



HOUSE OF LORDS, HOUSE OF COMMONS

A Guide to the Report from the Joint Committee on the Draft Mental Incapacity Bill.




**A Guide to the Draft
Mental Incapacity
Bill**

What does it mean for me?



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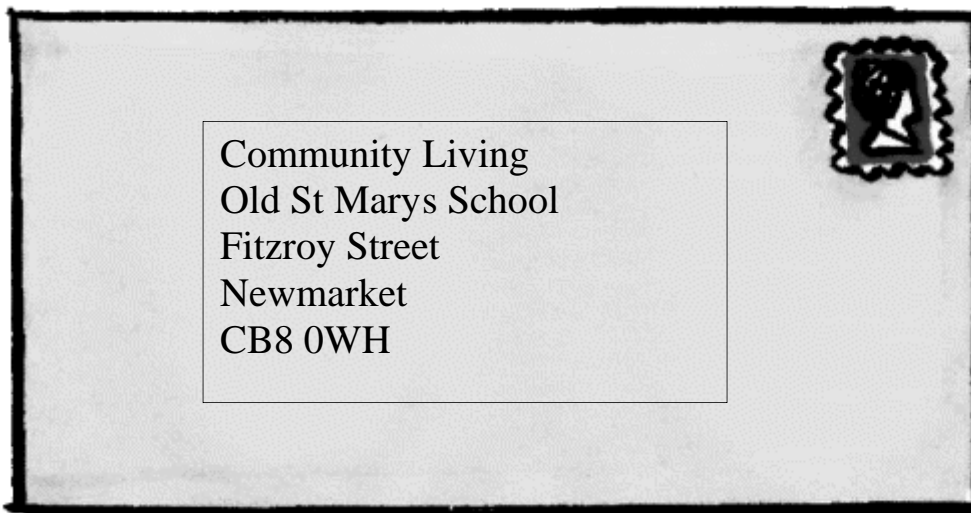
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This easy read version of the report was commissioned by the Joint Committee on the Draft Mental Incapacity Bill and is published on behalf of the Committee.

What is the Joint Parliamentary Committee on the Mental Incapacity Bill?

A Joint Committee is a group of MPs from the House of Commons and Members of the House of Lords. This Committee had eight members from each House.



The Committee's job is to look at and check the draft Mental Incapacity Bill.

They asked the public and other people what they thought of it. A lot of people made comments on the Bill and talked to the Committee.

The Committee then wrote a report about what they think about the draft Mental Incapacity Bill and what they think should be changed.



There is a full report and this easy read version.

What is the Draft Mental Incapacity Bill?

The draft Bill was written by the Department for Constitutional Affairs.

A bill does not become a law until it has all been agreed by Parliament. It is then called an Act.



The Bill could change the law on decision making. It should help people make their own decisions whenever they can and tell people what should happen if someone really cannot make their own decision.

This would apply to people aged 16 or over who are not able to make their own decisions.



There is a full version of the Draft Mental Incapacity Bill and an easy read version. We have used the easy read version to help write this report. You don't have to read the draft Mental Incapacity Bill but the full versions do have more information in them.


A Guide to the Draft
Mental Incapacity
Bill

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Produced by the Constitution Unit
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Copies of the draft Mental Incapacity Bill can be bought from the Stationery Office. They cost £23 each.

For an easy read version of the draft Mental Incapacity Bill, or to get it on tape, please ring Lisa Crowe at the Department for Constitutional Affairs.



0870 600 5522

For more information, look at the web site.



www.dca.gov.uk/family/mi/

About this report

This report is an easy read version of the Report from the Joint Parliamentary Committee on the Draft Mental Incapacity Bill. We have put into boxes the things the Committee said. We have also put in some of things the draft Bill said.

