



Centre on Human Rights
for People with Disabilities

Disability Action's Centre on Human Rights for People with Disabilities aims to secure the human rights of disabled people in Northern Ireland. It works to promote and protect the rights of disabled people through training, outreach work, advocacy support, research and campaigning.

Mental Capacity (Health, Welfare and Finance) Bill:

An innovative piece of legislation which has the potential to set an international standard as well as protect the dignity and rights of all people who at any time in their lives may have impaired decision making capabilities.

A gap currently exists in the law in relation to the care and treatment of people who are at any time unable to make decisions and reform of the Mental Health Order (1986) is overdue.

In September 2009, following a public consultation on the Government Response to the overall Bamford Review (Delivering the Bamford Vision), the Department of Health, Social Services and Public Safety (DHSSPS) announced that it is to introduce a new single Bill into the Assembly to reform mental health legislation and develop new capacity legislation in Northern Ireland.

The new law will promote people's autonomy and their right to make decisions for themselves in relation to their own health and welfare where they have the capacity to do so and protect the rights and interests of those who do not.

Who will be affected by the Mental Capacity Bill?

Anyone. People's capacity to make decisions may be affected at different stages of their lives and for many different reasons – because of a brain injury, mental ill health or learning disability or the onset of dementia.

For the first time people with a mental disability or learning disability will have the same rights as anyone else. It changes the presumption of the law, from 'do you have a mental disorder?' to 'Is your ability to make this decision impaired?'

Key features of the proposals for the Mental Capacity Bill:

- **Principles-based:** autonomy, justice, benefit and least harm
- **Statutory presumption of mental capacity**
- **Support to make decisions**
- Establishment of a lack of capacity through a **statutory test**
- Capacity is determined on a **decision-specific basis**
- **Empowerment for those who lack capacity:** decision making through lasting powers of attorney, advance decisions and advance statements
- Integration of measures aimed at **protecting the public from serious harm**
- **A tiered approach to interventions**— routine, urgent, formal and specifically authorised with **safeguards** e.g. nominated person and an advocate
- **Reform of structures to support legislation** include the High Court, the Mental Health Review Tribunal, the Office of the Public Guardian and the Regulation and Quality Improvement Authority.

Why is the Mental Capacity Bill significant?

Protecting rights and ensuring equality

The new Mental Capacity Bill is a major opportunity to protect the rights of people with disabilities to make decisions about their lives.

Article 12 of the UN Convention on the Rights of Persons with Disabilities says that people with disabilities have a right to equal recognition before the law. This means disabled people have the right to make decisions about their lives, but in reality this is often not the case.

Currently if someone has a physical health issue, they have the right to make a decision to refuse treatment, even if this is for a life threatening illness. However, if someone has mental ill health and is subject to the Mental Health Order they lose the right to refuse treatment.

As things stand under mental health law you do not have the right to refuse treatment. If you have a mental disability or severe learning disability you can be treated compulsorily against your will. This right to refuse unwanted treatment does not apply to children, nor to persons within the criminal justice system who have a mental disorder

which requires treatment and where without such treatment they would pose a substantial risk of serious harm to self and others.

The new Mental Capacity Bill includes a statutory presumption of capacity, which means one must assume a person is able to make decisions about their lives, regardless of whether they have a disability or not.

The proposed safeguards included in this Bill will also protect the rights of anyone who is unable to make a decision about their health, welfare or finance.

Setting international standards

The decision to proceed with a Single Bill to reform the Mental Health Order (1986) and introduce new mental capacity legislation will make the Northern Ireland Mental Capacity Bill an innovative piece of legislation - a national and international first.

A lasting legacy

This significant piece of legislative reform will impact on all of us for many years to come. That is why it is so important we get it right!

Timetable for Enactment

31 October 2010	End of Consultation on EQIA of the DHSSPS' proposals for Mental Capacity
Autumn 2010	Minister and Executive clearance
Early 2011	Preparation of a draft Bill
Summer 2011	Consultation on the Draft Bill
Autumn 2011	New Minister and Executive clearance of draft Bill
End of 2011	Introduction to Assembly
Spring 2013	Enactment

Unanswered questions

A lot of questions regarding implementation and enforcement of the Mental Capacity Bill remain unanswered. For example:

- What type of support will be made available to assist with decision making? How will it be provided? What is a reasonable level of support?
- Who can become an advocate? Will there be investment in advocacy services?
- How will the legislative framework be implemented into day-to-day decisions?
- If someone is deemed to lack capacity and is subsequently deprived of liberty, how will the person's right to make decisions be protected in other areas?
- The new Bill requires a change in perceptions of people with a learning and mental disability. How will this be enforced?

Call to action

Disability Action calls on representatives of the Executive and the Assembly to support the broad direction of the Mental Capacity Bill when it is introduced next year. It will be one of the most significant pieces of legislation to go through the NI Assembly.

Whilst some of the measures being considered in the Bill will incur costs, many others will save on costs through greater compliance with healthcare treatment (resulting in fewer complaints and costly legal actions), less unnecessary detention of individuals (which is extremely expensive) and the provision of a single, clear legal framework for all professionals working in key areas of health/social care and criminal justice.

Priority should be given to protecting the rights and dignity of the people you represent rather than the cost of implementation. It is wrong to restrict a disabled person's right to make a decision about their lives on the basis of cost when the rights of others are not so restricted.

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