

Deprivation of Liberty Safeguards Policy & Procedures

This policy describes the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interest of care or treatment and who lack capacity to consent to the arrangements made for their care or treatment.

THIS POLICY APPLIES TO ADULTS AGED 18 YEARS AND OVER

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Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	10.04.2012	Draft 1 circulated to members of committee for consultation and comments.
2	24.05.2012	Revisions made to draft policy, contents reviewed by Safeguarding Committee.
3	12.6.2012	Comments from policies group – revisions – formatting, abbreviations and definitions.
4	16.09.2013	Notification to CQC following DoLS application revised form. Hyperlink updated and divisional leads informed of changes. Change in supervisory body.
5	25.04.2014	Disaggregation of DoLS team to separate city and county teams 1.4.14 the contact numbers have been updated.
6	13.04.2015	Reflection of new case law and updated forms for authorisation of a DoL.
7	06.07.2016	Review of hyperlinks and contact details to ensure updated. Streamlining of appendices. Review of policy against LLR Interagency Policy to ensure consistency.
8	01.03.2017	Duties and responsibilities updated (section 5). Flowchart and process for applying for a DoLS updated (section 6).
8.1	01.04.2017	Referral to Coroner removed in line with recent changes to legislation. Quick Reference Guide added as appendix 1. Admission flowchart added as appendix 2.
8.2	13.06.2017	Statement in relation to review of Modern Slavery Act included. Review of roles and responsibilities updated and clarified.
9	09.01.2018	Policy re-written to ensure legislation is accurately reflected in local procedures and to incorporate developments on Ulysses. Circulated for comments.

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Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 4) of this policy.

Definitions that apply to this Policy

Authorisations	The authority to legally hold someone in a hospital under the DoLS. There are two types; urgent & standard authorisations.
Authorising Signatory	A senior manager of a Local Authority responsible for checking completed assessments from DoLS assessors and granting standard authorisations based on these.
Best Interests Assessor (BIA)	A health or social care professional with an additional qualification to undertake some of the DoLS assessments.
Court Appointed Deputy	A person appointed to act and make decisions on behalf of someone who lacks capacity to make those decisions.
Court of Protection	The court that governs the Mental Capacity Act including the DoLS. It can make decisions regarding a person's mental capacity and what is in their best interests.
Deprivation of liberty	The term used in Article 5 of the European Convention on Human Rights which states that everyone has the right to liberty and it can only be taken away in certain circumstances and only if legal processes are used.
Deprivation of Liberty Safeguards (DoLS)	The legislation that provides the procedures and rules governing a deprivation of liberty in hospitals.
Independent Mental Capacity Advocate (IMCA)	An independent advocate for people who lack capacity who can support and represent their views as far as possible.
Lasting Power of Attorney	A legal document that allows one person to give another person authority to make a decision on their behalf.
Managing Authority	A care home or hospital.
Mental Capacity	The ability to make a specific decision at the time the decision needs to be made.
Mental Health Assessor	A doctor qualified to undertake some DoLS assessments.
Qualifying Requirements	A person must meet a series of requirements to be placed under a standard authorisation.
Representative	Everyone under a standards DoLS authorisation has an independent representative appointed to support them.
Review	A person under a standard DoLS authorisation has the right to a review.
Supervisory Body	A Local Authority.

1.0. Purpose of the Policy

- 1.1** The aim of this policy is to provide a local framework for the implementation of the Deprivation of Liberty Safeguards within Leicestershire Partnership NHS Trust (LPT). **THIS POLICY APPLIES TO ADULTS AGED 18 YEARS AND OVER.**
- 1.2** This policy aims to set out the procedures to be followed by clinical staff in identifying those patients who are, or may be, at risk of being deprived of their liberty.
- 1.3** This policy describes the procedures to be followed with regards to urgent and standard DoLS authorisations, the review of authorisations and the suspension of authorisations.

2.0. Summary and key points

This policy provides trust wide guidance for all employees on the Deprivation of Liberty Safeguards to ensure that they are aware of their roles and responsibilities. This policy includes specific information on processes in relation to the application of the safeguards.

3.0. Introduction

- 3.1** The Deprivation of Liberty Safeguards were introduced to provide a legal framework around the deprivation of liberty. Specifically, they were introduced to prevent breaches of the European Convention on Human Rights (ECHR) such as the one identified by the judgement of the European Court of Human Rights in the case of HL v the United Kingdom (commonly referred to as the 'Bournemouth judgment).
- 3.2** To prevent further similar breaches of the ECHR, the Mental Capacity Act 2005 has been amended to provide safeguards for people who lack capacity specifically to consent to treatment or care in either a hospital or a care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty, and where detention under the Mental Health Act 1983 is not appropriate for the person at that time. These safeguards are referred to in this policy as the Deprivation of Liberty Safeguards (DoLS).
- 3.3** All practical and reasonable steps should be taken to avoid a deprivation of liberty, but where deprivation of liberty is occurring, that is not itself a statement on the standards of care. Deprivation of liberty is a legal state of affairs and can exist in environments of the highest standard.
- 3.4** The DoLS apply to:
- A relevant person in a hospital or care home who is over the age of 18
 - Who lacks capacity to consent to the arrangements for their care **and**
 - For whom deprivation of liberty is a proportionate and necessary step to take in their best interests to keep them from harm.
- 3.5** This policy is relevant to all services for patients age 18 or over.

Deprivation of Liberty Safeguards (DoLS) – A One Page Summary

The DoLS provide protection for people who lack capacity to consent to being resident for care or treatment and who have restrictions in place to keep them safe. The restrictions mean the person is under '*complete supervision and control and not free to leave*' and so is deprived of their liberty. The DoLS provide a legal means to authorise this.

Who?

Any adult aged 18 and over who has a mental disorder and lacks capacity to consent to being resident for care or treatment plus other legal criteria.

The Court of Protection can authorise the deprivation from the age of 16.

Where?

Any registered care home or hospital in England or Wales.

If a person is deprived of their liberty in other locations (supported living, extra care or their own home for example) an application to the Court of Protection is needed.

Legal Bodies

Managing Authorities = care homes & hospitals. Responsible for identifying individuals who lack capacity and may be deprived of their liberty.

Supervisory Bodies = Local Authorities. Responsible for arranging the assessments for standard authorisations and then authorising them.

When?

A person who lacks capacity to be resident for care & treatment and is subject to restrictions to prevent them coming to harm. The restrictions in place mean the person is subject to '*complete supervision and control AND not free to leave*' which means they are deprived of their liberty.

Assessors

A minimum of two for standard authorisations. A mental health assessor (doctor) and a DoLS best interests assessor (BIA).

How?

There are 2 types of DoLS authorisations:

Urgent (7-14 days) - authorised by the hospital themselves for up to 7 days and this can be extended to 14 days with permission from the Supervisory Body.

Standard (up to 1 year) – involving independent assessors and authorised by the supervisory body.

Why?

The DoLS are fundamentally about human rights. The use of the DoLS is not a criticism of the care provider. By using the DoLS both the person and the care provider are legally protected.

Rights

A person placed under a standard DoLS is given a series of rights including appeal, review, representation, advocacy and CQC monitoring.

4.0. Duties within the Organisation

4.1 The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.

4.2 Trust Board Sub-committees have the responsibility for ratifying policies and protocols.

4.3 The Executive Safeguarding Lead within LPT is the Chief Nurse. The Executive Lead is responsible for ensuring that a policy is in place to ensure the Trust meets the legislative requirements set out in the Deprivation of Liberty Safeguards.

4.4 The Trust Lead for Safeguarding is responsible for providing expert knowledge and advice on complex areas around the MCA and the DoLS.

4.5 The Trust Safeguarding Team will:

- Oversee the implementation and operation of the DoLS.
- Maintain a record of all patients under a DoLS authorisation.
- Provide reports as required to Directorate level committees and to the Safeguarding Committees.
- Manage reports to the Care Quality Commission.
- Undertake a programme of DoLS related audit.
- Provide advice and assistance to clinical areas to ensure that services operate within the legislative framework.
- Manage DoLS training as defined in this policy.
- Manage working relationships with the Leicester and Leicestershire DoLS teams.

