

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

DRAFT 2

A BILL TO require ~~public bodies to implement the rights of disabled people set out in Article 19 of the Convention on the Rights of Persons with Disabilities~~; 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 ~~to enable disabled people to choose where and with whom they live on an equal basis with others~~; 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.

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1. Implementation of Article 19 of the Convention on the Rights of Persons with Disabilities

1. ~~Every local authority and NHS body shall ensure that all disabled people can live in their community, with choices equal to others and the support necessary to ensure their full inclusion and participation in the community.~~

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2. In particular local authorities and NHS bodies shall ensure that:

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- a. ~~Disabled people can choose their place of residence and where and with whom they live on an equal basis with others;~~
- b. ~~Disabled people are not obliged to live in a particular living arrangement otherwise than in accordance with the Mental Capacity Act 2005 or the Mental Health Act 1983; and~~
- c. ~~Each disabled person can access a range of in-home and community support services, including the support necessary to ensure inclusion in the community and to prevent isolation or segregation from their community. This shall include support to access inclusive education and / or training, employment and other activities in the community that are meaningful to the person, as is consistent with that person's wishes and feelings.~~

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 ~~education or~~ 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

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.
2. In particular, every local authority and NHS body shall ensure that there are sufficient services available to assist disabled people and their families at times of crisis, with the intention of avoiding the need to make a new living arrangement for a disabled person at crisis point.
3. Every local authority and NHS body shall ensure that a range of disabled people with relevant expertise and experience are employed in the team responsible for the planning and commissioning of community support services.
4. Every local authority and NHS body shall support disabled people in its area to produce a report at least every 12 months as to the steps taken by the local authority or NHS body in meeting the duties imposed by subsections 1-3 above. This report shall be published by the Local Authority or NHS body on its website and in a range of accessible formats.
5. Information about the provision secured under this section shall be published by every local authority and NHS body in the form of a 'local offer', to be available on its website and in a range of accessible formats.

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 comply with section 1 above.

3. In determining which living arrangement is the most appropriate, the local authority or NHS body must:

- a. Ask the disabled person if there is anyone whose views the local authority should take into account in reaching the decision;
- b. Support any person identified by the disabled person to give their views on the most appropriate living arrangement, including ensuring supporting those people identified to communicate and reach a shared view if that is consistent with the disabled person's wishes; and

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c. Consult any Independent Mental Capacity Advocate or independent advocate appointed under the Care Act 2014;

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. However the duty imposed by section 1 takes precedence over the financial resources of the local authority or NHS body.

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 with the full involvement of the disabled person no later than three months from the date the living arrangements commenced and then at intervals of no more than 12 months.

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6. In every review of a living arrangement, the local authority or NHS body shall:

a. Ask the disabled person if there is anyone whose views the local authority should take into account in reaching the decision;

b. Support any person identified by the disabled person to give their views on the most appropriate living arrangement, including ensuring supporting those people identified to communicate and reach a shared view if that is consistent with the disabled person's wishes; and

c. Consult any Independent Mental Capacity Advocate or independent advocate appointed under the Care Act 2014;

5. Living arrangements to be subject to approval

1. A local authority or NHS body intending to make a new living arrangement for a disabled person otherwise than under the Mental Health Act 1983 shall obtain the necessary approval before such a living arrangement is secured.

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2. In subsection (1) 'the necessary approval' means the following:

a. In the case of a child under 16, the agreement of the child if they have capacity to decide whether they live, otherwise the agreement of a person with parental responsibility for that child, or 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, the agreement of any Deputy or donee of a Lasting Power of Attorney or a declaration from the Court of Protection that the living arrangement is in the person's best interests.

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3. Where a local authority or NHS body intends to make a new living arrangement 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 in a format and manner which is as accessible as possible to the person:

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- a. Why the local authority or NHS body considers that the place the disabled person has been living is not or is no longer 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 they can remain resident in their own home, if that is consistent with their wishes and feelings;
 - d. What steps are to be taken to seek to provide appropriate community support for the disabled person so that any arrangement which is being made which has not been chosen by the person (i.e. an arrangement made under the Mental Capacity Act 2005 or the Mental Health Act 1983) can be brought to an end; 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.

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6. Duty to report on 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 living arrangements made in the previous 12 months for disabled persons for whom the local authority or NHS body is responsible;
 - b. When and by whom the decision was taken in each case where a living arrangement was made which was not consistent with the wishes and feelings of the disabled person;
 - c. Why in each case where the living arrangement made was not consistent with the wishes and feelings of the disabled person there was

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no appropriate living arrangement available which was consistent with their wishes and feelings;

- d. What plans are in place in each such case to make a new living arrangement which is consistent with the person's wishes and feelings;
 - e. The name of the social worker with responsibility for the person's care plan; and
 - f. 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 living arrangements made nationally which are not consistent with the person's wishes and feelings 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.

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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 subsection (2) and insert –

'(3) Other than in relation to Part III of the Act, a learning disability or an autism spectrum condition 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 disability which includes the presence of a significantly reduced ability to understand new or complex information or to learn new skills, with a reduced ability to cope independently, and which started before adulthood, with a lasting effect on development, and "autism spectrum condition" means autism, Asperger's syndrome, pervasive developmental disorder or any other autism spectrum disorder.'

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9. Duty to provide community mental health services to disabled people

1. Every local authority and NHS body shall ensure that appropriate mental health services are provided in their area to meet the needs of disabled people, including people with a learning disability or autism spectrum condition.
2. In subsection (1) above, "learning disability" means a disability which includes the presence of a significantly reduced ability to understand new or complex information or to learn new skills, with a reduced ability to cope independently, and which started before adulthood, with a lasting effect on development, and "autism spectrum condition" means autism, Asperger's syndrome, pervasive developmental disorder or any other autism spectrum disorder.

10. Duty to involve disabled people and supporters in decisions made about their care

1. Every local authority and NHS body shall ensure that when any decision is taken as to the care or residence of a disabled person:
 - a. The disabled person is given reasonable notice of the meeting;
 - b. The disabled person is informed that they are entitled to attend the meeting along with any other person whom they wish to attend with them;
 - c. Appropriate support is provided free of charge to enable the disabled person to attend the meeting;
 - d. The disabled person is given the opportunity and supported to make representations to the meeting in any format they choose; and
 - e. The decision from the meeting is communicated promptly to the disabled person and any other person they wish in an appropriate accessible format.

11. Guidance

1. The Secretary of State must issue guidance to local authorities and NHS bodies of the duties imposed by this Act within six months of this section coming into force.
2. In preparing to issue the guidance required by subsection 3 above, the Secretary of State must undertake a public consultation of at least 12 weeks duration. The consultation must be accessible to all disabled people.
3. Local authorities and NHS bodies must act under the guidance issued by the Secretary of State in accordance with subsection 1 above.