

OPG607



*Department  
of Health*

Office of the  
Public Guardian



# Deprivation of Liberty Safeguards

## A guide for primary care trusts and local authorities

Mental Capacity Act 2005

## DH INFORMATION READER BOX

<b>Policy</b>	Estates
HR/Workforce Management	Commissioning
Planning/Performance	IM & T
Clinical	Finance
	Social Care/Partnership Working

**Document purpose** Policy

**Gateway reference** 11228

**Title** Deprivation of liberty safeguards: A guide for primary care trusts and local authorities

**Author** DH

**Publication date** 01 Feb 2009

**Target audience** PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, Directors of Adult SSs, PCT Chairs, NHS Trust Board Chairs, Directors of Finance, Allied Health Professionals, GPs, Communications Leads

**Circulation list** PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, Directors of Adult SSs

**Description** This booklet is aimed at Primary Care Trusts and local authorities under the Mental Capacity Act 2005 Deprivation of Liberty Safeguards legislation

**Cross reference** Deprivation of liberty safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice

**Superseded documents** N/A

**Action required** Compliance with requirements of the MCA DOLS legislation

**Timing** **By 01 Apr 2009**

**Contact details** Kate Hardy  
SCLCCP-SCPI-D&Q  
Unit 124, Wellington House  
133-155 Waterloo Road  
London SE1 8UG  
020 7972 4039

**For recipient's use**

Deprivation of Liberty Safeguards  
A guide for primary care trusts  
and local authorities

Mental Capacity Act 2005

## Contents

1. About this booklet	5
2. About the MCA DOLS	7
3. Key responsibilities of supervisory bodies	11
4. The assessment process	16
5. Further sources of information and guidance	28
Appendix: An overview of the MCA DOLS process	29

## 1. About this booklet

This booklet is for people working in primary care trusts (PCTs) and local authorities who have responsibility for implementing the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS).

The MCA DOLS, which come into force in England on 1 April 2009, provide a legal framework to prevent unlawful deprivation of liberty occurring. They protect vulnerable people in hospitals or care homes who lack the capacity to consent to the arrangements made for their care and/or treatment but who need to be deprived of their liberty in their own best interests to protect them from harm. PCTs and local authorities have a statutory responsibility for administering the MCA DOLS at a local level, so it is important that you know about them and are aware of your legal obligations.

Although this booklet is designed to give you a broad overview of the MCA DOLS and their main implications for you at work, you should refer to the legal framework in Schedule A1 of the Mental Capacity Act 2005 and the accompanying MCA DOLS Code of Practice for more details. This can be downloaded at:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

It is important to understand that the MCA DOLS are **not** about detention or compulsory treatment under the Mental Health Act 1983. The 1983 Act is primarily about people who are diagnosed as having a mental health problem and who need to be detained or treated for their own well-being or to protect other people.

Key terms used in the MCA DOLS legislation include:

- **supervisory body**: this refers to PCTs and local authorities
- **managing authority**: this is the person or body with management responsibility for the hospital or care home in which a person is being, or may be, deprived of liberty

- **standard authorisation:** this permits lawful deprivation of liberty and is issued by a supervisory body (see page 9)
- **urgent authorisation:** this permits lawful deprivation of liberty and is issued by a managing authority (see page 10)
- **relevant person:** this is the person who needs to be deprived of liberty
- **relevant person's representative:** this is the person who represents the relevant person (see page 21)
- **best interests assessor:** this is the person who assesses whether or not deprivation of liberty is in the person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm (see page 17)
- **advance decision:** this is a decision to refuse specified treatment made in advance by a person who has capacity to do so. The decision will then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment (see page 16)
- **donee of lasting power of attorney:** this is the person appointed under a lasting power of attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made them lasting power of attorney (see page 16)
- **Independent Mental Capacity Advocate (IMCA):** this is a person who provides support and representation for a person who lacks capacity to make specific decisions in certain defined circumstances. The IMCA was established by the Mental Capacity Act and is not the same as an ordinary advocacy service (see page 8).

An overview of the MCA DOLS process can be found in the Appendix on page 29.

## 2. About the MCA DOLS

### What are the MCA DOLS?

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS) provide legal protection for vulnerable people who may be deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights (ECHR) in a hospital (other than under the Mental Health Act 1983) or care home, whether placed there under public or private arrangements.