4.6 Managers and Team leaders are responsible for ensuring that care is delivered in the least restrictive way and is proportionate and necessary to prevent harm. They will ensure that the clinical areas have processes in place to review and update patient care plans and consider the patients ability to consent and be actively involved in their care planning. They should ensure that no person is deprived of their liberty except where legally permitted through an urgent or standard DoLS authorisation or through detention under the MHA 1983 by ensuring that the procedures described in this policy are followed.

4.7 Clinical staff must ensure that they follow this policy and follow the procedures that are set out within it.

Clinical staff must ensure that consent has been sought and obtained before any care, intervention or treatment is delivered. Consent can be given verbally and / or in writing. Someone could also give non-verbal consent as long as they understand the treatment or care about to take place. Consent must be voluntary and informed and the person consenting must have the capacity to make the decision.

In the event that the patient's capacity to consent is in doubt, clinical staff must ensure that a mental capacity assessment is completed and recorded. Someone with an impairment of or a disturbance in the functioning of the mind or brain is thought to lack

the mental capacity to give informed consent if they cannot do one of the following:

- Understand information about the decision
- Remember the information
- Use the information to make the decision
- Communicate the decision

Clinical staff must ensure that they understand when care may amount to a deprivation of a patient's liberty and know what procedures to follow in response.

5.0 Deprivation of Liberty

5.1 Article 5 of the European Convention on Human Rights states:

- 5(1): Everyone has the right to liberty & security of person. No one shall be deprived of his liberty save if the following cases (e – persons of unsound mind) and in accordance with a procedure prescribed in law.
- 5(4): Everyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5.2 There are two elements to first consider when identifying what deprivation of liberty is.

- The objective element: Is the person is confined to a restricted space for a not negligible length of time?
- The subjective element: the person has not validly consented to the conditions of accommodation in question. A person who lacks capacity to consent cannot validly consent. Consent in this context means that the person makes a capable and affirmative choice. An incapable choice, or the failure of an incapable person to object, is not sufficient.

5.3 The next step is to look at the actual situation of the individual in the setting, and take account of the type, duration, effects and manner of implementation of the measures in question.

5.4 The legal test for whether there is a deprivation of liberty is whether the person:

Is under continuous supervision and control AND is not free to leave

5.5 Continuous supervision & control

The DoLS Code of Practice (Paragraph 2.5) suggests factors that will be taken into account when considering if the person is under continuous supervision and control (Note since the Code was written in 2009, subsequent case law has elaborated on the meaning of some of the statements);

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- The staff exercise control over assessments, treatment, contact and residence.
- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff consider it appropriate. NB; A DoLS authorisation cannot be used to authorise restrictions on contact. It cannot be used as a means of imposing the will of the Trust over relatives. Any requirement to limit contact will require legal advice which in turn may result in an application to court.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts because of restrictions placed on their access to other people.

5.6 Not free to leave

The person would not be free to leave if he is unable to leave permanently in order to live where and with whom he chooses. He may not be free to leave if he can't go from the ward as he wishes whether that is with or without help. This applies whether or not he is making attempts to leave.

5.7 The following factors are irrelevant when considering if a person is deprived of their liberty:

- The person's compliance or lack of objection.
- The relative normality of the ward / unit environment.
- The reason why the person has been admitted to the ward / unit.

5.8 A legal summary of deprivation of liberty can be found at **Appendix 6**.

6.0 Implementation

6.1 Clinicians must establish whether the person lacks capacity to consent to the arrangements proposed for their care or treatment. The DoLS cannot be applied to patients who have the capacity to give or withhold consent. Guidance on completing a mental capacity assessment can be found in the Mental Capacity Act Policy.

6.2 Clinicians must determine whether any restrictions or restraints will be required in order to provide the care or treatment. Any restrictions or restraint must be proportionate and necessary to prevent harm to the individual. The following steps should be followed by staff when providing care:

- Follow established good practice for care planning.
- Make a proper assessment of whether the person lacks capacity to accept or refuse the proposed treatment.

- Consider whether the person's needs could be met in a less restrictive way.
- Take proper steps to help the person to maintain contact with family, friends, and carers.
- Take into account the views of the relevant person, their family and carers. Consider if any of them object to the measures described in the care plan.
- Review the care plan on an ongoing basis and reduce levels of restrictions as soon as practical.

6.3 Clinicians working within mental health services must be aware that Schedule 1A Case E of the Mental Capacity Act sets out the circumstances where the relevant person is ineligible for detention in hospital under the Deprivation of Liberty Safeguards. Clinicians must consider whether;

- The person is within the scope of the Mental Health Act AND;
- Objecting (or who would object if able to do so) to admission to hospital or to some or all of the treatment in hospital wholly or partly for the purposes of treatment for a mental disorder.

If so they will be ineligible for detention under the DoLS and a Mental Health Act assessment must be undertaken.

Where staff are unsure whether the DoLS or the MHA applies they can escalate concerns to the Mental Health Act office and/or to the Trust Safeguarding Team.

6.4 Unless Schedule 1A Case E applies in any given case, it is not inevitable that the Mental Health Act must be used. It may be possible to use the MCA Deprivation of Liberty Safeguards. Case law indicates that the following questions are relevant:

- Might the Trust be able to rely on the provisions of the MCA to lawfully assess and treat the patient who lacks capacity to consent to admission?
- Is the patient compliant? Clinicians will need to assess the degree of compliance and the risks of non-compliance. If the patient is not compliant, assess under the Mental Health Act for detention under Mental Health Act (as Schedule 1A MCA Case E applies).
- Where the patient is compliant, how should the existence of a choice between reliance on the MHA and the MCA and the DoLS be taken into account?
- The AM v SLAM case is authority for the proposition that it is generally but not always more appropriate to rely on DoLS in circumstances where the patient who lacks capacity is deprived of liberty and is not objecting.

- There may be cases where the MHA for the compliant patient who lacks capacity is more appropriate e.g. capacity fluctuates and the person may regain capacity and object.

6.5 If after thorough assessment and taking into account all of the above it is felt that the MCA Deprivation of Liberty Safeguards procedures are appropriate in any given case, it will be necessary to apply for authorisation under those procedures.

6.6 Disagreement resolution; Occasionally, a patient may be deemed by an assessor to be ineligible for the DoLS and a subsequent Mental Health Act assessment results in a decision not to detain under that Act. In such circumstances, the patient remains deprived of liberty but without lawful authorisation.

As soon as a Mental Health Act assessment is completed but without a decision to detain, a new DoLS Form 1 should be completed with a clear statement that a MHA assessment has been concluded which has resulted in a decision not to detain.

7.0 The Deprivation of Liberty Safeguards: Local Procedures

This section outlines the procedures to be followed in implementing and operating the Deprivation of Liberty Safeguards within Leicestershire Partnership NHS Trust.

7.1 Urgent & Standard Authorisation (combined in DoLS Form 1)

Authorisation should normally be obtained in advance. However if it is clear that there is already a deprivation of liberty occurring so there is a need for the deprivation of liberty process to begin immediately (and use of the Mental Health Act is not required by law) an urgent authorisation on page 6 of DoLS Form 1 must be completed. The clinician must explain why the person is or will not be free to leave and why they are under continuous supervision and control. The clinician must describe the restrictions that are in place which are necessary to ensure that the person receives care and treatment including the frequency of those restrictions. Where the deprivation of liberty is occurring on a mental health unit, the clinician must state that the use of the Mental Health Act has been discounted as the person is not objecting nor does it appear that they would object if they could. It is not acceptable to state that the DoLS is the least restrictive intervention.

An urgent authorisation is valid for 7 calendar days and commences from the time & date when the DoLS Form 1 is signed.

Where the relevant person has a Lasting Power of Attorney or a Court Appointed Deputy, those appointed to act on behalf should be consulted prior to the urgent authorisation being signed. An urgent authorisation is not valid where an Attorney or Deputy does not agree that the care and accommodation is in the relevant person's best interests. The Mental Capacity Act Policy contains guidance on how to check for Attorney's and Deputies.

DoLS Form 1 also contains the request for a standard authorisation on pages 1 to 5. This must also be completed at the same time. The form must be submitted to the

relevant Local Authority DoLS Team. Where the form is faxed, the relevant DoLS team must also be notified by telephone.

An urgent authorisation can be signed by;

- The patient's consultant.
- The duty doctor.
- The service manager.
- The nurse in charge.

