

## 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 will be at 2<sup>nd</sup> reading in the House of Commons on the 18<sup>th</sup> of December 2018.

Despite improvements to the Bill made in the House of Lords, it will negatively affect the human rights of over three hundred thousand citizens in England and Wales with conditions including dementia, learning difficulties, autism and brain injuries, as well as their families and supporters. Our concerns are echoed by leading academics and lawyers, other third sector organisations and general public<sup>1</sup>. We urge you to take part in the debate and scrutinise the Bill.

We are also deeply unhappy with the fact that the Bill is being pushed through Parliament with such speed. We accept there is a need to deal with the backlog of cases which built up after Cheshire West decision in the Supreme Court. However it in no way can justify rushing through ill thought reforms. It is not right to reduce protections for everyone just because the system is not able to cope with all the cases.

### Our key concerns:

**Weakening human rights protection** - not only does the bill go against all the principles in the UN Convention on the Rights of Persons with Disabilities - CRPD<sup>2</sup>, which the UK is a party to, it will significantly weaken the few existing protections people have and still raises questions about the compliance with Article 5 of the European Convention on Human Rights. The bill has been improved in the House of Lords by the Government itself and by the Peers, who had to push amendments to ensure the person concerned is informed of their rights. We believe very important issues still remain:

- There is no attempt to introduce any elements of supported decision-making to make the law more compliant with UNCRPD.
- There are still important issues about conflict of interests, for instance care home managers, who in the vast majority of cases will have financial and other interests in getting an authorisation to deprive person of their liberty will still be responsible for identifying whether or not a person is objecting to the arrangements and what person's wishes are. It is unacceptable as only people who are perceived to be objecting will be entitled to an independent review. The managers of independent hospitals will be able to authorise deprivation of liberty, when their organisations are to benefit financially from this.
- Access to advocacy is still limited. It is based on whether professionals believe it is in person's best interests.

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<sup>1</sup> Our [petition](#) about the bill was already supported by 146,250 people

<sup>2</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".

- There are no sufficient provisions to ensure everyone is supported and enabled to exercise their unqualified right to have their deprivation of liberty reviewed by a court or tribunal as required by article 5 of the European Convention on Human Rights.
- We do not believe the Bill makes it clear that deprivation of liberty cannot be used as a way to deliver care in the cheapest way possible. It can be cheaper to sedate a person or to restrain them physically than provide support to ensure they are able to do what they enjoy doing.
- There has to be a wider consultation and clarity about extending the scheme to 16 and 17 year olds. We believe there is a risk that the new scheme will make it easier for authorities to remove young people from the care of their families despite objections from the families.

**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 to develop proposals for reforming Deprivation of Liberty Safeguards. There is no evidence of the engagement with people who are affected to discuss the divergence from initial proposals. Despite all the promises, as far as we know there has been no meaningful engagement with organisations that are run and controlled by Disabled people<sup>3</sup>. We believe it is unacceptable 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 and comment on the proposed changes<sup>4</sup>. Moreover, too many important issues, which will have an impact on Disabled people's right to liberty, are left for the Code of Practice, the draft of which has not been published or consulted on either. The government has published its Equality Impact Assessment for the Bill only on the 17<sup>th</sup> of December 2018, which raises the question about compliance with the Public Sector Equality Duty.

**We therefore believe the passage of the Bill should be halted at least until all the materials are available in accessible formats, the government has consulted with Disabled people and their organisations as required by the UN Convention on the Rights of Persons with Disabilities, the Equality Impact assessment has been published.**

We urge you to raise those issues in the debates and work with us to improve the Bill.

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<sup>3</sup> This is required by article 4 of the UN Convention on the Rights of Persons with Disabilities. The UN Committee on the rights of Persons with Disabilities made it clear in its [General Comment 7](#) that these can only be organisations that are run and controlled by Disabled people.

<sup>4</sup> The lack of information in alternative formats is potentially a breach of duty to make reasonable adjustments under the Equality Act 2010.