They were introduced following the legal judgment given by the European Court of Human Rights (ECtHR) in the case of *HL v United Kingdom* (commonly referred to as the *Bournemouth* judgment).<sup>1</sup> This case concerned an autistic man (HL) with a learning disability who lacked the capacity to decide whether he should be admitted to hospital for treatment. He was admitted to hospital on an informal basis under common law but was prevented from leaving the hospital with his carers. This decision was challenged by HL's carers and the ECtHR found that there had been a breach of HL's rights under the ECHR. The reasons given by the ECtHR were that:

- HL had been deprived of his liberty and the deprivation of liberty had not been in accordance with 'a procedure prescribed by law' and was, therefore, in breach of Article 5(1) of the ECHR
- there had been a contravention of Article 5(4) of the ECHR because HL had no means of applying quickly to a court to see if the deprivation of liberty was lawful.

---

<sup>1</sup> (2004) Application No: 00045508/99

The MCA DOLS were introduced to prevent further breaches of the ECHR, and to ensure that deprivation of liberty can only take place when it is in the best interests of the person concerned and when it is authorised by a supervisory body. The MCA DOLS also give legal protection to the relevant person, including the right to:

- an independent representative to act on their behalf
- the support of an Independent Mental Capacity Advocate (IMCA)
- have their deprivation of liberty reviewed and monitored on a regular basis
- challenge their deprivation of liberty in the Court of Protection.

### Who can be deprived of liberty under the MCA DOLS?

In order to come within the scope of the MCA DOLS, a person must be deprived of their liberty in a hospital or care home, and must meet six qualifying requirements:

- the age requirement
- the no refusals requirement
- the mental capacity requirement
- the mental health requirement
- the eligibility requirement
- the best interests requirement.

Assessments must be undertaken to establish whether the relevant person meets these requirements. The assessments are described on page 16 of this guide. If the assessments show that all the requirements are met, as a supervisory body you must issue a deprivation of liberty authorisation.



It is impossible to predict exactly which individuals might come within the scope of the MCA DOLS and each application for an authorisation must be considered on its own particular facts. Deprivation of liberty should be avoided whenever possible, and should only be authorised in cases where it is in the relevant person's best interests and the only way to protect them from harm. The MCA DOLS are not to be used as a form of punishment, or for the convenience of professionals, carers, or anyone else.

It is anticipated that the majority of people who will require the protection of the MCA DOLS are those with more severe learning disabilities, older people with the range of dementias or people with neurological conditions such as brain injuries.

## What changes do the MCA DOLS introduce?

### Assessment and authorisation

The MCA DOLS make it lawful for a person to be deprived of their liberty, based on a rigorous, standardised assessment and authorisation process. Under the MCA DOLS, hospitals and care homes must apply to their PCT or local authority for a deprivation of liberty 'authorisation' if they believe they can only provide adequate care for a person in circumstances that amount to a deprivation of liberty.

There are two types of authorisation: standard and urgent.

- **Standard authorisations** can be issued by supervisory bodies only if the six statutory assessment requirements (listed on page 8) indicate the need to do so. Standard authorisations will be the most common type of authorisation. Wherever possible, they must be applied for in advance of a person being deprived of liberty and only after rigorous care planning methods have indicated that less restrictive measures cannot meet the person's needs. A standard authorisation can last for up to 12 months, but deprivation of liberty should last only for as long as is necessary.

- **Urgent authorisations** can be issued by managing authorities where there is a need to deprive someone of their liberty immediately in their own best interests to protect them from harm, and are valid for a maximum of seven calendar days. When issuing an urgent authorisation, managing authorities must, if they have not already done so, simultaneously apply to their supervisory body for a standard authorisation to be issued within the period of the **urgent authorisation**. If there are exceptional reasons for doing so, a supervisory body may extend the duration of an urgent authorisation by up to seven days.

If a managing authority believes that deprivation of liberty needs to continue beyond the initial authorisation period, it should seek a new authorisation. This will determine, on the basis of further assessments, whether continued deprivation of liberty is in the person's best interests.

Every effort should be made, in both commissioning and providing care or treatment, to prevent deprivation of liberty occurring. If deprivation of liberty cannot be avoided, it should last for the shortest period possible.

### **The right to have a relevant person's representative (RPR)**

The MCA DOLS also make provision for every person deprived of liberty to have an RPR who will represent them in, and be consulted on, all matters connected to their deprivation of liberty. The RPR will usually be a family member or friend but can also be a paid representative, where the person has no family member or friends to fulfil the role on their behalf.

