

# Mental Capacity (Amendment) Bill [HL]

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## MOTION TO BE MOVED ON CONSIDERATION OF COMMONS AMENDMENTS

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*[The page and line references are to Bill 303, the bill as first printed for the Commons]*

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### Before Clause 1

#### COMMONS AMENDMENT 1

1 Insert the following new Clause –

**“Meaning of deprivation of liberty**

(1) After section 4 of the Mental Capacity Act 2005 insert –

**“4ZA Meaning of deprivation of liberty**

- (1) In this Act, references to deprivation of a person’s liberty have the same meaning as in Article 5(1) of the Human Rights Convention and, accordingly, a person is not deprived of liberty in any of the circumstances described in subsections (2) to (4).
- (2) A person is not deprived of liberty in a particular place if the person is free to leave that place permanently.
- (3) A person is not deprived of liberty in a particular place if –
  - (a) the person is not subject to continuous supervision, and
  - (b) the person is free to leave the place temporarily (even if subject to supervision while outside that place).
- (4) A person is not deprived of liberty if –
  - (a) the arrangements alleged to give rise to the deprivation of liberty are put in place in order to give medical treatment for a physical illness or injury, and
  - (b) the same (or materially the same) arrangements would be put in place for any person receiving that treatment.
- (5) A person is free to leave a particular place for the purposes of subsections (2) and (3) even if the person is unable to leave that place provided that if the person expressed a wish to leave the person would be enabled to do so.”

- (2) In section 64(5) of that Act (interpretation) for the words from “same” to the end substitute “meaning given by section 4ZA.””

**1A** **Baroness Tyler of Enfield to move, as an amendment to the motion That the House do agree with the Commons in their Amendment 1, leave out from “House” to end and insert “do disagree with the Commons in their Amendment 1 and do propose Amendment 1B in lieu –**

**Before Clause 1**

**1B** Insert the following new Clause –

**“Meaning of deprivation of liberty**

- (1) After section 4 of the Mental Capacity Act 2005 insert –

**“4ZA Meaning of deprivation of liberty**

- (1) A person is deprived of liberty if the circumstances described in subsection (2) apply to them.
- (2) A person is deprived of liberty if they –
- (a) are subject to confinement in a particular place for more than a negligible period of time; and
  - (b) have not given valid consent to their confinement; and
  - (c) the arrangements are due to an action of a person or body responsible to the state.
- (3) For the purpose of subsection (2)(a), a person is subject to confinement where they –
- (a) are prevented from removing themselves permanently from the place in which they are required to reside, in order to live where and with whom they choose; and
  - (b) are subject to continuous supervision and control.
- (4) A person who requires permission to leave a place temporarily is still considered to be subject to continuous supervision and control.
- (5) A person is not regarded as deprived of liberty if the person is –
- (a) in a hospital receiving life-sustaining treatment in intensive care which is unavoidable as a result of circumstances beyond the control of the relevant authorities and is necessary to avert a real risk of serious injury or damage and the same (or materially the same) arrangements would be put in place for anyone receiving that treatment; or
  - (b) unconscious or in a minimally conscious state receiving life-sustaining treatment which is unavoidable as a result of circumstances beyond the control of the relevant authorities and is necessary to avert a real risk of serious injury or damage, and the same (or materially the same) arrangements would be put in place for anyone receiving that treatment.”

- (2) In section 64(5) of that Act (interpretation) for the words from “same” to the end substitute “meaning given by section 4ZA.””



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*18 February 2019*

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