceptional circumstances.”

LORD WOOLF

- 4 Page 5, line 33, at end insert –
- “(1A) For the purpose of paragraph 2(1)(b), a cared-for person is deprived of their liberty only if –
- (a) the cared-for person is subject to confinement in a particular place for a not negligible period of time; and
- (b) the cared-for person has not given valid consent to their confinement.
- (1B) For the purpose of paragraph 2(1A)(b), a cared-for person is deemed to have given their valid consent where –
- (a) the cared-for person is capable of expressing their wishes and feelings (verbally or otherwise);
- (b) the cared-for person has expressed their persistent contentment with their care and treatment arrangements;
- (c) there is no coercion involved in the implementation of the cared-for person’s care and treatment arrangements; and
- (d) paragraphs 2(1B)(a) to (c) are confirmed in writing by two professionals, one of whom must not be involved in the implementation of the cared-for person’s care or treatment arrangements.”

LORD O'SHAUGHNESSY

- 5 Page 6, line 2, leave out “18” and insert “16”
- 6 Page 6, line 4, leave out “is of unsound mind” and insert “has a mental disorder”
- 7 Page 6, line 42, after second “arrangements” insert “, in relation to a cared-for person aged 18 or over,”
- 8 Page 6, leave out line 45 and insert “care home arrangements,”

Schedule 1 - continued

- 9 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;”
- 10 Page 7, line 7, at end insert—
 ““clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;”
- 11 Page 7, line 7, at end insert—
 ““English responsible body” has the meaning given by paragraph 10A;”
- 12 Page 7, line 13, at end insert—
 ““mental disorder” has the meaning given by section 1(2) of the Mental Health Act;”
- BARONESS THORNTON
 BARONESS WATKINS OF TAVISTOCK
 BARONESS JOLLY
- 13 Page 7, line 17, at end insert—
 ““nominated body” means the body designated by the responsible body to carry out the following responsibilities in relation to the authorisation of care home arrangements—
 (a) determinations required by paragraphs 15 and 16;
 (b) consultation under paragraph 17;
 (c) decisions on whether paragraph 18(2)(a) or (b) applies;
 (d) preparation of the draft authorisation record in accordance with paragraph 21;
 (e) preparation of a statement in accordance with paragraph 29; and
 (f) responsibilities specified in paragraphs 31 and 34.”
- LORD O'SHAUGHNESSY
- 14 Page 7, leave out lines 21 and 22
- 15 Page 7, line 22, at end insert—
 ““Welsh responsible body” has the meaning given by paragraph 10B.”

Schedule 1 - continued

BARONESS BARKER
 BARONESS FINLAY OF LLANDAFF
 BARONESS MEACHER

- 16 Page 8, line 10, at end insert—
 “(aa) if the arrangements are carried out in an independent hospital, the designated NHS trust;”

BARONESS THORNTON

- 16A★ Page 8, line 10, at end insert—
 “(aa) if the arrangements are for the cared-for person to be accommodated in an independent hospital for the purpose of assessment or treatment for mental disorder, and the care is commissioned by a clinical commissioning group or Local Health Board, that clinical commissioning group or Local Health Board;”

LORD O'SHAUGHNESSY

- 17 Page 9, leave out lines 9 to 11
- 18 Page 9, line 12, after “authority”” insert “, in relation to a cared-for person aged 18 or over,”
- 19 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;”
- 20 Page 9, line 13, after “if” insert “neither paragraph (za) nor paragraph (zb) applies and”
- 21 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

Schedule 1 - continued

- (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).”

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

23 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).”

24 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.”

BARONESS THORNTON

BARONESS JOLLY

25 Page 10, line 7, leave out “is of unsound” and insert “has any disorder or disability of the”

LORD O'SHAUGHNESSY

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

Schedule 1 - continued

BARONESS BARKER
BARONESS THORNTON

27 Page 10, line 8, after “necessary” insert “to prevent harm to the cared-for person”

28 Page 10, line 8, at end insert “in relation to the likelihood and seriousness of harm to the cared-for person”

BARONESS HOLLINS
BARONESS THORNTON
BARONESS JOLLY
BARONESS WATKINS OF TAVISTOCK

29 Page 10, line 8, at end insert –

“Rights to information

11A(1) Prior to the authorisation process, the cared-for person must be fully informed of their rights.

