

# Mental Capacity (Amendment) Bill [HL]

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SECOND  
MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*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**

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,

**Schedule 1 - continued**

- (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.”

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.”

**Schedule 1 - continued**

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
  - (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,”

**Schedule 1 - continued**

- 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
- 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”

**Schedule 1 - continued**

- 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).
  - (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”

**Schedule 1 - continued**

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”

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 subparagraph (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.”

**Schedule 1 - continued**

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.
- (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.”

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”

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]



**Schedule 1 - continued**

- 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.”

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.”

**Schedule 1 - continued**

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.”

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,”

BARONESS BARKER  
BARONESS JOLLY  
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,

**Schedule 1 - continued**

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."

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  
BARONESS JOLLY

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  
BARONESS JOLLY

89 Page 15, line 8, at end insert –

- "(d) there are practicable less restrictive options that would meet the authorisation conditions"

**Schedule 1 - continued**

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 –”

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”

**Schedule 1 - continued**

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”

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  
BARONESS JOLLY

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

- 106 [*Withdrawn*]

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”

**Schedule 1 - continued**

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”

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”

**Schedule 1 - continued**

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”

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

**Schedule 1 - continued**

- (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  
BARONESS JOLLY

- 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.”



*After Clause 3 - continued*

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

BARONESS JOLLY

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.”

LORD HUNT OF KINGS HEATH

BARONESS THORNTON

BARONESS JOLLY

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.”

**After Clause 3 - continued**

BARONESS THORNTON

**143A** Insert the following new Clause—**“Requirements before commencement: consultation etc**

- (1) Before any provisions of this Act other than those which come into force on its passing come into force, the requirements under subsection (2) must be met.
- (2) The requirements are as follows—
  - (a) the provisions of this Act must be subject to public consultation and the Secretary of State must publish a report detailing which of the provisions of the Act will be consulted on, by whom and by when;
  - (b) the Secretary of State must publish his or her consideration of the conclusions of the Independent Review of the Mental Health Act relevant to the deprivation of liberty in accordance with the provisions of the Mental Capacity Act 2005, and in particular Schedule AA1 of that Act;
  - (c) the Secretary of State must conduct further consultation with vulnerable people, families, charities, providers, practitioners and other relevant stakeholders regarding the provisions in this Act and publish the results;
  - (d) the Secretary of State must publish an equality impact assessment on the impact of the provisions of this Act on persons with protected characteristics under the Equality Act 2010.”

**Clause 5**BARONESS TYLER OF ENFIELD  
BARONESS JOLLY**144** Page 4, line 14, after first “section,” insert “section (*Requirements before commencement*),”LORD HUNT OF KINGS HEATH  
BARONESS THORNTON  
BARONESS JOLLY**145** Page 4, line 14, after first “section,” insert “section (*Code of practice*),”LORD HUNT OF KINGS HEATH  
BARONESS JOLLY**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*),”

BARONESS THORNTON

**147A** Page 4, line 14, after first “section,” insert “section (*Requirements before commencement: consultation etc*),”

LORD O'SHAUGHNESSY

**148**

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

# Mental Capacity (Amendment) Bill [HL]

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SECOND  
MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*23 November 2018*

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