

DISABLED PEOPLE (COMMUNITY INCLUSION) BILL 2015 ('#LBBILL')

A BILL TO require due regard by public bodies to the need for disabled people to be included in the community; to require public bodies not to take residential care into account when determining questions in relation to community support for disabled people; to require local authorities and NHS bodies to secure a sufficient level of community support for disabled people; to ensure disabled people benefit from the most appropriate living arrangement for them; to require residential living arrangements for disabled people to be given approval; to require reporting on residential living arrangements made for disabled people; to amend the Mental Capacity Act 2005 to safeguard the rights of disabled people and families; to remove people with learning disabilities and autism spectrum conditions from the scope of the Mental Health Act 1983; and for connected purposes.

1. Duty to have due regard to the need for disabled people to be included in the community

1. In carrying out their functions, a local authority or NHS body must have due regard to the need for disabled people to be fully included in their community.

2. Residential care not relevant to decisions in relation to community support for disabled people

1. In carrying out any function relating to assessment, care planning or service provision under the relevant enactments, a local authority or NHS body may not take into account either the cost or availability of residential care where a non-residential service is requested by the disabled person and / or their carer.
2. For the purposes of (1) above, the 'relevant enactments' are:
 - a. The Chronically Sick and Disabled Persons Act 1970
 - b. The Children Act 1989
 - c. The Care Act 2014
 - d. The National Health Service Act 2006
 - e. The Mental Health Act 1983

3. Duty to secure sufficient supply of community support

1. It shall be the general duty of every local authority and NHS body to secure a sufficient supply of in-home, residential and other community support services for disabled people, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

4. Duty to secure most appropriate living arrangement

1. Any local authority or NHS body which has responsibility for securing a new living arrangement for a disabled person must secure the living arrangement which is, in their opinion, the most appropriate available for that person.

2. In determining which available living arrangement is the most appropriate, the local authority or NHS body must treat the disabled person's wishes, feelings and preferences as a primary consideration.
3. In determining which available living arrangement is the most appropriate, the local authority or NHS body must have due regard to the need to –
 - a. ensure disabled people remain in or close to the local community with which they identify;
 - b. maintain links between disabled people and their family and friends; and
 - c. support disabled people to access employment, education and / or training and other activities in the community.
4. In determining which available living arrangement is most appropriate, the financial resources of the local authority or NHS body shall be a relevant consideration.
5. The question of whether the existing living arrangement for a disabled person is the most appropriate available shall be reviewed by the responsible local authority or NHS body at least every 12 months from the date the living arrangements commenced.

5. Residential living arrangements to be subject to approval

1. A local authority or NHS body intending to place a disabled person in any residential setting otherwise than under the Mental Health Act 1983 shall obtain the necessary approval before such a living arrangement is secured.
2. In sub-section (1) 'the necessary approval' means the following:
 - a. In the case of a child under 16, the agreement of a person with parental responsibility for that child, or where no such person exists a declaration from the Family Division of the High Court that the living arrangement is in the child's best interests.
 - b. In the case of a child aged 16 or 17 or an adult who has the capacity to decide where they live, the agreement of that person.
 - c. In the case of a child aged 16 or 17 or an adult who lacks the capacity to decide where they live, a declaration from the Court of Protection that the living arrangement is in the person's best interests.
3. Where a local authority or NHS body intends to place a disabled person in any residential setting otherwise than under the Mental Health Act 1983, it shall give the person from whom the necessary approval is required the following information at the time the living arrangement is proposed:
 - a. Why the local authority or NHS body considers that the place the disabled person has been living is not the most appropriate living arrangement;
 - b. Why it is considered that the proposed living arrangement is the most appropriate living arrangement for the disabled person;

- c. What steps have been taken to seek to provide appropriate community support for the disabled person so that a residential living arrangement is not the most appropriate available;
 - d. What steps are to be taken to seek to provide appropriate community support for the disabled person so that the residential living arrangement will not be the most appropriate available in the future; and
 - e. When the question of which living arrangements for the disabled person will next be reviewed.
4. In addition to the person from whom the necessary approval is required, the information specified at (3) above shall be provided (subject to (5) below), at the time the living arrangement is proposed, to:
 - a. The disabled person;
 - b. Any family member of the disabled person who is involved in the disabled person's care;
 - c. Any independent advocate acting for the disabled person; and
 - d. Any other person involved in the disabled person's care or interested in their welfare.
5. If the disabled person is aged 16 or over, the information specified at (3) above shall not be provided to any person where the local authority or NHS body reasonably considers that to do so would be contrary to the disabled person's wishes and feelings.
6. Any person mentioned at (4) above to whom the local authority or NHS body refuses to provide the information in accordance with (5) above shall be provided with written reasons at the time the refusal is communicated to them.

6. Duty to report on residential living arrangements and community support

1. Every local authority and NHS body shall prepare an annual report to the Secretary of State setting out the following information on an anonymised basis:
 - a. The number of residential living arrangements secured in the previous 12 months for disabled persons for whom the local authority or NHS body is responsible;
 - b. Why in each case there was no more appropriate living arrangement in the community for the disabled person;
 - c. What plans are in place in each case to support the disabled person to return to the community;
 - d. The name of the social worker with responsibility for the disabled person's care plan and discharge plan; and
 - e. The steps taken to comply with the duty to secure a sufficient supply of community support in section 3 above.
2. Every local authority and NHS body shall publish the annual report to the Secretary of State on its website.

3. The Secretary of State shall lay before Parliament and publish a report each year which –
 - a. Summarises the annual reports from every local authority and NHS bodies;
 - b. States whether the number of residential living arrangements made nationally is increasing or decreasing over time; and
 - c. Sets out the steps which the Secretary of State intends to take to support compliance with the duty in section 3 above by local authorities and NHS bodies.

7. Amendments to Mental Capacity Act 2005

1. In section 2 of the Mental Capacity Act 2005, insert –

‘(4A) No question about a person’s capacity shall be determined unless the decision maker has consulted with the person and with any person engaged in his care or interested in his welfare about the person’s ability to make the relevant decision, unless the decision maker reasonably considers it to be necessary and in the person’s best interests to determine the question of capacity without such consultation.’
2. In section 4 of the Mental Capacity Act 2005, insert –

‘(1A) The person making the determination must ascertain the person’s present wishes, feelings and preferences on all matters relating to the decision and must treat these as a primary consideration.

‘(1B) The person making the determination must have due regard to the need to minimise restrictions of the person’s rights and freedom of action and the need to respect his dignity, bodily integrity, privacy and autonomy.’
3. In section 4(7) of the Mental Capacity Act 2005, delete ‘He must take into account, if it is practicable and appropriate to consult them, the views of’ and insert ‘He must consult with and take into account the views of, if it is possible and in P’s best interests to do so’.

8. Removal of people with learning disabilities and autistic spectrum conditions from scope of Mental Health Act 1983

1. In section 1 of the Mental Health Act 1983, delete the text after sub-section (2) and insert –

‘(3) A learning disability, an autism spectrum condition or dependence on alcohol or drugs are not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.

(4) In subsection (3) above, “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning and “autism spectrum condition” means autism, Asperger’s syndrome, pervasive developmental disorder or any other autism spectrum disorder.’