### **Access to the Court of Protection**

Under the MCA DOLS, every person deprived of liberty, or someone acting on their behalf, may challenge their deprivation of liberty authorisation in the Court of Protection. The relevant person and their unpaid representative have a statutory right to the support of an IMCA when making an application to the Court of Protection.

### 3. Key responsibilities of supervisory bodies

Supervisory bodies are responsible for overseeing the MCA DOLS at a local level. It is their role to commission and coordinate the assessment process and appoint assessors. In addition, they are responsible for granting standard authorisations and appointing relevant person's representatives (RPRs) for all people issued with a deprivation of liberty authorisation.

All supervisory bodies will be expected to implement appropriate systems and allocate responsibility to staff to support MCA DOLS. Each supervisory body must decide how best to do this, particularly based on any local estimates they have undertaken for the likely number of assessments that will be required in their area. An implementation tool is available to help estimate the number of assessments and staff that are likely to be required for 2009/10 at:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_084204](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084204)

#### Record-keeping requirements

There is a statutory requirement for all supervisory bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the RPR and the documentation related to the termination of the authorisation. Managing authorities are required to keep duplicate records.

To assist with this record-keeping requirement, and to ensure that the administration of the MCA DOLS system is as straightforward and seamless as possible, there are a number of standard forms for both supervisory bodies and managing authorities. These are available for download, together with accompanying guidance, at:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772)

The forms are not a statutory requirement and do not have to be used to support the administration of the MCA DOLS. However, if they are used in their unedited form, these standard forms will help supervisory bodies ensure compliance with the safeguards and promote a consistent approach to record-keeping.

In addition, supervisory bodies are required to submit data returns on the MCA DOLS to the Information Centre for Health and Social Care. Nearly all the necessary information to complete this form can be taken from the standard forms.

## What should a supervisory body do on receipt of an application form for a deprivation of liberty authorisation?

### Application requests from managing authorities

The supervisory body must be fully involved in the application process for both standard and urgent authorisations. Where a managing authority gives itself an urgent authorisation, it must notify the relevant supervisory body and proceed with an application for a standard authorisation. Standard forms are available to managing authorities for the purpose of giving an urgent authorisation and making an application for a standard authorisation.

When a supervisory body receives either an urgent authorisation form or a standard authorisation application form, it should check that the form has been appropriately completed. If standard forms have not been used by the managing authority, the supervisory body should exercise extra care when reviewing the documentation.

### Handling standard authorisations

When a supervisory body receives an application for a standard authorisation, it must consider whether the request is appropriate and whether it should be pursued. Where appropriate, the supervisory body has 21 calendar days to complete the assessment process. In cases where an urgent authorisation has been granted,

the standard application must be completed while the urgent authorisation is still valid.

### Handling urgent authorisations

Where a supervisory body receives notice that an urgent authorisation has been issued, it should make arrangements to begin the assessment process for a standard authorisation immediately. All assessments must be completed within the period for which the urgent authorisation has been given.

An urgent authorisation can last for a maximum of seven calendar days. However, in exceptional circumstances, managing authorities may request an extension of an urgent authorisation. A standard form is available to managing authorities for this purpose. On receipt of such a request, supervisory bodies need to consider the facts of the case and decide whether an extension is necessary in the circumstances. The supervisory body must decide the period of any extension, which must not exceed seven calendar days. A standard form is available for the supervisory body to record their decision and inform the managing authority.

A dialogue between the supervisory body and managing authority should be maintained throughout the period of the urgent authorisation.

### Providing support during the assessment process

It is essential that the person in respect of whom the application is being made (the 'relevant person') has someone to support them during the assessment process. Managing authorities must, when applying for an authorisation, notify their supervisory body if there is no one who can fulfil this role.

If the relevant person has no one to support them, the supervisory body must, under section 39A of the Mental Capacity Act 2005, appoint an Independent Mental Capacity Advocate (IMCA) (often known as a section 39A IMCA).

## Handling application requests from third parties

If the relevant person or any relative, friend, carer or other third party believes that they or someone else is being deprived of their liberty without authorisation, they can notify the managing authority. If the managing authority subsequently fails to resolve the matter informally with the relevant person or third party, or to apply for an authorisation within a reasonable length of time, the notifying party can approach the supervisory body directly.

The third party should supply the name of the person they are concerned about, the name of the hospital or care home where the person is, and the reasons why they think the person is being deprived of their liberty. A standard letter is available for this purpose. On receipt of this letter, the supervisory body must consider whether the request is appropriate and if it should be pursued.