(2) The responsible body must take such steps as are practicable to ensure that the cared-for person and any appropriate person or Independent Mental Capacity Advocate representing and supporting them understand the possible outcome of the assessments, the reasons why the cared-for person may be deprived of their liberty and their rights –

(a) to request an Approved Mental Capacity Professional’s assessment and review of the arrangements,

(b) to advocacy, and

(c) 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 steps involved in the authorisation process,

(b) the purpose, duration and effect of the authorisation,

(c) any conditions to which the authorisation is subject,

(d) the reasons why the cared-for person met the qualifying requirements in question,

(e) the right to object to the authorisation and the right to request a review by an Approved Mental Capacity Professional,

(f) the outcome of a review of the arrangements,

(g) the relevant rights of the cared-for person,

(h) how the cared-for person may exercise relevant rights.

(4) In this paragraph, “relevant rights” includes the right to make an application to the court to challenge an authorisation decision in court under section 21ZA 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.”

Schedule 1 - continued

LORD O'SHAUGHNESSY

- 30 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.”

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

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

- 32 Page 10, line 10, leave out “, other than care home arrangements,”

BARONESS FINLAY OF LLANDAFF

- 33 Page 10, leave out lines 14 to 16

LORD O'SHAUGHNESSY

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

BARONESS FINLAY OF LLANDAFF

- 35 Page 10, line 32, at end insert—
 “12A The responsible body may not authorise arrangements if an Approved Mental Capacity Professional has concluded that the arrangements should not be authorised.”

LORD O'SHAUGHNESSY

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

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

- 37 Page 10, line 33, leave out from beginning of line 33 to end of line 18 on page 12 and insert—
 “13 When the responsible body wishes to consider authorising arrangements, wherever a cared-for person is cared for, the manager of the place of care is responsible for ensuring that—
 (a) a medical assessment,
 (b) a capacity assessment relevant to the decision on the proposed care, which has been conducted by a registered professional who has the appropriate experience and knowledge to conduct the assessment, and

Schedule 1 - continued

- (c) a proposed care and support plan, are supplied to the responsible body.
- 14 (1) Documents supplied by the manager of the place of care to the responsible body in relation to a decision to authorise arrangements must confirm that—
- (a) the cared-for person is aged 16 or over, and
 - (b) the arrangements proposed in the care and support plan—
 - (i) are necessary and proportionate to protect the cared-for person’s liberty as much as possible, and
 - (ii) meet the wishes and feelings of the cared-for person as far as possible, and
 - (c) the appropriate consultation has been conducted in accordance with section 4 of this Act.
- (2) Documents supplied by the manager of the place of care to the responsible body must state—
- (a) the length of time since the assessment was carried out;
 - (b) the purpose for which the assessment was carried out;
 - (c) whether there has been a change in the cared-for person’s condition that is likely to affect the determination made in the assessment.”

BARONESS FINLAY OF LLANDAFF

- 38 Page 10, line 34, after “has” insert “coordinated the provision of information from independently conducted assessments in respect of paragraphs 15 and 16 and”

BARONESS THORNTON
BARONESS JOLLY

- 39 Page 10, line 40, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

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

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

BARONESS THORNTON
BARONESS JOLLY

- 42 Page 11, line 17, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

- 43 Page 11, line 18, at end insert “and”