If you would like to obtain a copy of the Committee's Report, you can view it at:



<http://www.publications.parliament.uk/pa/jt200203/jtselect/jtdmi/189/189.pdf>

Or it can be obtained from The Stationery Office:



0845 702 3474

For more copies of this report:

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The Main Points of the Bill

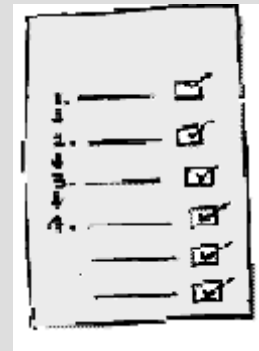
The Bill's Principles

The Principles are the aims of the Bill
(what it is trying to do)



The Committee Report said:

The main aims and reasons for the Bill should be put at the beginning of the Bill in a 'Statement of Principles' so that everyone can understand what the Bill is trying to do. (This has already been done in Scotland).



The Bill should explain that:

- People should be able to make any decisions they can unless it is proved otherwise.
- People should be given support to make decisions if they need it.



- People should be allowed to make unwise decisions (although if they do this a lot, the Committee thinks that there should be a way of checking if the person is alright and is able to make these decisions).
- People who make decisions for somebody else should always think about what is best for the person.
- The decision should not affect the person's rights and freedoms.
- Human rights issues (the rights that everyone has).



The Codes of Practice (a list of how things should be done)



The list of how things should be done (called the Codes of Practice) will explain in detail to people how to do things properly, these Codes are very important, BUT they haven't been written yet.



The Committee Report said:

The Codes will have to be very clear so that everyone knows what to do and how things should work.



The Codes should explain how to help people make decisions by using different ways of communicating and making information easier to understand.

The Codes of Practice should be easy to understand and use.



The Government should explain and tell carers and families how everything works.

The Codes should explain to people who make decisions for other people, what is expected of them. This should be called 'A Standard of Conduct' and should be very clear and easy to understand.



The Committee want to make sure that the people making decisions legally meet a duty of care. There will need to be very clear information about what this means.

Capacity

Capacity means being seen as legally able to make decisions.



The draft Bill said:

The Bill is not for people who **can** make their own decisions. The Bill is only for people who cannot make their own decisions.



People must be allowed to make any decisions they can. It looks at **each** decision that has to be made **when** it has to be made.

Other people will only make decisions for another person when they really have to.



Everything possible has to be done to help a person make a decision for themselves.

Some decisions are more difficult than others. A person might be able to decide if they want to go to the day centre or not, but it might be more difficult to decide whether to move from a care home into sheltered accommodation.



If people have difficulty in communicating (telling someone) what they want, then they must get as much help and support as possible to help them. This could mean:



- having more time to think about the decision.
- finding the best way of giving and getting information, such as picture boards and other aids.



The Committee Report said:

It is very important that the Bill looks at **each** decision that has to be made **when** it has to be made because people's ability to make decisions can change.

The idea that people should make their own decisions if they can is **very** important. The Bill is not meant to hold people back but help them to make decisions.



The Bill should allow people to have control over their decisions wherever possible, it should also protect them.

Best Interests (what is seen as the best thing for a person)

Anybody making a decision for another person has to look at what is best for that person. This is called 'Best Interests'.



The draft Bill said:

When a person cannot make their own decision about something, then another person who is making decisions for them must do what is best for that person.

The person who takes decisions for somebody else will always have to think about what the other person wants to happen and what the person feels about the situation.



Everyday Decisions



The draft Bill said:

People find the current law about making decisions confusing. The new Bill would make it clearer. It would let people make a decision and do things for a person who was not able to make that decision as long as the decision is the best thing for the person.



The decision might be about money, like when a person might need to get a taxi to the day centre, the person who books the taxi can use the person's money to pay for it.



More Difficult Decisions



The draft Bill said:

Most decisions will be easy or simple decisions where no-one else has to be involved.

But sometimes, when decisions are more difficult, it may be better to have somebody else to make decisions for those people who cannot make decisions themselves.



The Committee Report said:

Best Interests is a very important part of the Bill.

There should be a checklist of things people need to think about to make sure a decision is made in a person's best interests.



All the points on the Best Interest Checklist should be thought about but not everything can be put on a list. It will be different for each and every person.

The person making the decision will have to think about what the person wants and what is best for them.