The person signing the DoLS Form 1 should be satisfied that all criteria are met and is responsible for ensuring that the relevant person is informed that they are subject to an urgent authorisation. An information leaflet about urgent authorisations can be found at **Appendix 8**. The relevant person must be provided with a copy of DoLS Form 1. The person signing DoLS Form 1 must also ensure that the relevant person's family have been advised.

Any Independent Mental Capacity Advocate (IMCA) who is commissioned by the Supervisory Body at this stage must be provided with a copy of DoLS Form 1.

Form 1 should be completed via the Ulysses Safeguard system. After accessing Ulysses, follow the link 'DoLS Reporting' and complete the questionnaire. On completing the questionnaire press submit so that the Safeguarding Team receive an alert and can monitor the application. Completing the questionnaire will allow for the Form 1 to be printed out. **The person completing the form must ensure that the date & time are completed before printing the form.** The printed Form 1 should then be sent to the appropriate Supervisory Body / Local Authority. A record of all urgent authorisations will be maintained by the Safeguarding Team.

A copy of Form 1 should be given to the relevant person and to any family members / representatives.

On receipt of the completed Form 1, the Supervisory Body / Local Authority will triage the request based on the information provided. The triaging system operated by Leicestershire & Leicester DoLS Teams can be found in **Appendix 7**. It is the responsibility of the person completing the form to ensure that the Supervisory Bodies / Local Authorities have sufficient information to triage and prioritise the referral appropriately.

If the relevant person, or any family members, are objecting to the arrangements for care and treatment, the person completing Form 1 must ensure that the Local Authority / Supervisory Body is made aware of this. If a family member is objecting the person completing Form 1 should advise the Safeguarding Team.

7.2 Extension of Urgent Authorisation: DoLS Form 1 (page 7)

The relevant Local Authority DoLS Team may have completed all assessments and given a decision within the period of the 7 day urgent authorisation. If, for exceptional reasons, the assessment process has not been completed within this time an extension can be requested by the Trust by completing page 7 of DoLS Form 1 and submitting to the relevant Local Authority DoLS Team.

The relevant person must be informed that the urgent authorisation has been extended, and the relevant person must be provided with a copy of the amended DoLS Form 1. Any family members should also be advised.

NOTE: the unavailability of DoLS assessors is not considered to be an exceptional reason and as such an extension should not be sought solely because the Supervisory Body is unable to provide a Best Interests Assessor.

7.3 During the assessment process

On receipt on the completed DoLS Form 1, after the request has been triaged, the Local Authority / Supervisory Body will allocate a Mental Health Assessor and a Best Interests Assessor. Clinicians should cooperate with the Mental Health Assessor, Best Interest Assessor and any Independent Mental Capacity Advocate who has been appointed by the Supervisory Body. Assessors must be provided with any relevant information, assessments and care plans. Access to and copies of the relevant person's notes should be facilitated.

If the eligibility assessor, usually the Mental Health Assessor, concludes that the person is ineligible because of Schedule 1A of the Mental Capacity Act, the ward must take steps to arrange a Mental Health Act assessment without delay where this is appropriate.

Should the Best Interests Assessor decide that the standard authorisation should include conditions, those conditions should be discussed with clinical staff before they are appended to any standard authorisation.

7.4 Standard authorisations – the assessments

To complete a standard authorisation, a person must meet certain criteria. A series of six assessments are undertaken by a Mental Health Assessor and by a Best Interests Assessor. The assessments are;

- Mental health – to confirm that the person has a mental disorder.
- Age – to confirm that the relevant person is aged 18 or over.
- No refusals – to confirm there is no advance decision, lasting power of attorney or deputy opposing the proposed authorisation.
- Mental capacity – to confirm that the person lacks the mental capacity to decide whether to be accommodated in the hospital for care and treatment.
- Best interests – To confirm that the relevant person is deprived of their liberty in the hospital AND it is in their best interests AND it is necessary to prevent harm to them AND it is a proportionate response.
- Eligibility – to confirm that the person is not or should not be detained under the Mental Health Act.

7.5 If a standard authorisation is granted

If the Supervisory Body grants authorisation it will do so using DoLS Form 5. The authorisation is signed by an authorising signatory, usually a senior manager in the Local Authority / Supervisory Body. The relevant person and their appointed representative must be informed that the authorisation has been granted and take all practical and possible steps to ensure that they understand the effects of this and their rights. The relevant person should be informed that they have the right to appeal against the authorisation. Information must be given both verbally and in writing. An information leaflet regarding standard authorisations can be found at **Appendix 9**. All relevant staff must be made aware that a standard authorisation has been granted and be informed of any conditions that may be attached to the authorisation including duration. A copy of DoLS Form 5 must be placed in the relevant person's notes.

It is vitally important to ensure that any conditions that are imposed by the Supervisory Body are adhered to. Steps should be taken to monitor compliance with the conditions and there should be evidence in the clinical records that they have been met. Where it is not possible to meet the conditions specified in the authorisation a review should be requested using DoLS Form 10.

When a standard authorisation is granted the relevant Local Authority / Supervisory Body will notify the Leicestershire Partnership NHS Trust Safeguard Team who will complete the CQC notification. The Safeguarding Team will maintain a record of all live standard authorisations for which the Trust is responsible.

7.6 If a standard authorisation is not granted

If the Supervisory Body refuses authorisation they will do so using DoLS Form 6.

A planning meeting should be arranged within 48 hours in order to review the care or treatment currently in place and agree alternatives to reduce the level of restrictions and restraint. Any deprivation of liberty that is not authorised will be unlawful.

When a standard authorisation is not granted the Leicestershire Partnership NHS Trust Safeguarding Team will contact the relevant clinical area to seek assurance that care or treatment has been reviewed.

7.7 Requests from third parties

Sometimes an interested third party may contact the Trust in writing because they believe that their relative or friend is being deprived of their liberty on Trust premises. They must ask the Trust to apply for authorisation if it wishes to continue with the care regime or to change the care regime immediately.

The Trust must respond to this request within 24 hours. This would normally involve discussion and an attempt to resolve the issue informally.

If it is not possible to resolve the issue informally, by changing the care regime, the Trust must apply for authorisation. This would mean the use of DoLS Form 1 to apply for an authorisation.

Similarly any Trust clinician who has a legitimate interest in the well-being of a patient on their caseload (for example a Doctor or Community Nurse who has a patient in a Registered Care Home) may bring the above to the attention of the Registered Manager of that care home and becomes the 3rd Party for the purposes of the Safeguards.

7.8 Suspension of authorisation: DoLS Form 7 (page 1)

Where the relevant person is under a Deprivation of Liberty Authorisation but his/her condition now means that he/she needs to be detained under the Mental Health Act 1983, the clinician must notify the Local Authority / Supervisory Body. The Supervisory Body will suspend the authorisation. The clinician should use DoLS Form 7 (page 1) through the Ulysses Safeguard system. A copy of DoLS Form No 7 must be given to the relevant person and their representative and placed in the person's healthcare records.

A notification of suspension can be approved by;

- The patient's consultant.
- The duty doctor.
- The service manager.
- The nurse in charge.

7.9 Lifting of suspension of authorisation: DoLS Form 7 (page 2)

If the relevant person becomes eligible for the safeguards again within the next 28 days, the clinician must use DoLS Form No 7 (page 2) through the Ulysses Safeguard system to inform the relevant Supervisory Body. The Supervisory Body will remove the suspension. If no such notice is given by this Trust to the relevant Supervisory Body within 28 days, the authorisation will be terminated.

A notification that suspension has been lifted can be approved by either:

- The patient's consultant.
- The duty doctor.
- The service manager.
- The nurse in charge.

A copy of DoLS Form 7 must be given to the relevant person, their representative and placed in the person's healthcare records.

7.10 Request for a further standard authorisation: DoLS Form 2

Where the Trust has already obtained a standard authorisation, and there is likely to be a need to extend that authorisation, DoLS Form 2 must be used through the Ulysses Safeguard system. The request must be made to the Supervisory Body at least 28 days before the current standard authorisation is due to expire.

Wards should ensure that they have systems in place to monitor the expiry dates and times of standard authorisations.

The Leicestershire Partnership NHS Trust Safeguarding Team will monitor the expiry dates of all live standard authorisations.