- 44 Page 11, leave out lines 19 to 21

Schedule 1 - continued

BARONESS THORNTON
 BARONESS WATKINS OF TAVISTOCK
 BARONESS JOLLY

45 Page 11, line 22, leave out “care home manager” and insert “nominated body”

BARONESS THORNTON
 BARONESS BARKER

46 Page 11, line 22, after “manager” insert “or any person interested in the cared-for person’s welfare”

LORD O'SHAUGHNESSY

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

BARONESS THORNTON
 BARONESS JOLLY

48 Page 11, line 36, after “prepared” insert “by the nominated body”

BARONESS FINLAY OF LLANDAFF

49 Page 11, line 37, at end insert –

- “(iv) the person’s care and support plan, and
- (v) a statement that the care and support plan has been made available to all persons listed in paragraph 17(2)”

BARONESS THORNTON
 BARONESS JOLLY

50 Page 11, line 44, leave out “is of unsound” and insert “has any disorder or disability of the”

LORD O'SHAUGHNESSY

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

52 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 subparagraph (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).

Schedule 1 - continued

(1D) 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.”

BARONESS FINLAY OF LLANDAFF

As an amendment to Amendment 52

53 In subsection (1A), after “appropriate” insert “skills,”

LORD O'SHAUGHNESSY

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

BARONESS THORNTON

BARONESS JOLLY

55 Page 11, line 47, leave out “care home manager” and insert “nominated body”

56 Page 12, line 3, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

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

58 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.”

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

BARONESS BARKER

BARONESS THORNTON

60 Page 12, line 12, after “necessary” insert “to prevent harm to the cared-for person”

BARONESS BARKER

BARONESS FINLAY OF LLANDAFF

BARONESS JOLLY

61 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.”

BARONESS BARKER

BARONESS THORNTON

62 Page 12, line 12, at end insert “in relation to the likelihood and seriousness of harm to the cared-for person”

Schedule 1 - continued

LORD O'SHAUGHNESSY

63 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.”

BARONESS THORNTON
BARONESS JOLLY

64 Page 12, line 14, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

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

66 Page 12, line 18, at end insert –

- “(3) 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.
- (4) Regulations made by the appropriate authority under sub-paragraph (3) may make provision about a connection of any kind (financial or otherwise).
- (5) 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.”

BARONESS BARKER
BARONESS JOLLY
BARONESS THORNTON

67 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.

Schedule 1 - continued

- (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.
- (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.”

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

68

Page 12, leave out lines 20 to 24 and insert—

- “(1) Consultation on the care plan to be provided in cases where the responsible body is considering authorising arrangements must involve—
 - (za) the cared-for person,”

LORD O'SHAUGHNESSY

69

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

Schedule 1 - continued

BARONESS THORNTON
BARONESS JOLLY

70 Page 12, line 22, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

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

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

72 Page 13, line 2, leave out “or 13(d)”

LORD O'SHAUGHNESSY

73 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 FINLAY OF LLANDAFF

74 Page 13, line 3, after “person” insert “who is a registered health or social care professional with the appropriate skills, knowledge and experience, and”

75 [*Withdrawn*]

76 Page 13, line 15, at end insert “, or
(c) there is dispute between the responsible body and the registered health or social care professional who has carried out the review under paragraph 20.”

BARONESS FINLAY OF LLANDAFF
BARONESS THORNTON
BARONESS BARKER
THE LORD BISHOP OF OXFORD

76A★ Page 13, line 15, at end insert “, or
(c) a person involved in the care or treatment of the cared-for person, or interested in the cared-for person’s welfare, has informed the responsible body that there is reason to believe that the cared-for person does not wish to reside or receive care or treatment in the particular place.”

Schedule 1 - continued

BARONESS BARKER
 BARONESS FINLAY OF LLANDAFF
 BARONESS JOLLY

- 77 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.”

LORD O'SHAUGHNESSY

- 78 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.”
- 79 Page 13, line 27, after first “any” insert “other”
- 80 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.”

