



N.IRELAND ASSOCIATION OF SOCIAL WORKERS

(PART OF BASW)

**NIASW Submission to the
Joint Ad Hoc Committee on the
Mental Capacity Bill**

The Northern Ireland Association of Social Workers is part of the British Association of Social Workers, which is the largest professional association for social workers in the UK. The Association has over 16,000 members employed in frontline, management, academic and research positions in all social care settings.

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INTRODUCTION

The Northern Ireland Association of Social Workers (NIASW) is part of the UK wide British Association of Social Workers (BASW), the primary professional organisation representing Social Workers. Additionally the professional association concerns itself with public policy particularly social policy and especially addresses the interface between the individual citizen and their family with their local community and the wider society and the laws and instruments of Government. BASW is a member of the International Federation of Social Workers and adheres to the world wide definition of the profession.¹ This definition includes the statement that 'Principles of human rights and social justice are fundamental to social work'. In Northern Ireland there are now over 5000 social workers registered with the Northern Ireland Social Care Council working in the Health and Social Care, Justice and Education Statutory Sectors, within the Voluntary Sector, in Education and Training as well as Independent Practitioners. We are the lead statutory profession in respect of protection of children and vulnerable adults and we do also contribute to the protection of the public.

Social Workers have been involved with the operation of mental health (including financial incapacity) law since 1961 when the then Mental Health Act introduced the position of Mental Welfare Officer; developing into the role of Approved Social Worker (ASW) following the 1986 Order. In addition to the ASWs working across sectors there are also social workers, who have yet to complete this specialist training, operating in the Learning Disability, Adult Mental Health, Older Peoples Mental Health and Dementia and Child and Adolescent Mental Health Services and in specialised adult mental health provision. Social Workers also are involved in hospital, care home and community with those of all ages experiencing severe physical disability, substance misuse, chronic physical ill health, acquired brain injury and life limiting conditions.

¹ International Federation of Social Workers web site <http://www.ifsw.org>

SUBMISSION ON SPECIFIC CLAUSES AND PROPOSED AMENDMENTS

NIASW welcomes this opportunity to provide a written submission to the Ad Hoc Joint Committee. We have addressed a number of the specific clauses/schedules below and have proposed some minor amendments but would also be more than happy to also provide additional oral evidence on these or any other relevant issues to the Committee.

Principles: capacity

Clause 1. In general NIASW continues to support the single Bill and the principles based approach. Having one comprehensive legal framework, with impaired decision making ability as the gateway criterion, addresses the ongoing concern and potential discrimination of having separate mental health law with mental disorder and risk as the gateway criteria. It also provides a positive response to the requirements of the United Nations Convention on the Rights of Persons with Disabilities. It is hoped that this development in Northern Ireland will help raise the concerns, about powers to compulsorily intervene with people with mental health problems who retain the ability to give and withhold consent, in other countries.

Principle: best interests

2. (and the proposed **Section 7**) It is agreed that, when a person, despite all possible support being provided, is unable to make a decision, the basis on which the decision is made should continue to be that it is in the person's best interests. How this is defined is a complex issue and it is proposed that, in addition or instead of, wishes and feelings (Section 7(6)) Section 7 should state that the person's will and preferences are the central foundation for the decision. It is also accepted that the person's will and preferences cannot be the only consideration, for example when they are based on delusional beliefs and/or involve serious harm to self or others, but nonetheless should be central.

Meaning of "lacks capacity"

3. Clause 3 specifies the exclusion of those under 16. Whilst it is accepted that the intention of this exclusion is positive, to ensure children's rights are better protected

and that under 16s are protected from the potentially negative future consequences of coming under this Bill, it is nonetheless concerning that an equivalent comprehensive framework for under 16s will not be in place at the same time as this Bill. It is hoped that the interim arrangements will offer at least the same level of safeguards as the draft Bill but having the Mental Health (Northern Ireland) Order 1986 continue just for this group will create difficulties in practice.

Supporting person to make decision

5. NIASW whole heartedly welcomes the inclusion of the support principle in the Bill. This aspect of the Bill may have the greatest potential to improve the promotion of the autonomy of people whose decision making may be impaired. Although this supported decision making approach reflects good social work practice to have it in the law is an excellent development. A concern would be that a very narrow interpretation of what is meant by support could be adopted but we accept that will be addressed further in the Code of Practice.

Advance decisions: effect on section 9

11. NIASW also welcomes the inclusion of greater provision for future decision making arrangements through a range of routes. It is accepted that the case law, practice and wider societal debates about legally binding advance decisions are still developing and it positive that advance decisions are referred to within the Bill and the other opportunities for advance planning, such as Lasting Powers of Attorney, are included and clearly defined. Although Advance Decisions remain in the common law the Code/s of Practice should provide guidance on how these should be drafted, made accessible and so implemented.

Short title

295. Although all law, policy and guidance should be as clear as possible, the scope of this Bill makes the title of particular importance. The current working title of Mental Capacity Act (Northern Ireland) 2015 may not convey to many people the focus of this law. The title of the Bill should reflect what it is about – making decisions – and the language used in the Bill should be as accessible as possible.

Schedules 1 and 2

The most concerning aspect of the Bill from NIASW's perspective is that, under Schedules 1 and 2 there remains ambiguity about who is the appropriate person to make applications. Throughout the process of the development of the Bill it was NIASW's understanding that the role of the ASW in processes which involved deprivation of liberty and other very serious interventions would be retained as a specifically social work role. The rationale for this has been repeatedly considered and established. It includes: the importance of having professionals involved in this aspect of practice with a specific focus on systemic assessment and rights; the support of service users and carers for this to remain a social work role; and the research that has established the effectiveness of social workers in this role. Although it may still be the case that the intention is for this role to continue to be an exclusively social work role, the current draft of the Bill does not make this clear and may be interpreted as allowing this important aspect of the Bill's safeguards to be conducted by anyone and in a wide range of ways.

CONCLUSION

Although this may be obvious, it is nonetheless important to reinforce that the great potential of this Bill will not be realised without the necessary training, implementation process and resources. The variation in the implementation and effectiveness of the Mental Capacity Act 2005 in England and Wales further supports this point. The current intensive training programme for ASWs provided through the Regional ASW Programme and Queen's University Belfast has ensured the high quality of current practice and so we would support the equivalent level of training being provided for the new legal framework.

As already mentioned NIASW welcomes the capacity based approach of the draft Bill. It may be important to consider adopting the language of the UNCRPD, specifically that of will and preferences, as an important, if not the paramount consideration, in best interests. The support principle is an excellent development and perhaps has the greatest potential to develop and improve practice in this area. Approved Social Workers and Social Workers across all aspects of practice will be

involved in the implementation of this legal framework. As a profession, the values, approach and training of social workers will provide a valuable resource for the approach to supporting and protecting autonomy required by the Bill. We are keen to continue to work with the DHSSPS and DoJ to ensure that the positive intentions of the Draft Bill are translated into practice that will better support and protect service users and carers.