General Authority

General Authority means a person can make decisions about money, health and care for someone who cannot decide these things for themselves.



The draft Bill said:

The General Authority could be used to make certain decisions for people who cannot decide for themselves.



The Committee Report said:

Some people do not like the words 'General Authority'. The Committee said using different words might make the idea easier to understand.

Some people feel the 'General Authority' will allow other people to take over their lives and will not give them the opportunity to make decisions when they are able to.



The Committee said decisions should **only** be made for someone if there is no way they can do it themselves.

Certain decisions should not be made under 'General Authority' such as important decisions about large amounts of money or stopping keeping someone alive.



The Committee is worried that not everyone will understand what they should be doing when they make a decision for someone else.



It has to be made clear and easy to understand for everyone.

People should be given training about 'General Authority' and what it means. The Government should explain to the public what it means.



People taking decisions under 'General Authority' should be able to remember and explain why they took a certain

Advocacy

An independent advocate is someone who can get to know a person well, who can speak up on their behalf when they cannot themselves. They must be independent. This means they are separate from services and should have no personal interest in the decision.



The draft Bill said:

People should have the chance to talk a decision over with someone.

People should be able to choose someone they want to help them say what they want.





The Committee Report said:

Lots of people said that **independent advocacy** is a very important part of making decisions and telling people what you want.

People said that advocacy can also help when people do not agree about what is best and it can also help stop abuse.



People said there should be more advocacy services and that they should be better than they are now.

The Committee said they agree with this, but can see that there is not always enough money.



They don't think that it can be made law that everyone should have an advocate.



The Committee do think that advocacy is still a **very** important part of the Bill and that the people writing the bill should think about this some more.



Lasting Powers of Attorneys (LPAs)

An attorney is somebody who is chosen by a person to make decisions for them in the future if a time comes when they cannot take decisions themselves.



The draft Bill said:

The Bill will allow people to choose who can decide for them if they cannot decide for themselves. They will be able to do this by making a Lasting Power of Attorney (LPA). The person who is chosen to make the decisions is called the attorney. (The attorney does not need to be a lawyer: it could be a lawyer or somebody else who can be trusted to make sensible, honest decisions for others.)

Your attorney could make decisions about health and social care as well as money. BUT, it is the person choosing an LPA who also decides what decisions the LPA can make.



Who might want to make an LPA?



The draft Bill said:

Someone might want to make an LPA when they know that they might become more ill in the future and think that they might not be able to make some decisions for themselves.

They can choose someone to be their attorney who is close to them, who they trust and who knows what they want and what is important to them.



The attorney would still need to use the Best Interest Checklist to make sure the decision was best for the person.



The Committee Report said:

The Committee was told that there has been abuse of the system that is used now, some people had been tricked by the people who were looking after their money.



The Committee said:

Attorneys need to be clearly told what their duties are.

They must always act in the Best Interests of the person who chose them. Attorneys should not make decisions just to suit themselves.

A register of attorneys is a good idea and may help find out if somebody is abusing the system.

The attorney will have to tell the Public Guardian when the person who appointed them is not able to make their own decisions any more.

The rules should be stricter and attorneys should be able to show what they are doing with the money of the person who chose them.



The new Court of Protection

There will be a new Court of Protection that will deal with big decisions for people who cannot decide for themselves. It will also make decisions when there are conflicts or complaints. The court will sit in different parts of the country.



The draft Bill said:

At the moment, the Court of Protection only deals with decisions about money. Other decisions, like medical treatment, are decided at the High Court.

The Bill will make a new court. It will still be called the Court of Protection. It will deal with all decisions for adults who cannot decide for themselves.



The court will be friendly and simple to use and will have special judges and staff who understand the problems with decision making.

There will be lots of ways that people can use the court for help and advice.

If there is just one decision to be made and it cannot be sorted out any other way, then the people can go to court to decide. This would be an 'order of the court'.



The Committee Report said:

They want the Government to make sure that there is enough money to make the court accessible for everybody.

They feel the Government should make clear if money to pay for help in court (legal aid) will be available and what will happen to those people who are not given any help.

