

The Bamford Review

Possible changes to the law in Northern Ireland

- helping people make decisions about their lives



Easy read summary

August 2007

Introduction



This paper is about the law and helping people make choices and decisions about their own lives. It is also about helping people who are not able to make decisions and looking after their human rights.



Being able to make your own decisions is called **capacity**.

Not being able to make your own decisions is called **lacking capacity**.

Some people are not able to make decisions about some things in their lives at certain times because they may have:



- mental health problems
- learning disabilities
- problems with making decisions for themselves because they have dementia or a brain injury or a stroke.



The government has asked us to say how to

- help people make decisions
- keep people who are not able to make decisions safe



This paper says what we think should happen.

We want to make a new law to help people to make their own decisions. We want to make a new law to help people who are not able to make their own decisions.

This is very important for people who need social care or healthcare, including mental healthcare.



All the laws about mental health and mental capacity need to work together well.

When we looked at this, we came up with some ideas for how to change things.

We think the most important things are:



Autonomy – People should be treated with respect when it comes to them making decisions about their lives. People should not be stopped from making a decision just because someone else thinks it is wrong or bad.



Justice – The laws and rules must be fair and equal for everybody.



Benefit – If someone makes a decision for someone who is not able to make their own decisions, they must make sure it is the best thing for that person.



Least harm – Doing everything possible to make sure the person does not get hurt.



These things are important for everybody when it comes to how decisions are made about their healthcare, social care and money.



Someone should only help a person make decisions when that person is not able to make decisions for themselves.

How would the new law work?



There is a new law in England and Wales called the **Mental Capacity Act 2005**. We think this law should be used in Northern Ireland, with only small changes.

The most important things in the law should be:

Assessing capacity:

No one can say you cannot make a decision just because of

- your age
- your disability
- your gender (if you are male or female)
- an illness you may have
- how you look



If someone needs to make a decision for you, they must be sure that you are not able to make the decision yourself.

Best interests:

If someone has to make a decision for you, they must make the decision that is best for you. They must do their best to help you say what you want, ask people who know you and make sure that you can be a part of making the decision as much as possible.



Acts in connection with care and treatment:

If you need care or treatment, someone can give you the care or treatment you need. There will be laws to make sure this happens in the best way. The person caring for you or giving you treatment must think about what is best for you.



Lasting power of attorney:



Lasting Power of Attorney is a legal document you can make. In the document, you can say who you want to make decisions for you in the future if you are not able to make decisions for yourself. You can only make this document if you understand what it means.

The person (or people) you choose to make decisions for you is called the **attorney**. The attorney must always do whatever is best for you.

In the new law the attorney can make decisions about:



- **Health-** for example, if you need medical treatment
- **Welfare-** for example, deciding where you want to live and who you want to live with
- **Property-** for example, if you need to sell things like your house or your car
- **Money-** for example, buying things for you or looking after your bank account and paying your bills



Deputies:

The courts will have more powers. They can choose a deputy for someone who does not have an attorney.

The deputy can make some decisions for you if you are not able to decide everything for yourself.



Advance Decisions to refuse treatments:



Sometimes, a doctor needs to give treatment to a person who is not able to decide for themselves if they want treatment. Treatment is things like operations and medicine.



An **advance decision** to refuse treatment is when someone who can make decisions now makes some decisions about their future. They do this in case they are not able to make their own decisions in the future.



People have to think very carefully before making an advance decision. No one can force you to make an advance decision or to sign one. It is **your choice** and you must understand what an advance decision means before you make one.

Advance Statements:



You can also make an **advance statement** about what you would like to happen about other kinds of decisions. The advance statement would be looked at when your best interests are being thought about.

Research:



There are very strict rules about research. There will be a group of independent people who will decide if you should take part in the research and make sure the people doing the research follow the rules.



The rules are about making sure the research is safe and that it is helping to find out what is best for people. For example, what medicine is best and what activities will help them.

You can say if you want to take part in the research or not. You must be happy to take part in any research and be able to stop at any time if you want.

Independent advocates:

Advocates will help people who have no family or friends to care for them. They will help people when big decisions have to be made about health services, social care and housing.



This could be a decision about treatment you need in hospital or moving into a care home.

Other changes we think should happen



There are some things that are not in the law called the Mental Capacity Act, but are in other laws. We think these things should all be part of the new law.

Some of these things are about when someone needs treatment for mental illness, for example, depression. Or if they need looking after when they think they are ok.



The law needs to think about what is best for the person and what is best for the community they live in.

This can mean making people do things they do not want to do, like taking their medicine or making them go to a care home or hospital.

People who get treatment or who get looked after when they do not want it can say if they think this is wrong.



This includes people who are being looked at or given treatment for a mental illness.

These people can go to something called the **Mental Health Review Tribunal**.

The **Mental Health Review Tribunal** is a group of people who know about the law and healthcare.

A person can go to the **Mental Health Review Tribunal** if they are being looked after or having treatment when they do not want it.



The person can say why they think their treatment or care is wrong, and can be helped to do this.

The people at the Mental Health Review Tribunal listen to the person.

They listen to what the doctor, healthcare workers and social workers think.

They say whether the person can make their own decisions about their treatment and care at that time.

We think the new law should also be about:

- the rights of families, carers and people like doctors, nurses and social workers who are helping the person who is not able to make their own decisions



- making sure children and young people get special protection

- getting the different organisations who work with people who break the law, to work well together.



The organisations can then work better for people who are not able to make their own decisions and are going through the courts or are in prison.

Code of practice: (a code of practice is like rules that people need to follow)

There will be new code of practice to tell people how to follow the law.



Some people like nurses, doctors and social workers will have to follow the code. We want families, carers and other people to read the code and know what the law says about what these workers can and cannot do.



Changes that are needed for the new law to start happening in Northern Ireland

Here are the changes that are needed:



- setting up research to look at exactly how the new law could be made to work best
- new training for staff and everybody who needs to know



- keeping the public, families and carers up to date with new laws
- getting service users and carers to be part of setting the new things up



- making sure there is enough money to make the new things happen

What happens next?



There needs to be a group of people called a **task force** to make the changes happen and to bring everything together in the new law.



We want to see the law change to make things better for people when they have to make decisions about their own lives. We want all the laws to do with making decisions to work well together.