7.11 Request for a review: DoLS Form 10

The grounds for a review of a DoLS authorisation can be summarised as follows:

- The relevant person no longer meets one of the requirements.
- The reason why the relevant person meets one of the requirements is different.
- There has been a change in the person's circumstances and the conditions need to be varied.

A request for a review can be approved by either:

- The patient's consultant.
- The duty doctor.
- The service manager.
- The nurse in charge.

A copy of DoLS Form 10 must be sent to the relevant Local Authority DoLS Team through the Ulysses Safeguard system. The Supervisory Body will give notice of their decision regarding a review using page 3 and 4 of DoLS Form 10. If the relevant person does not meet the criteria, then the standard authorisation must cease.

DoLS Form 10 must be completed and submitted to the Local Authority / Supervisory Body where the patient is discharged.

7.12 Relevant Person's Representative

Once authorisation has been given by the Supervisory Body, they will appoint a Relevant Person's Representative (RPR). Notification of the appointment will be made on DoLS Form 3. The purpose of the Representative is to ensure the person under the DoLS has someone to support them in matters relating to the authorisation. A Representative can be a relative or friend. If the person has no family or friends suitable to be appointed, a professional paid representative will be appointed, referred to as a Paid Person's Representative (PPR).

The clinicians who are working with the relevant person must accommodate visits by the Relevant Person's Representative at all reasonable times. If there are any concerns about the frequency of contact by the Representative, it is best to resolve those concerns informally. If those concerns cannot be resolved, the clinician should inform the relevant Local Authority DoLS Team.

7.13 Advocacy (IMCA)

The DoLS provide a statutory right to advocacy via an Independent Mental Capacity Assessment (IMCA) (Part 11 of Schedule A1 and Sections 39A-D of the Act) for people being assessed for, or subject to the DoLS. The relevant Local Authority will appoint an IMCA where one is required. There are a number of ways in which an IMCA can be appointed under the DoLS;

- There is no one appropriate to consult when undertaking the assessment of the person's best interests for the purpose of a DoLS authorisation.
- An assessor has been appointed to determine whether there has been an unauthorised deprivation of liberty and there is no-one to consult in determining the person's best interests.
- There are gaps in appointing a representative.
- The person or their representative requests an IMCA.
- The Local Authority / Supervisory Body has reason to believe;
 - Without the help of an advocate, the person under the DoLS or their unpaid representative would be unable to exercise one or more of the relevant rights.
 - The person under the DoLS or their unpaid representative have failed to exercise a relevant right when it would have been reasonable to exercise it.
 - The person under the DoLS or their unpaid representative are each likely to exercise a relevant right when it would be reasonable to exercise it.

8.0. Urgent DoLS Authorisations

This section provides a brief summary of the powers and scope of urgent DoLS authorisations.

8.1 An urgent authorisation provides the authority to deprive a person of their liberty in a care home or hospital if the person lacks the capacity to consent to being in the care home or hospital for care or treatment. It is used as a short term holding power while arrangements are made for a standard DoLS authorisation. An urgent authorisation is issued by the staff of a care home or hospital and is limited in duration to seven days, or in exceptional circumstances and with the permission of the Local Authority / Supervisory Body, a maximum of fourteen days. It cannot be extended beyond this time period.

8.2 The following legal criteria apply to an urgent authorisation:

- The care home or hospital must believe the criteria for a standard DoLS are met and;

- The care home or hospital believe they cannot wait for a standard authorisation before the deprivation of liberty begins because the person's needs are so urgent or;
- They have already applied for a standard authorisation but they cannot wait for the standard authorisation to be given before the deprivation of liberty begins because the person's needs are so urgent.

8.3 Completion of an urgent authorisation provides for the following powers;

- The authority to deprive a person of their liberty for up to seven days or up to fourteen with the agreement of the Local Authority / supervisory body.
- The relevant person can be given treatment and care if they lack the capacity to consent by using the Mental Capacity Act. Staff should assess the person's mental capacity and if the person lacks the mental capacity to consent to the act of treatment or care, make a decision in the person's best interests.
- If the relevant person absconds, they can be returned to the care home or hospital, using restraint if necessary.

8.4 The care home or hospital can allow the person to leave the premises at its discretion.

8.5 Any patient subject to an urgent authorisation has the right to appeal to the Court of Protection.

8.6 Duties on staff; hospitals must;

- Keep records of all urgent authorisations they make, the reasons for them and any extensions requested. This will be maintained by the Trust Safeguarding Team.
- Inform the relevant person that an urgent authorisation has been made and give them a copy of the DoLS urgent authorisation.
- Notify family, friends and carers of the urgent authorisation.
- Take all practicable steps to ensure the person understands their legal rights and provide this information both orally and in writing. A patient information leaflet about urgent authorisations can be found in **Appendix 8** of this policy.
- Inform the relevant person if an extension is made to the urgent authorisation and provide them with a copy.

8.7 Whilst an urgent authorisation sets a maximum period of duration, it does not compel the care home or hospital to deprive a person of their liberty for the duration stated. There

are a number of ways for an urgent authorisation to end:

- By an order of the Court of Protection.
- Lapse of the urgent authorisation. This is not good practice.
- If either a standard authorisation is granted or the Local Authority / supervisory body refuse to grant one, the urgent authorisation ends immediately.
- If the relevant person no longer meets one of the qualifying criteria, for example by regaining their mental capacity, the urgent authorisation ends.

9.0 Standard DoLS Authorisations

This section provides a brief summary of the powers and scope of standard DoLS authorisations.

9.1 A standard authorisation provides the authority to deprive a person of their liberty in a hospital if the person lacks the mental capacity to consent to be in the hospital for care and / or treatment. A standard authorisation lasts for up to one year at a time. It is authorised by a Local Authority following assessments undertaken by a minimum of two assessors.

9.2 The following legal criteria apply to a standard authorisation:

- The person is at least 18 years old.
- The person must have a mental disorder as defined in The Mental Health Act 1983 (Section 1).
- The person must lack the mental capacity to decide whether to be in the hospital for the purpose of receiving care & treatment.
- There must not be any authority to refuse or oppose the use of the DoLS, known as 'no refusals'. There are three possible sources of a refusal; an advance decision, a lasting power of attorney and a court appointed deputy. An assessment of these refusals can only be undertaken by a Best Interests Assessor.
- The person must not be under a section of the Mental Health Act.
- It must be in the person's best interests to be deprived of their liberty in the hospital and it is necessary to prevent harm to them and the deprivation is a proportionate response to the likelihood and the seriousness of that harm occurring.

9.3 The granting of a standard authorisation provides for the following powers:

- The authority to deprive a person of their liberty for up to 12 months.
- The relevant person can be given treatment and care if they lack the capacity to consent by using the Mental Capacity Act. Staff should assess the relevant person's mental capacity and if the person lacks the mental capacity to consent to the act of treatment or care, make a decision in the person's best interests.
- If the relevant person absconds, they can be returned to the care home or hospital, using restraint if necessary.

9.4 The care home or hospital can allow the person to leave the premises at its discretion.

9.5 Any patient subject to a standard authorisation has a number of rights:

- The right to appeal to the Court of Protection at any point.
- The right to a review at any time.
- The right to an independent mental capacity advocate (IMCA).
- The right to independent support from a representative.

9.6 Duties on staff: hospitals must:

- Take all practicable steps to ensure that the relevant person understands their legal rights. The hospital must provide information this information orally and in writing in a way the person is most able to understand. A patient information leaflet about standard authorisations can be found in **Appendix 9** of this policy.
- Record and monitor how often a representative is in contact with the relevant person.
- Ensure any conditions are complied with and a review requested where this is not possible.

9.7 There are a number of ways for a standard DoLS authorisation to end:

- Following an appeal to the Court of Protection.
- Following a review; see section 10 'Reviews'.
- Lapse of authorisation at the end of the period granted. Allowing an authorisation to expire through the passage of time is not good practice. If a further period of authorisation is necessary, a new application should be made using DoLS Form 2. There is no time limit on how early this application may be made but if it is too early, the person's circumstances may change.

- The hospital can lift the restrictions on the person and discharge them but the Local Authority must be notified so it can officially end the DoLS authorisation.
- Not meeting one or more of the criteria. If a person, for example, regains capacity to be resident for care this will end the authorisation as the legal criteria are no longer met. A review should take place immediately to confirm this.