The Court of Protection should be able to remove attorneys who are not doing their job properly or who are being criminal.

Other ways should be found to solve disputes without having to go to court.



A Court Appointed Deputy

A Court Appointed Deputy is someone chosen by the Court of Protection to make decisions about money, health and social care.



The draft Bill said:

The court will choose someone to make decisions about money, health and social care. This person will be called a deputy. They might be a relative, a friend or someone close to that person.

The court will make sure that the person appointed is the right person. They will only be able to make decisions about the things the court says they can. They will have to use the Best Interest Checklist to make sure any decision is the best for the person.

The court will make sure the deputy does what they should.





The Committee Report said:

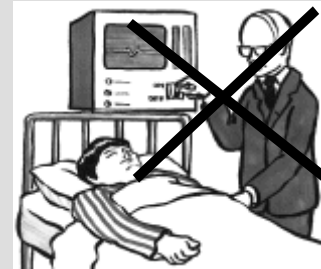
Deputies should be given clear instructions about which decisions they can take for the person and how to do it.

They would not be able to make decisions about keeping people alive.

There should be more information for the court to help them decide whether an order of the court should be given or whether a deputy should be chosen.

The Bill should make clear which decisions can be made under 'A General Authority' and which decisions need a deputy to make them.

The Court of Protection should be able to remove deputies who are not doing their job properly or who are being criminal.



The Public Guardian

The Public Guardian checks whether people chosen by the court to make decisions are doing their jobs properly.



The draft Bill said:

There will be a new person called the 'Public Guardian'. He or she will make sure that people appointed by court are doing their job properly. The Public Guardian will tell the court if something is wrong and the court could get rid of bad decision makers.



The Public Guardian will work closely with other organisations who are working for adults who have difficulty making their own decisions.



The Public Guardian will look at problems or abuse.

The Public Guardian will also help support attorneys and deputies to do their jobs.

It will be against the law to treat badly or neglect people who cannot make decisions.



It will be against the law to destroy important papers like advance decisions.



The Committee Report said:

The Public Guardian should be allowed to look into any situation where abuse has been reported and to take action if needed.



When somebody has reported abuse, people must be asked to explain what they have done and why, and to prove if it was not abuse.



The list of how things should be done (Codes of Practice) should explain what the Public Guardian does and what will happen if people do not follow the list.



Making a decision about not having treatment in the future

This is about a person's right to decide now about treatment they might not want in the future.



The draft Bill said:

People will be able to make a decision about what medical treatment they would not want in the future. This is called an Advance Decision.

An Advance Decision can only be made if a person understands what it means at the time they make the Advance Decision.

There will be very strict rules about this to make sure the person can make their own decision when they need to and that it is clear that their Advance Decision is about the treatment given.

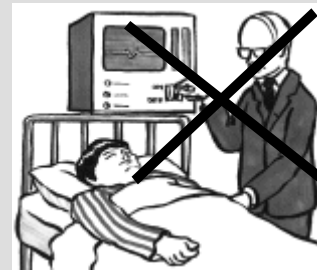




The Committee Report said:

People have talked about this idea a lot and some people do not agree with it because they feel that people can choose to die and that this is wrong. They also think that some people might be forced to make a decision or might want to change their minds later on.

The law already says that people should be able to refuse treatment if they want to.



The Bill just gives people a chance to have the same choices that people get when they are able to make their own decisions.

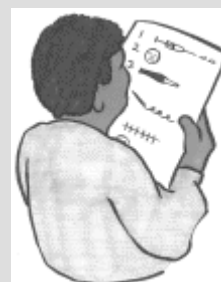
This is not the same as asking someone to help them die and the law on this will stay the same. The Bill should make this clear.



The Bill should carefully explain advance decisions to the public.

The Committee do have some ideas on how to make this part of the Bill better:

- Advance Decisions must be written down and must be respected.
- 2 independent witnesses must be there to check that the person really did make the decision.
- People should be asked to tell their doctors that they have made an Advance Decision.
- Advance Decisions can be changed and should be looked at often.
- It should be made clear for people who are worried that an Advance Decision is not the same as asking someone to help you die.
- Doctors should be happy that an Advance Decision was made properly and that the person was not forced to make a decision that they did not want to.
- People should be able to expect good care and no one should be treated differently because they cannot make decisions.