Schedule 1 - continued

BARONESS FINLAY OF LLANDAFF

- 81 Page 13, line 32, leave out “person” and insert “registered health or social care professional”

BARONESS THORNTON
BARONESS BARKER

- 82 Page 13, line 32, at end insert –
“(za) meet with the cared-for person, if it appears to be appropriate and practicable to do so,”

BARONESS BARKER
BARONESS THORNTON

- 83 Page 13, line 46, at end insert “intended to reduce the deprivation of liberty or its effect on the cared-for person”

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

- 84 Page 14, line 2, leave out “or 14(2)(b)(iii)”

BARONESS FINLAY OF LLANDAFF

- 85 Page 14, line 7, at end insert –
“(5) A copy of the authorisation record and of the care plan must be provided to –
(a) the cared-for person, or
(b) their nominated representative, or
(c) their donee of lasting power of attorney, or
(d) a court-appointed deputy,
and to the care team providing care in the cared-for person’s place of residence.”

BARONESS HOLLINS
BARONESS THORNTON
BARONESS JOLLY
BARONESS WATKINS OF TAVISTOCK

- 86 Page 14, line 7, at end insert –
“(5) The responsible body must –
(a) ensure that the cared-for person, any appropriate person, and any Independent Mental Capacity Advocate supporting and representing the cared-for person, are given copies of the authorisation record and care plan as soon as possible after authorisation is granted,
(b) provide copies of the authorisation record to any persons consulted under paragraph 17 if they request a copy, unless there is good reason not to do so.”

Schedule 1 - continued

BARONESS FINLAY OF LLANDAFF
 BARONESS JOLLY
 BARONESS THORNTON

87 Page 14, line 7, at end insert –

“Dispute

21A(1) In the case of disagreement over any aspect of the authorisation between any of the relevant parties, an independent Approved Mental Capacity Professional must be appointed, by the responsible body, to review the proposed arrangements and conduct an investigation into the areas of disagreement and conduct assessments as necessary.

(2) If, following a review, investigation or assessment under subparagraph (1), agreement is still not reached on the arrangements, independent mediation must be considered prior to proceeding to the Court of Protection.”

BARONESS BARKER

88 Page 14, line 36, leave out from “ensure” to end of line 37 and insert “the cared-for person, any person appointed to represent the cared-for person and any person likely to be carrying out the arrangements are notified.”

BARONESS BARKER
 BARONESS THORNTON

89 Page 15, line 8, at end insert –

“(d) there are practicable less restrictive options that would meet the authorisation conditions”

LORD O'SHAUGHNESSY

90 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.”

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

Schedule 1 - continued

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

92 Page 15, line 17, leave out from beginning of line 17 to end of line 4 on page 16 and insert –

“27 The responsible body may renew an authorisation if the responsible body has carried out consultation under paragraph 17 and the cared-for person, and others who are interested in the care of the cared-for person, are satisfied with the arrangements.”

LORD O'SHAUGHNESSY

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

BARONESS THORNTON
BARONESS JOLLY

94 Page 15, line 31, after “statement” insert “made by the nominated body”

95 Page 15, line 40, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

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

BARONESS THORNTON
BARONESS JOLLY

97 Page 15, line 43, leave out “care home manager” and insert “nominated body”

98 Page 16, line 1, leave out “care home manager” and insert “nominated body”

LORD O'SHAUGHNESSY

99 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 FINLAY OF LLANDAFF
BARONESS JOLLY

100 Page 16, leave out lines 13 and 14

BARONESS THORNTON
BARONESS JOLLY

101 Page 16, line 13, leave out “care home manager” and insert “nominated body”

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

102 Page 16, line 15, leave out “, in any other case”

Schedule 1 - continued

BARONESS THORNTON
BARONESS BARKER

103 Page 16, line 20, after “interest” insert “in the welfare of the cared-for person, or”

BARONESS FINLAY OF LLANDAFF

104 Page 16, line 29, at end insert –

“(g) if any person with an interest in the cared for person’s welfare has raised concern with the responsible body about the person’s care or treatment.”

BARONESS BARKER

105 Page 16, line 33, at end insert “and”

BARONESS JOLLY

106 Page 16, leave out lines 37 and 38

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

107 Page 17, leave out lines 1 and 2

BARONESS THORNTON
BARONESS JOLLY

108 Page 17, line 2, leave out “manager” and insert “nominated body”

BARONESS FINLAY OF LLANDAFF

109 Page 17, line 3, after “sub-paragraph” insert “3(g) or”

LORD O'SHAUGHNESSY

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

111 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.”