10.0 Reviews

A standard authorisation can be reviewed at any time. An urgent authorisation cannot be reviewed. Reviews are carried out by the Local Authority. The grounds for a review being carried out are;

- There is a change in the person's situation and therefore an existing condition should be amended, a new condition added or an old condition removed.
- The reasons the person meets the qualifying requirements (any of the six assessments) are different from the reasons originally stated in the standard authorisation. In this situation the hospital must request a review.
- The person no longer meets one or more of the qualifying requirements (any of the six assessments). In this situation the care home or hospital must request a review.
- The person is no longer eligible because they now object to receiving mental health treatment or being in hospital for mental health treatment.

A review can result in the standard authorisation continuing, ending, or the conditions attached being changed, deleted or new conditions added.

11.0 Training needs

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as role development training. E-learning regarding the Deprivation of Liberty Safeguards can be accessed via u-Learn.

The governance group responsible for monitoring the training is the Trust Safeguarding Committee.

12.0 Monitoring Compliance and Effectiveness

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
11	Staff responsible for the completion of DoLS forms will access training.	Evaluation of training / access to training.	Training records.	Safeguarding Committee.	Bi annual.
5 - 10	Staff knowledge and confidence in DoLS procedures.	DoLS procedures followed.	Trust wide DoLS audit.	Safeguarding Committee.	Annually.
7	Quality of DoLS documentation meets expected standards.	Review of documentation	Clinical audit.	Safeguarding Committee.	Annually.
5 - 10	Statistical data relating to the DoLS.	Directorates / Trust able to identify and manage levels of activity.	Reports to directorate level Safeguarding Committees and to the Trust Safeguarding Committee.	Safeguarding Committee.	Quarterly.

13.0 Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
CCG SAT: The organisation's audit programme includes the DoLS.	The audit plan for the DoLS is managed by the MCA Clinical Forum.
CCG SAT: The organisation has a Deprivation of Liberty policy.	Policy & procedures in place and reviewed at an appropriate interval.
CCG SAT: the organisation has systems in place to enable accurate monitoring of DoLS applications and adherence.	Quarterly report made to the Safeguarding Committee.
CCG SAT: the safeguarding training programme will include the DoLS.	Number of e-learning completions.
CCG SAT; clear expectations regarding the DoLS are specified in all job descriptions and through the appraisal process.	Standard job description template makes reference to relevant legislation.
CCG SAT; all staff are aware how to access support and guidance relating to the DoLS.	Number of Safeguarding Team advice line calls received regarding the DoLS.

CCG SAT; the Trust has systems in place to capture, triangulate and action findings from incidents relating to the DoLS.	Quarterly report made to the Safeguarding Committee.
CCG SAT; included in the DoL policy will be practical guidance on the identification of potential DoL and the DoLS application process to be followed which includes requirements for care planning and documentation.	Policy & procedures in place and reviewed at an appropriate interval.
CQC E6.7; do staff recognise when a person is being deprived of their liberty, and do they seek authorisation to do so when they consider if necessary and proportionate.	Clinical audit results.

14.0 References and Bibliography

This policy was drafted with reference to the following:

- The Ministry of Justice (2008) The Deprivation of Liberty Safeguards Code of Practice to supplement the main Mental Capacity Act Code of Practice. TSO, London.
- The Department of Constitutional Affairs (2007) Mental Capacity Act Code of Practice. TSO, London.
- AM v South London & Maudsley NHS Foundation Trust and the Secretary of State for Health (2013) UKUT 365.
- ADASS (2015) Revised Deprivation of Liberty Forms.
- Mental Capacity Act policy, Leicestershire Partnership NHS Trust.

Appendix 1

Training Requirements

Training Needs Analysis

Training topic:	Deprivation of Liberty Safeguards
Type of training: (see study leave policy)	<input type="checkbox"/> Mandatory (must be on mandatory training register) <input type="checkbox"/> <u>Role specific</u> <input type="checkbox"/> Personal development
Division(s) to which the training is applicable:	<input type="checkbox"/> <u>Adult Mental Health & Learning Disability Services</u> <input type="checkbox"/> <u>Community Health Services</u> <input type="checkbox"/> Enabling Services <input type="checkbox"/> <u>Families Young People Children</u> <input type="checkbox"/> Hosted Services
Staff groups who require the training:	<p>Staff identified in this policy as responsible for completing DoLS documentation and staff identified as responsible for ensuring the legislative framework is met. This policy lists these as:</p> <ul style="list-style-type: none"> • The patient's consultant. • The duty doctor. • The service manager. • The nurse in charge.
Regularity of Update requirement:	Every 3 years.
Who is responsible for delivery of this training?	Training is through completion of e-learning. The content of the e-learning will be created and monitored by the Trust MCA & DoLS Lead with oversight through the Trust Safeguarding Committee.
Have resources been identified?	Yes.
Has a training plan been agreed?	Yes.
Where will completion of this training be recorded?	<input type="checkbox"/> <u>ULearn</u> <input type="checkbox"/> Other (please specify)
How is this training going to be monitored?	Through reports from U-Learn.

Appendix 2

The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

Shape its services around the needs and preferences of individual patients, their families and their carers	X
Respond to different needs of different sectors of the population	X
Work continuously to improve quality services and to minimise errors	X
Support and value its staff	X
Work together with others to ensure a seamless service for patients	X
Help keep people healthy and work to reduce health inequalities	X
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	X

Appendix 3

Stakeholders and Consultation

Key individuals involved in developing the document

Name	Designation
Susan Challis	Service Manager, Leicestershire County DoLS Team
Vincent Duffy	Team Leader, Leicester City DoLS Team
Greg Payne	Lead Practitioner for Adult Safeguarding

Circulated to the following individuals for comment

Name	Designation
Anne Scott	Deputy Chief Nurse
Neil King	Trust Lead for Safeguarding
Dean Cessford	Senior Safeguarding Practitioner
Zahra Makhany	Senior Safeguarding Practitioner
Laura Belshaw	Deputy Head of Service
Rebecca Colledge	Community Manager
Michelle Churchard	Head of Nursing AMH / LD
Sarah Latham	Lead Nurse Community Hospitals
Sarah Clements	Matron
Caroline Barclay	Nurse Consultant
Lynne Moore	Senior Matron
Louise Short	Inpatient Team Manager
Elizabeth Compton	Senior Matron
Jane Capes	Senior Matron
Emma Wallis	Associate Director of Nursing and Professional Practice
Dr Saquib Muhammad	Consultant Psychiatrist
Alison Wheelton	Senior mental Health Act Administrator

Appendix 4

Due Regard Screening Template

Section 1	
Name of activity/proposal	Deprivation of Liberty Policy & Procedures
Date Screening commenced	December 2018
Directorate / Service carrying out the assessment	Safeguarding Team
Name and role of person undertaking this Due Regard (Equality Analysis)	Greg Payne
Give an overview of the aims, objectives and purpose of the proposal:	
<p>AIMS: The aim of this policy is to provide a local framework for the implementation of the Deprivation of Liberty Safeguards within Leicestershire Partnership NHS Trust (LPT). The policy aims to set out the procedures to be followed by clinical staff in identifying those patients who are, or may be, at risk of being deprived of their liberty.</p>	
<p>OBJECTIVES: The policy objective is for Leicestershire Partnership NHS Trust to meet its legal responsibilities as defined in the Deprivation of Liberty Safeguards. Adherence to the legislation will ensure that no differential treatment will occur as a result of a person's protected characteristic.</p>	
Section 2	
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details
Age	This policy applies to people over the age of 18. The application of these policies and procedures, in conjunction with the Mental Capacity Act, will ensure that deprivation of a person's liberty is not based upon their age.
Disability	<p>The application of these policies and procedures, in conjunction with the Mental Capacity Act, will ensure that deprivation of a person's liberty is not based upon any disability.</p> <p>The leaflets provided within this document can be made available in other formats to ensure that the requirement to provide reasonable adjustments is met.</p> <p>This policy can be made available in other formats to ensure that the requirement to provide reasonable adjustments is met.</p>
Gender reassignment	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Marriage & Civil Partnership	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.

	This policy ensures that LPT will act in accordance with Article 8 of the European Convention on Human Rights, the right to family life.
Pregnancy & Maternity	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Race	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Religion and Belief	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Sex	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Sexual Orientation	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.
Other equality groups?	This policy applies to all groups with no exceptions in line with the human rights approach as set out in LPT's Equality & Diversity policy.

