



HOUSE OF LORDS

SELECT COMMITTEE ON THE MENTAL CAPACITY ACT 2005

Call for Evidence

The House of Lords has established a Select Committee on the Mental Capacity Act 2005. The terms of reference of the inquiry ask the Committee to “consider and report on the Mental Capacity Act 2005”. The Committee will explore the following key issues in detail and would welcome your views on **any or all** of the following questions. **Please note that questions are not listed here in any particular order of importance.**

Written evidence should arrive no later than 2 September 2013 and should be sent to holmentalcapacityco@parliament.uk or to Judith Brooke, Clerk, Committee on the Mental Capacity Act 2005, Committee Office, House of Lords, London SW1A 0PW.

The Committee will be considering the Mental Capacity Act 2005 in general and, as such, will not be investigating individual cases. If you have any queries about submitting evidence please contact the Committee Clerk, Judith Brooke, on 0207 219 7516 or brookej@parliament.uk.

Overview and context

1. To what extent has the Mental Capacity Act 2005 (MCA) achieved its aims?
2. Which areas of the Act, if any, require amendment; and how?
3. At the core of the MCA are its principles and definitions of capacity and best interests. Are these appropriate?

Implementation

4. To what extent have the five principles of the MCA been implemented in frontline practice? What evidence is available to assess this? Is there a satisfactory balance between enablement and protection?
5. How effective was the Government’s implementation plan? What measures were taken to ensure that professionals and families of those who lack capacity know about and act in accordance with the provisions of the MCA? Has it led to sustainable change?
6. Is the Act widely known and understood by professionals required to implement it? How does this differ across different sectors, such as health, social care, banking and others?
7. Is the Act widely known and understood by those who are directly affected by it and by their non-professional carers? To what extent does the Act provide protection and reassurance for informal carers? Has the right balance been struck between protection of the carer and protection of the individual lacking capacity?
8. Has the Act ushered in the expected, or any, change in the culture of care?

9. Is there any evidence that the provisions of the MCA affect some groups disproportionately? If so, what data exists to compare representation across different socio-economic groups, Black and Minority Ethnic groups, and gender?

Decision making

10. Are those directly affected by the Act being enabled and supported to make decisions for themselves to a greater or lesser extent than they would have been in the past? Does the means by which the decision is made – ‘general authority’, Lasting Power of Attorney, deputyship, Court of Protection – affect the quality of decision making?
11. What evidence is there that advance decisions to refuse treatment are being made and followed?
12. Has the MCA fostered appropriate involvement of carers and families in decision-making?
13. Has the role of the Independent Mental Capacity Advocate (IMCA) succeeded in providing a voice for clients and an additional safeguard against abuse and exploitation for those who have no-one to speak on their behalf?
14. Has the level of referrals to IMCAs met expectations? What are the reasons for the regional variations in the number of referrals?
15. Are IMCAs adequately resourced and skilled to assist in supported or substituted decision making for people lacking capacity?

Deprivation of Liberty Safeguards

16. Are the safeguards in the Deprivation of Liberty Safeguards (DoLS) adequate?
17. Are the processes for authorisation, review and challenge of DoLS sufficiently clear, accessible and timely?

The Court of Protection and the Office of the Public Guardian

18. Are the Court of Protection and the Office of the Public Guardian sufficiently understood and accessible to all? Are they operating effectively and successfully?
19. What has been the impact of the introduction of Lasting Powers of Attorney (LPA), especially with regard to decision making on matters of personal care and welfare?
20. What concerns, if any, are there regarding the costs associated with registering an LPA, or with making an application to the Court of Protection?
21. Is legal aid available and sufficient? What impact will the recent and proposed reforms to legal aid have?

Regulation

22. Is the role of the Care Quality Commission in inspecting on the MCA standards adequate and appropriate? Is there a case for additional powers?
23. Should other regulatory bodies, such as health and social care professional regulators, be acting in this area?

Other legislation

24. How well is the relationship with the mental health system and legislation understood in practice?

Devolved administrations and international context

25. Does the implementation of the Mental Capacity Act differ significantly in Wales?
26. What lessons, if any, can be learnt from the approaches taken to mental capacity legislation in Scotland and Northern Ireland, or in other jurisdictions?
27. Is the MCA compliant with the United Nations Convention on the Rights of Persons with Disability (CRPD)? Are there lessons that can be learnt from the CRPD for the successful implementation of the MCA?

Evidence should be submitted to holmentalcapacityco@parliament.uk or to Judith Brooke, Clerk, Committee on the Mental Capacity Act 2005, Committee Office, House of Lords, London SW1A 0PW. The deadline for written evidence is 2nd September 2013. Short submissions are preferred. A submission longer than six pages should include a one-page summary.

Evidence must be clearly printed or typed, and preferably supplied in Microsoft Word format. Paragraphs should be numbered. If drawings or charts are included, these must be black-and-white and of camera-ready quality. Evidence should be signed and dated, with a note of the author's name and status, and of whether the evidence is submitted on an individual or corporate basis.

Evidence becomes the property of the Committee, and may be published by the Committee at any stage. Once you have received acknowledgement that the evidence has been received, you may publish or publicise your evidence yourself but, in doing so, must indicate that it was prepared for the Committee. Parliamentary privilege will not apply to your own publication.

Personal contact details supplied to the Committee will be removed from evidence before publication. However, personal contact details will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information or to send copies of the Committee's report.

Persons who submit written evidence, and others, may be invited to give oral evidence. Oral evidence is usually given in public at Westminster, broadcast on the internet, and transcripts are published. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy direct. You may follow the progress of the inquiry via the Committee website:

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/mental-capacity-act-2005/>