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Clerk
Ad hoc joint committee on the Mental Capacity Bill
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Dear Kathryn

MENTAL CAPACITY BILL

Thank you for your letter of 7 December following the Committee's further deliberations on the Bill.

The Departments' comments and responses are set out below.

Clauses 202-207

At the date of this response, DoJ can confirm that the Law Commission has not as yet published a final report containing recommendations to government on the law relating to unfitness to plead or the defence of insanity.

Clauses 256 and 257

The Departments do not hold any information as to why the provisions in the Criminal Justice Act 2003, which raised the maximum penalty on summary conviction in England and Wales from 6 to 12 months, have not been commenced as it is a decision for the Secretary of State for Justice.

Clause 283

The exact composition of the Trust panels will vary depending on the type of case requiring authorisation but, at this stage, we would anticipate there being a mixture of expert and lay panel members. The expertise and experience of those members (which we intend to address in regulations made under clause 283(3)) will necessarily

reflect the needs of the person in respect of whom an authorisation is being sought and the nature of the intervention being proposed. For example, where major surgery is being proposed, a panel member with surgical expertise will be required. In other cases, a consultant psychiatrist may need to be on the panel if a particularly serious treatment for a mental disorder is involved; or a social worker if for example the issue is whether an elderly person should be moved from his/her home in circumstances amounting to a deprivation of his/her liberty.

The Department would wish to advise the Committee that it intends to consult further with professional colleagues on how to deal with cases where a unanimous decision cannot be reached. This work will inform any regulations to be made under clause 283(4). Current thinking, based on initial consultations, is that while a majority vote may be appropriate in some cases, it may not in others and the Department remains of the view that dealing with this and other procedural issues in regulations is the most prudent approach given the wide scope of this Bill.

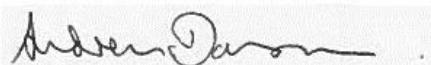
Clause 288

The main effect of the proposed amendments to clause 288 is to remove the power in subsection (2) to amend or modify *other primary legislation* in regulations, for all but one of the purposes listed in subsection (1): consequential. Similar powers to amend the Bill once enacted are now restricted to Part 11 only (see new clause 253(7) in the list of departmental amendments). For completeness, subsection (3) is replaced by new clause 58A which has the same effect. As previously advised, this change of approach will increase the chance of a further Bill being required in the future to supplement or amend the Act.

The residual power to amend other primary legislation in consequence of the Bill once enacted is provided for in the amendment to clause 290. It will be used to, for example, amend and substitute references to the “Mental Health (NI) Order 1986” in other primary legislation with the “Mental Capacity Act”, where appropriate. Some examples include:

- The Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003;
- The Jobseeker’s Allowance Regulations (NI) 1996;
- Justice Act (NI) 2015;
- Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015;
- Transport Act (NI) 2011;
- Goods Vehicles (Licensing of Operators) Act (NI) 2010;
- Charities Act (NI) 2008; and
- The Marriage (NI) Order 2003.

Yours sincerely,



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