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

113 Page 18, leave out lines 14 to 24

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

114 Page 18, line 15, leave out “proposing or”

BARONESS THORNTON
BARONESS JOLLY

115 Page 18, line 18, leave out “manager” and insert “nominated body”

Schedule 1 - continued

LORD O'SHAUGHNESSY

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

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

- 117** Page 18, leave out lines 31 to 33

LORD O'SHAUGHNESSY

- 118** Page 18, leave out lines 36 to 39

BARONESS FINLAY OF LLANDAFF

- 119** Page 18, leave out lines 37 and 38

BARONESS THORNTON
BARONESS JOLLY

- 120** Page 18, line 37, leave out “care home manager” and insert “nominated body”

BARONESS FINLAY OF LLANDAFF
BARONESS JOLLY

- 121** Page 18, line 39, leave out “, in any other case”

LORD O'SHAUGHNESSY

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

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

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

- 125** Page 19, line 10, after “would” insert “not”

BARONESS THORNTON
BARONESS BARKER

- 126** Page 19, line 11, at end insert “, or
(ii) the cared-for person has nobody apart from paid carers to be consulted as part of determining his or her best interests.”

LORD O'SHAUGHNESSY

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

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

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

Schedule 1 - continued

- 130 Page 19, line 46, leave out “relevant person” and insert “responsible body”
- 131 Page 23, line 18, leave out from “treatment” to end of line 19 and insert “is to be read in accordance with paragraph 49;”
- 132 Page 23, leave out lines 20 to 23
- 133 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”
- 134 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.””

Clause 2

LORD O'SHAUGHNESSY

- 135 Page 2, line 29, at end insert “or”
- 136 Page 2, line 32, leave out “which would” and insert “that”
- 137 Page 2, line 33, leave out from “liberty” to end of line 36
- 138 Page 2, line 40, leave out “or (c)”
- 139 Page 3, line 8, leave out “or (c)”

After Clause 3

LORD HUNT OF KINGS HEATH

- 140 Insert the following new Clause—

“Requirement before commencement: consultation

Before any 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 report listing the names of organisations consulted by the Government in preparation of the Mental Capacity (Amendment) Bill since 13 March 2017.”

- 141 Insert the following new Clause—

“Requirement before commencement: outstanding applications

Before any 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 report outlining the Government’s plans to ensure that all outstanding deprivation of liberty safeguards applications are settled.”

BARONESS TYLER OF ENFIELD

- 142 Insert the following new Clause—

“Requirements before commencement

- (1) Before any 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—
 - (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.”

After Clause 3 - continued

LORD HUNT OF KINGS HEATH
BARONESS THORNTON

143 Insert the following new Clause –

“Code of practice

- (1) Before any of the provisions of this Act other than those which come into force on its passing can come into force, the Lord Chancellor must by regulations made by statutory instrument revise the codes of practice required by section 42 of the Mental Capacity Act 2005 to take account of Schedule AA1 to that Act.
- (2) 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.
- (3) Subsequent revisions to the codes of practice, to the extent that they cover Schedule AA1 to the Mental Capacity Act 2005, must be made according to the procedure set out in this section.”

Clause 5

BARONESS TYLER OF ENFIELD

144 Page 4, line 14, after first “section,” insert “section (*Requirements before commencement*),”

LORD HUNT OF KINGS HEATH
BARONESS THORNTON

145 Page 4, line 14, after first “section,” insert “section (*Code of practice*),”

LORD HUNT OF KINGS HEATH

146 Page 4, line 14, after first “section,” insert “section (*Requirement before commencement: consultation*),”

147 Page 4, line 14, after first “section,” insert “section (*Requirement before commencement: outstanding applications*),”

LORD O'SHAUGHNESSY

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

Mental Capacity (Amendment) Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

20 November 2018