What else does the Committee say?

The Committee talked about some other issues in their report:



How much will it cost?



The Committee Report said:

It has been difficult to work out how much money the Bill will cost all together because a lot of work still has to be done on how much money each part of the bill will cost.



There are lots of costs to look into, such as making sure there are enough trained people for the Bill to be put into practice.

Medical Research



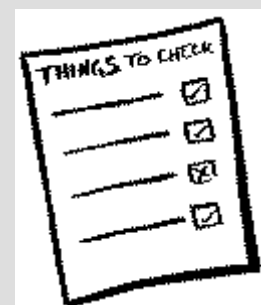
The Committee Report said:

People talked about whether the Bill should allow people who cannot make their own decisions to take part in medical tests which might help treat people with the same illness or condition as them.



Some people are very unhappy and worried about this becoming part of the Bill and think it should not be allowed because people might be hurt or abused.

Medical testing should be allowed, but that it would need to follow very strict rules. The rules would protect people from being hurt. If testing is not allowed, treatments will not be found for conditions and illnesses which take away people's capacity.



Most people have some way of saying yes or no to helping with research. People should never be forced to take part.



People who do not have the capacity to make decisions should only be asked to take part if people who can make decisions cannot be used for the tests.

An ethics Committee (people looking at what is right and what is wrong) must decide for each test whether people who cannot make a decision can take part. There will be doctors as well as other people on the Committee.



Other Laws

The Mental Health Act

The Mental Health Act and the Mental Incapacity Bill are different but sometimes both of them can cover the same person.



The Committee Report said:

The Mental Incapacity Bill should not be delayed because of conflicts between the two Bills. The Mental Health rules should be written to work with the Mental Incapacity Bill.

The list of how things should be done (Codes of Practice) should explain how the different laws can be used and the choices people have when treating someone who cannot make decisions for themselves.



That the Bill says that there must be a second opinion (to ask another doctor about a condition) for certain treatments to be carried out. This will be the same in the Mental Health Act.



The Incapacity Act in Scotland

The law in Scotland for mental incapacity is different in some ways to the draft Mental Incapacity Bill.



The Committee Report said:

That it is important that the Bill is clear about which law covers which people, for example when people go on holiday in Scotland (from England) or come to England (from Scotland).

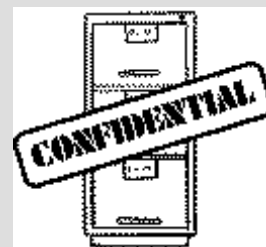
Confidentiality (keeping things private)

Laws which keep certain information private, such as the Data Protection Act, also apply to people who do not have the capacity to make decisions.



The Committee Report said:

They are worried that the Data Protection Act and other laws might stop people from finding information to help someone who cannot make their own decisions.



That this is something that needs to be looked at in more detail by the people writing the Bill.

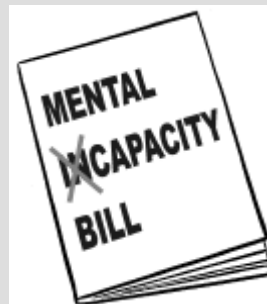
Changing the name of the Bill



The Committee Report said:

The name of the Bill should be changed from the Mental Incapacity Bill to the Mental **Capacity** Bill because it should focus on what people can do and decide for themselves first and then help the people who cannot.

It should also change the way people see the Bill and the people it concerns.



Conclusion: The Bill and the Report



The Committee Report said:

Most people agreed that the Bill is a good idea and that it is needed but many people are worried about certain parts of it. The Committee thinks that sometimes people do not need to worry as much.



The Bill ought to make lives better. People have been waiting a long time for the Bill. It is important that Parliament sees it as soon as possible.



People need to change the way they think about incapacity and the rights people have in decision making.



