

## Briefing on the Mental Capacity Amendment Bill

As an organisation that is run and controlled by Disabled people we are extremely concerned about the Mental Capacity Amendment Bill, that is currently at the Committee stage in the House of Lords. We believe this bill will have a significant negative impact on Disabled people's human rights. Our concerns are echoed by leading academics and lawyers. Provider organisations such as [Dimensions](#) who would be given significant new responsibilities under the bill have also raised serious concerns. We urge you to work with us to table amendments to improve the bill.

### Our key concerns:

**The lack of consultation with people affected by the bill and their organisations** - In many important aspects the bill is at odds with what has been proposed by the Law Commission after it undertook its review and engagement. There is no evidence of the engagement with people who are affected to discuss the divergence from initial proposals. We are also seriously concerned about the fact that none of the materials for the bill and the bill itself are available in alternative formats, especially in easy read. This indicates to us that people who are affected could not and still aren't able to meaningfully engage with the proposed changes. **We therefore believe the passage of the bill should be halted at least until all the materials are available in accessible formats and consultation undertaken.**

**Weakening human rights protection** - not only does the bill go against the UN Convention on the Rights of Persons with Disabilities (UNCRPD<sup>1</sup>), which the UK has ratified, it will significantly weaken the few existing protections people have under current legislation. We know deprivation of liberty is often used as an alternative to providing better and sometimes more expensive care. The bill makes it easier to detain people. It removes independent assessments for the majority of cases, except when a care home manager or a local authority decides that the person concerned is objecting. The bill does not require them to consult with the person concerned, give any weight to their wishes and feelings or even to inform them or their relatives about the decisions that are being made. There are no attempts to introduce elements of the supported decision-making system. The bill restricts access to independent advocacy and does not improve in any way the person's ability to challenge decisions that are made about them. The bill does not make it clear that deprivation of liberty cannot be used when other less restrictive options, such as providing more support or looking at true reasons behind the person's "challenging behaviour" could work to achieve the aim.

We believe amendments are needed in the following areas to ensure the bill is compliant with international human rights standards including the UNCRPD and the ECHR:

- Ensuring everything is done to promote Disabled people's liberty including provision of sufficient and appropriate support, so deprivation is only ever as a last resort.
- Making it easy to challenge decisions that deprive liberty, including by ensuring everyone has a right to an advocate of their choice and a duty to refer cases to the Court of Protection when there is a dispute and access to non-means tested legal aid.
- Ensuring significant weight is given to people's wishes and wants when decisions are made, including choice of a person who will support them to make decisions or makes decisions for them.
- Preventing deprivation of liberty for the purpose of protecting others.
- Ensuring effective participation of the person in the process: they should be consulted, informed in an accessible way, asked if they want to challenge and helped to do it if they want to.
- Putting in place effective safeguards to ensure people are not deprived of their liberty unnecessarily.
- Access to independent advocacy should be on an opt out basis.

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<sup>1</sup> The bill goes against the following key articles in the United Nations Convention on the Rights of Persons with Disabilities: 12, 14, 17, 19. In 2017, in its Concluding Observations for the UK Government, the UN Committee on the Rights of Persons with Disabilities has urged the UK government to "Repealing legislation and practices that authorize non-consensual, involuntary, compulsory treatment and detention of Disabled people on the basis of actual or perceived impairment or any form of forced intervention or surgery" and "allocating appropriate funding and setting up adequate support systems to enable Disabled people to live in the community in a place of their choice".