Section 3

Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.

Yes		No	
High risk: Complete a full EIA starting click here to proceed to Part B	<input type="checkbox"/>	Low risk: Go to Section 4.	<input checked="" type="checkbox"/>

Section 4

If this proposal is low risk please give evidence or justification for how you reached this decision:

Having reviewed the policy it meets the Trust's Equality, Diversity and Human Rights Policy. It does not discriminate on the grounds of any Protected Characteristic and follows clear Human Rights Approach.

Signed by reviewer/assessor		Date	6 th March 2019
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Sign off that this proposal is low risk and does not require a full Equality Analysis

Head of Service Signed		Date	
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PRIVACY IMPACT ASSESSMENT SCREENING

<p>Privacy impact assessment (PIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet individual's expectations of privacy. The first step in the PIA process is identifying the need for an assessment.</p> <p>The following screening questions will help decide whether a PIA is necessary. Answering 'yes' to any of these questions is an indication that a PIA would be a useful exercise and requires senior management support, at this stage the Head of Data Privacy must be involved.</p>			
Name of Document:	Deprivation of Liberty Safeguards Policy & Procedures		
Completed by:	Greg Payne		
Job title:	Lead Practitioner for Adult Safeguarding	Date	December 2018
			Yes / No
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.			No
2. Will the process described in the document compel individuals to provide information about themselves? This is information in excess of what is required to carry out the process described within the document.			No
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?			No
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?			No
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.			No
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?			No
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.			No
8. Will the process require you to contact individuals in ways which they may find intrusive?			No
<p>If the answer to any of these questions is 'Yes' please contact the Head of Data Privacy Tel: 0116 2950997 Mobile: 07825 947786 Lpt-dataprivacy@leicspart.secure.nhs.uk In this case, adoption of a procedural document will not take place until approved by the Head of Data Privacy.</p>			
IG Manager approval name:			
Date of approval:			

DoLS Forms Guidance

FORM 1: STANDARD REQUEST, URGENT AUTHORISATION & EXTENSION TO URGENT

PLEASE NOTE THAT THIS FORM NOW BEGINS WITH A STANDARD REQUEST AND ONLY IN EXCEPTIONAL CASES SHOULD AN URGENT AUTHORISATION ALSO BE COMPLETED.

Page 1: This page will take you through the person's basic details.

It is helpful to assessors if you can summarise relevant medical history, give details of any sensory loss and in particular describe the person's communication needs as this will help the assessor prepare and enable them to consider whether any aids are needed or in fact whether an interpreter may be needed.

However, the presence of sensory loss or communication needs is not necessarily indicative of a lack of capacity.

Page 2: Purpose of the Authorisation - this provides two essential pieces of information.

A description of the care and treatment - in other words: Why do you need to accommodate the person in the care home or hospital?

It asks you to describe in detail the care and/or treatment the person is receiving. It is helpful to assessors if this is as detailed as possible rather than a vague statement such as "24 hour care".

Secondly you are asked to explain why the person meets the acid test for a deprivation of liberty. In this section you need to describe all the measures you are taking which have led you to make a request for an Authorisation:

- Describe the environment the person is in
- Who has determined where they live
- Is it a temporary or permanent arrangement
- How are they monitored by staff leading you to conclude they are under continuous or complete supervision & control and not free to leave

When describing all the restrictions it is helpful to say how frequently they are taking place.

For example it is better to say: "Mrs X has to be reassured and redirected by staff at least 4-5 times a day as she is distressed and wants to leave", rather than "Mrs X says she wants to leave".

It is better to say: "1:1 support is in place at all times of day, when John is in his room or

moving around the building, when he has meals or takes part in social events. However at night there is less support as there is a sleeping night and no checks are made beyond the routine checks”, rather than “John has 1:1 support”.

Page 3: What is an Interested Person?

An interested person is any of the following:

- The relevant person’s spouse or civil partner;
- Where the relevant person and another person of the opposite sex are not married to each other but are living together as husband and wife - the other person;
- Where the relevant person and another person of the same sex are not civil partners of each other but are living together as if they were civil partners - the other person;
- The relevant person’s children and step children;
- The relevant person’s parents and step parents;
- The relevant person’s brothers, sisters, half-brothers, half-sisters, step brothers and step sisters;
- The relevant person’s grandparents or grandchildren.

The form also asks for other people such as anyone caring for the person or interested in their welfare. This could include social workers or care staff.

Page 4: IMCA – Advance Decision – Mental Health Act

IMCA:

It is necessary for the Managing Authority to inform the DoLS team if the person will need an IMCA to support them.

The DoLS team at the Supervisory Body will make the referral but you need to state whether the person has anyone appropriate to consult with.

Advance Decisions:

There is also a question about any Advance Decisions to refuse treatment the person may have made that you are aware of.

Mental Health Act 1983:

If you are aware of any aspect of the Mental Health Act that applies to the person, for example they may be subject to a Guardianship Order, then this is where you need to include that information, with as much detail as you are able to provide.

Once you sign and date the form you will also be asked to confirm that you have advised any interested persons of the request for a DoLS Authorisation. Communication with close family members is very important from the beginning.

Page 5: Important Data Collection

This information is required for the quarterly DoLS returns to the Health and Social Care Information Centre. Please note this information is based on the Adult Social Care collection and the disability here does not refer to mental incapacity but to any other disability that may apply to the person.

Page 6: Urgent Authorisation: complete only where the need for the deprivation of liberty is so urgent that it is in the best interests of the person for it to begin while the application is being considered.

Although the original intention was that an Urgent Authorisation would be for “sudden unforeseen needs” in practice this has not been the case and Managing Authorities often use Urgent Authorisations. There is an expectation that in the vast majority of cases it should be possible to plan ahead and make sure that a Standard Authorisation is requested ahead of the need for the deprivation of liberty to begin.

An Urgent Authorisation should only be given where the need for the deprivation of liberty is so urgent that it is in the best interests of the person for it to begin while the application for a Standard Authorisation, which is expected to be necessary, is being considered. There are some situations where an Urgent Authorisation is generally not needed, such as:

- Someone has developed a mental disorder as a result of a physical illness which can be treated and treating it will rapidly resolve the mental disorder. An example of this would be someone currently confused due to a urinary tract infection, but when treated with antibiotics the confusion usually resolves within a negligible period of time.
- Where a person is in accident and emergency or a care home and it is anticipated that in a matter of hours the person will no longer be there.

The tick boxes are straightforward as all of the details will have been provided earlier in the form.

The Urgent Authorisation can be given for a period of up to seven calendar days and comes into force at the time it is signed.

Page 7: Request for an Extension of the Urgent Authorisation

The intention of adding the request for an extension of an Urgent Authorisation to the initial form is to identify this at the beginning due to the unprecedented numbers of applications.

The DoLS Code of Practice describes that an Urgent Authorisation can be extended if there are “exceptional reasons” why the Standard Authorisation cannot be dealt with within the seven days.

The Code of Practice gives an example of when an extension may be justified as an assessor not being able to make contact with someone who it is essential to speak to. The Supervisory Body must decide what it considers to be “exceptional reasons”. The Code is very clear about the following:

- A decision about exceptional reasons must be soundly based and defensible.
- It would not usually be justified due to staff shortages.
- An urgent authorisation can only be extended once.

FORM 2: REQUEST FOR A FURTHER STANDARD AUTHORISATION

A Further Standard Authorisation is a new request for the same person.

When an existing DoLS Authorisation is coming to an end the Managing Authority must review whether it is still necessary. It is possible, at any stage, that things have changed and the person no longer needs such a restrictive environment. In this case the Managing Authority needs to request a Review to cease the DoLS Authorisation (Form 9 – Standard Authorisation Ceased).

If however, having reviewed the person's current situation, the Managing Authority concludes that the Authorisation needs to continue then a Further Authorisation should be requested. This can be done up to 28 days in advance and should not be left to the last moment.

The amount of information needed when a Further Request for Authorisation is being made, is much less than the initial requirement as the Supervisory Body will have already received a great deal of personal details and comprehensive information and will have carried out the necessary assessments to grant an initial Authorisation.

This form is short and should assist Managing Authorities to request further authorisations in a timely way.

