



Mental Capacity Bill (NI) introduced on 8 June 2015

Comments for the Ad Hoc Joint Committee on the Mental Capacity Bill (NI Assembly)

General comments

1. Citizens Advice welcomes the new Bill
2. We recommend that the Independent Advocacy Service be a single service for Northern Ireland. This would facilitate the development of specialties within the Advocacy Service (e.g. for older people, for people with intellectual disability, for young people, for offenders etc)

Specific comments on the Mental Capacity Bill as published on 8th June 2015

1. **Part 1: Principles**

Section 4(1) ***'Supporting person to make decisions'***

In order to emphasise the importance of this principle, it would be helpful, if this or a later section included an obligation on the HSC Trusts to provide funding for the employment of staff from the Advocacy Service (or other sources) to provide training in developing skills in working alongside those who need support in decision making.

The importance of developing legal frameworks and practice cultures for 'supportive decision making' has been debated internationally in recent years, spurred on by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2006. While 'substitute decision making' may be necessary for some people, it is likely that a greater number will be able to engage in 'supportive decision making' if that option is made easily accessible.

2. **Part 2. Chapter 1: Protection from liability and general safeguards**

Section 10: Advance decisions:

Re Section 10 (2): In this section 'an effective advance decision to refuse treatment' is defined. Because of the importance of these decisions, it is surprising that there is very little attention paid to them in the Bill. We

recommend that more clarification on 'Advance Decisions' be included in the Code of Practice to prevent differences in implementation.

3. **Part 4: Independent Advocates**

In order to make this more widely available in the future to people who have capacity but require help in decision making, we suggest under the section dealing with the 'power to adjust role of independent advocate' - the deletion of the clause 'who lack capacity' in Section 92 (1) (a) of the Bill, so that it would be possible in the future to extend the service. The new section would read: 92 (1) The Department may, by regulations – (a) expand the role of independent advocate in relation to persons aged 16 or over.

4. **Part 5: Lasting Power of Attorney**

We recommend that in order for the 'Lasting Power of Attorney' to be available to as many people as possible, that the application forms for registration be simple and clear in order to keep legal costs down. We suggest that those on benefits be exempted from registration fees and/or Legal Aid be available to those on low incomes.

For people who need help in making an application, but who do not wish to employ a legal firm, requests will no doubt be made to organisations such as Citizens Advice. Funding for training and service delivery will be required in advance of the law changing and during the early years of implementation.

5. **Part 12: Supplementary**

Section 152: Codes of Practice

We recommend that the Code of Practice be issued at the same time as the Act, and that it be updated regularly (either at 5 or 10 year intervals).

Prepared by Dr Pauline Prior (former Senior Lecturer in Social Policy, QUB) on 23rd June 2015