The main focus of this form is on two essential pieces of information:

- 1) The purpose of the deprivation of liberty, in other words why the person is still a resident or a patient and a description of the current care or treatment arrangements;
- 2) An opportunity to update any changes to the care or treatment plan and the restrictions in place, update information and record changes since the previous Authorisation was given.

FORM 7: SUSPENSION OF AUTHORISATION

Regulations allow for an Authorisation which is currently in force to be suspended only when the person is no longer eligible for DoLS because of a conflict with the MHA.

This is usually because the person has been detained in a hospital under the MHA but, as can be seen from the form, it can also be because there is now some conflict with a requirement imposed on the person by the MHA.

Note, therefore, that the Authorisation need not be suspended if, for example, the person is admitted to a general hospital on physical ill health grounds.

Page 1: Allows you to give notice that the Authorisation is suspended.

The Managing Authority must send this combined form to the Supervisory Body. This will enable the Managing Authority to report the position after 28 days using the same form.

Page 2:

After 28 days the Managing Authority should inform the Supervisory Body whether the person has returned within the time period and so the Authorisation is once again in force. If the person has not returned within this time period, the Authorisation will cease to be in force at the end of the 28 day period.

In practice this form is not used very often.

Most Managing Authorities seek guidance on what to do in other situations, such as, where a person who is subject to an Authorisation has been admitted to an acute hospital, or another temporary setting or is temporarily absent for another reason. There is currently no form to cover this scenario. However the most pragmatic approach seems to be as follows:

- If the new setting requests an Authorisation then the existing one is automatically ended and so you do not need to do anything.
- Alternatively if the absence is likely to be short and no DoLS Authorisation is requested by the new setting, again - do nothing. This will leave the authorisation in place for when the person returns.
- If the absence is likely to be for a long period, or there is a likelihood the person will not return to your setting, use the relevant section in Form 10 - Review to inform the Supervisory Body so the DoLS Authorisation can be reviewed and ceased.

FORM 10: REVIEW OF CURRENT AUTHORISATION

Previously the review process was cumbersome and required a number of forms to be completed. Not only was this arduous for the Supervisory Body but also meant the person being deprived of liberty and often their families / carers received numerous different forms.

The process is now captured on one form shared between the Managing Authority and the Supervisory Body.

Page 1:

This has details of the person being deprived of their liberty and also of the person or organisation requesting the review. It may be an IMCA who requests a review or it may be a family member. Sometimes a review request may come to the Supervisory Body in the form of a letter. If this is the case then the information about the person requesting the review can be transferred to the form.

The issue of grounds for review is stated at the bottom of page 1. In essence the grounds for

a review of a DoLS authorisation are:

1. The person no longer meets one of the requirements
2. The reason why they meet one of the requirements is different
3. There has been a change in the person's circumstances and the conditions need to be varied.

This has been summarised on the form as:

- The person may no longer meet at least one of the requirements – in other words this incorporates the first two grounds by asking for a review of all the requirements or one of the requirements. The person may in fact at the end of the process still meet all of the requirements but if this is for a different reason that will be made clear through the assessment process.
- The conditions attached to the Authorisation need to be varied because there has been a change in the person's circumstances. This second option is for a review of conditions only and does not require a full best interests review.
- The person requesting the review will give details to support their request at the bottom of page one.

Page 2:

This second page covers specific situations that do not always get reported to the Supervisory Body.

A DoLS Authorisation should not simply expire; it should be reviewed to bring it to an end. The exception to this is if a new setting has requested a new authorisation as described on page 27.

Very often in hospitals and care homes people are discharged without any action being taken in relation to the Authorisation.

This form provides, at page 2, a simple way for the Managing Authority to request a review to end an Authorisation for a person who is about to be discharged.

There must have been a change in the person's circumstances and the Managing Authority now believes that the person can be cared for elsewhere. This will generate a best interests decision and the Managing Authority can inform the Supervisory Body as soon as they have plans for the person's discharge.

The date when the person is due to leave and the new address of the person must be stated.

The new address is needed to determine whether the Supervisory Body need to make contact in relation to a subsequent Authorisation.

This should be accompanied by the best interests decision that has been made in relation to this decision.

There is room on the form to state for review purposes why it is no longer in the person's best interests to remain in the care home or hospital. This will allow the Supervisory Body to cease the DoLS authorisation using Form 9 – Standard Authorisation Ceased.

Page 3: Supervisory Body's decision as to whether any qualifying requirements are reviewable

The first section relates to whether there is information provided to suggest that one or more of the requirements may need to be reviewed.

First, there is the option that the Supervisory Body do not consider there are grounds for review. Therefore, the Authorisation will stay in place and the dates will be entered.

It is important to note that any review of an existing DoLS Authorisation can only be considered within the given time period.

Often Managing Authorities will request reviews when the Authorisation is almost at an end. In this scenario it is better to advise them to request a Further Authorisation using Form 2, when all requirements will be assessed again.

If the Supervisory Body has decided the grounds are met, it will have commissioned at least one assessment in relation to this and will indicate:

- which assessments were carried out
- whether the requirement was met or not met
- the reason why the requirement has changed

There are three possible outcomes following the review:

- At least one of the requirements was not met and therefore the Standard Authorisation will cease and the date of that will be entered;
- Based on the assessments that were carried out, the reasons given in the Standard Authorisation as to why the person meets the requirements have been varied will have been described in summary in the table above but will also be supported by a full assessment;
- All the review assessments carried out concluded that the person continues to meet the requirements to which they relate. Therefore the Standard Authorisation will continue to be in force until the date the Authorisation was originally given. This outcome may also be supplemented by a change in conditions.

Page 4: Review of Conditions Only

It is important to note that it is possible to request a review of conditions alone. Where the Supervisory Body decides that the best interests requirement should be reviewed solely because details of the conditions attached to the Authorisation need to be changed, and the

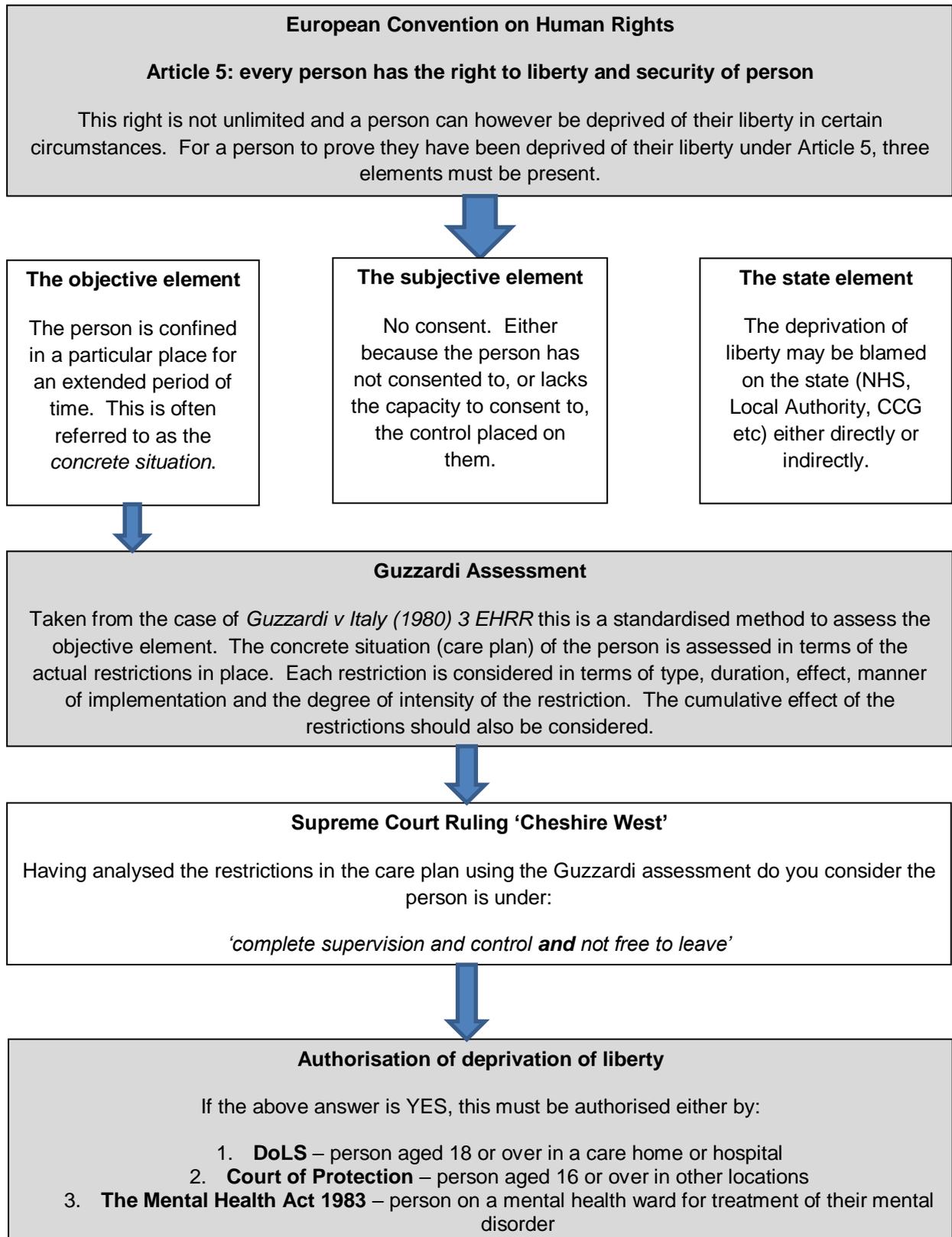
review request does not include evidence that there is a significant change in the person's overall circumstances, then there is no need for a full reassessment of best interests. The Supervisory Body can vary the conditions attached as appropriate. In deciding whether a full reassessment is necessary, the Supervisory Body should consider whether the grounds for the Authorisation, or the nature of the conditions, are being contested by anyone as part of the review request. If the review relates to any of the other requirements, or to a significant change in the person's situation under the best interests requirement, the Supervisory Body must obtain a new assessment.

Once it is decided that this is a review of conditions only this situation the Supervisory Body has two options:

1. It may find that there has been a change in the person's case but this does not require a change in conditions or;
2. There has been a change in the person's case as a result of which the conditions need to be varied and they are noted on this page.

It is hoped that by working with one form only for both request for reviews and outcomes of reviews this will simplify what is a key safety element of the process and reduce paperwork and bureaucracy for the person being deprived of liberty and their families and carers.

Deprivation of Liberty – A Legal Summary



Supervisory Body Triage Criteria

Priority 1A and 1B	
1A	1B
<ul style="list-style-type: none"> • Objections from relevant person (verbal or physical)/ family /friends • Attempts to leave • Restrictions on family/friend contact (Article 8 issue) • Confinement to a particular part of the establishment for considerable period of time • Unstable or query unsuitable placement • High level of restrictive practices • Active Safeguarding issues/concerns for welfare of RP • Query Mental Health Act? • On an acute / mental health ward likely to be discharged within a period of authorisation 	<ul style="list-style-type: none"> • Continuous 1:1 care during the day and/or night • Sedation / medication used frequently to control behaviour. • Physical restraint used regularly. • Subject to a Standard Authorisation about to expire. • Possible challenge to Court of Protection or complaint. • New placement.
Priority 2	Priority 3
<ul style="list-style-type: none"> • Asking to Leave but not consistently • Not making any active attempts to leave • Appears to be unsettled some of the time • Restraint or medication used infrequently. • Appears to meet some but not all aspects of the acid test. 	<ul style="list-style-type: none"> • Minimal evidence of control and supervision • No specific restraints or restrictions being used. E.g. in a care home not objecting, no additional restrictions in place. Have been living in the care home for some time (at least a year) • Settled placement in care home/hospital placement, no evidence of objection etc. but may meet the requirements of the acid test. • End of life situations, intensive care situations which may meet the acid rest but there will be no benefit to the person from the Safeguards.

You can ask your care team or an independent mental capacity advocate (IMCA) to help you write to the court.

Help from an independent advocate (IMCA)

You may be entitled to free help from an independent advocate if you want it. They can help you get information about your care and treatment, why you are being kept in a hospital, what it means and what your rights are. They can also help you with appealing to the Court of Protection or asking for a review.

If you want an advocate contact your local council DoLS team. If you do not want to contact the DoLS team yourself, you can ask a member of staff to contact them for you.

Code of Practice

There is a legal Code of Practice that gives advice to staff in the hospital about the DoLS. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

How do I complain?

If you want to complain about anything to do with your care or treatment in the hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedures. If you do not feel that the hospital's complaints procedure can help you, contact the local DoLS team. The Care Quality Commission (CQC) may be able to help. Contact them on 03000 616161 or email enquiries@cqc.org.uk.

Standard Authorisation Information Leaflet for Patients

Rights leaflet for people on a Deprivation of Liberty Safeguards standard authorisation
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Name			
Name of hospital			
Date authorisation started		Date authorisation ends	

What is this leaflet?

This leaflet tells you about being on a Deprivation of Liberty Safeguards (DoLS) standard authorisation. The hospital staff have a duty to give you this information and try to explain what it means.

Why am I on a standard authorisation?

Two people (a doctor and a health or social care professional called a best interests assessor) have met you and assessed that your health condition has affected your ability to decide where to live. After talking to you and people who know you and considering other information they have decided it is in your best interests to stay in this hospital to receive the care and treatment that you need.

While you are staying here there are some rules in your care plans which help to keep you safe. These rules mean you are not free to come and go as you may wish and that staff need to support and supervise you in different ways to look after you and keep you safe. This is why your local council has placed you under the protection of a standard DoLS authorisation while you are here to make sure the hospital are looking after you properly.

You must be given a copy of the assessments completed by the doctor and best interests assessor giving the reason why you are on a standard DoLS authorisation and a copy of the DoLS itself from the council. Your representative (see below) will also be given a copy of these.

How long will the standard DoLS authorisation last for?

The date when your authorisation ends is given at the top of this leaflet. You must not leave before this time unless the hospital staff say you can. If you try to leave, the staff can stop you, and if you do leave, you can be brought back. Before the authorisation ends you should be told whether you are going to be assessed again to see if it needs to be continued for a further period of time.

What care and treatment will I be given?

If you can make decisions about your care and treatment then you can say yes or no to anything that is offered to you. If you lack capacity to decide then staff must assess what is in your best interests under the Mental Capacity Act. You must be involved in any such decisions and your views and wishes taken into account. Your family and other people who know you must also be consulted.

Reviews

If you are not happy being on a standards DoLS authorisation or think it is wrong you can, at any time, ask for a 'review'. To do this, you need to contact the local council DoLS team. A review means you will be seen by an assessor from outside the hospital. This could be the same person who assessed you originally. You can contact the council DoLS team at:

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You can ask a member of staff to help you contact them. Your representative can also ask for a review.

Can I appeal?

Yes. You can appeal to the Court of Protection at any time using a special form called COPDLA. If you want to apply to the court you should write to:

Court of Protection, PO Box 70185, First Avenue House, 42-49 High Holborn, London. WC1A 9JA.
Telephone: 0300 456 4600 Email: courtofprotectionenquiries@hmcts.gsi.gov.uk

You can ask your representative or an independent mental capacity advocate (IMCA) to help you write to the court. Your representative can also appeal to the court themselves.

Help from an independent advocate (IMCA)

You are entitled to free help from an independent advocate if you want it. They can help you get information about your care and treatment, why you are being kept in a hospital, what it means and what your rights are. They can also help you with appealing to the Court of Protection or asking for a review.

If you want an advocate contact your local council DoLS team. If you do not want to contact the DoLS team yourself, you can ask a member of staff to contact them for you. You can also ask your representative to do this for you.

Your representative

Everyone under a standard DoLS authorisation has a person called a representative appointed for them. They can be a member of your family, a friend or someone such as an advocate. They are independent of the hospital and they must support you as long as you are on a standard DoLS authorisation. They can ask for a review or appeal to the Court of Protection. They must come and see you regularly.

You may have chosen the representative yourself, otherwise they will have been chosen for you. Your representative is:

If you do not want this person to be your representative speak to the local council DoLS team or ask the staff at the hospital to do this for you.

Code of Practice

There is a legal Code of Practice that gives advice to staff in the hospital about the DoLS. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

How do I complain?

If you want to complain about anything to do with your care or treatment in the hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedures. If you do not feel that the hospital's complaints procedure can help you, contact the local DoLS team. The Care Quality Commission (CQC) may be able to help. Contact them on 03000 616161 or email enquiries@cqc.org.uk.