If the supervisory body decides to pursue the request, it must appoint a best interests assessor (see page 18) to carry out a preliminary assessment to determine whether a deprivation of liberty is occurring. A standard form is available for supervisory bodies to record receipt of third party notifications and the action they take following this notification.

If the preliminary assessment concludes that an unauthorised deprivation of liberty may be taking place, the supervisory body should proceed with the full assessment process required for a standard authorisation.

Alternatively, the managing authority may change the person's care arrangements so there is no longer any deprivation of liberty. If, however, the managing authority considers that the original care regime must continue, it will need to give itself an urgent authorisation. Standard forms are available to help the best interests assessor to record the outcome of the preliminary assessment and for the supervisory body to record its actions following the completed assessment.

By law, supervisory bodies should also notify:

- the third party who made the request
- the relevant person
- the managing authority of the relevant hospital or care home
- any section 39A IMCA involved.

Copies of the relevant standard form should be sent to all of the parties listed above, notifying them of the supervisory body's decision and subsequent action.

### What if there is doubt about where the relevant person is ordinarily resident?

Once a supervisory body receives a request for a standard deprivation of liberty authorisation, it must proceed with the application, even where questions arise over where the relevant person is ordinarily resident. Regulations made under the MCA DOLS state that if a dispute occurs, the PCT or local authority that receives the request for a deprivation of liberty authorisation must act as the supervisory body until the dispute is resolved.<sup>2</sup>

Information and guidance on ordinary residence is currently being updated and will shortly be available on the Department of Health's website at:

[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/Ordinaryresidence/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/Ordinaryresidence/index.htm)

---

<sup>2</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008, [www.opsi.gov.uk/si/si2008/uksi\\_20081858\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081858_en_1)

## 4. The assessment process

Under the MCA DOLS, a series of six assessment requirements must be met in determining whether it is necessary to deprive a person of their liberty in their own best interests to protect them from harm. Once a supervisory body has received an application for a standard authorisation, and is satisfied that it is valid and correct, they must commission the required assessments. The six required assessments are as follows:

- **age assessment:** to assess whether the person being deprived of liberty is aged 18 or over
- **no refusals assessment:** to ensure that the authorisation being requested does not conflict with a valid decision by a donee of lasting power of attorney ('an attorney'), or by a deputy appointed for the person by the Court of Protection, and is not for the purpose of giving any treatment that would conflict with a valid and applicable advance decision made by the relevant person
- **mental capacity assessment:** to assess whether the person being deprived of liberty lacks capacity to decide whether to be admitted to, or remain in, the hospital or care home in which they are being, or will be, deprived of liberty
- **mental health assessment:** to assess whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983, but disregarding any exclusion for people with learning disabilities
- **eligibility assessment:** to assess whether the person is eligible to be deprived of liberty under the MCA DOLS. Broadly, a person is eligible unless they:
  - are detained under the Mental Health Act 1983



- are subject to a requirement under the Mental Health Act 1983 that conflicts with the authorisation being requested (such as a guardianship order requiring them to live somewhere else)
- object to being in hospital for the purpose of treatment of a mental disorder, or to being given some or all of the treatment in question, and they meet the criteria for detention under the Mental Health Act 1983. In deciding whether a person objects, their past and present behaviour, wishes, feelings, views, beliefs and values should be considered where relevant
- **best interests assessment:** to establish whether there is a deprivation of liberty and, if there is, whether it is:
  - in the best interests of the person to be subject to the authorisation
  - necessary in order to prevent them coming to harm
  - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

Assessors are required by law to keep written records of all the assessments they carry out. Standard forms are available to assessors for this purpose. Copies of all assessments must be given to the supervisory body for its records.

### Using 'equivalent' assessments

If an 'equivalent assessment' to any of the above assessments already exists for the relevant person, supervisory bodies may use this assessment instead of carrying out a new assessment. For example, a recent assessment carried out for the purposes of the Mental Health Act 1983 could serve as a mental health assessment under the MCA DOLS. However, great care should be exercised when deciding to use an equivalent assessment and it should not

be done routinely. A standard form is available to supervisory bodies for recording that an equivalent assessment has been used.

## The assessors

It is the responsibility of the supervisory body to appoint suitable assessors. Regulations made under the MCA DOLS set out the eligibility requirements for assessors.<sup>3</sup> These stipulate that assessors must:

- have an applied knowledge of the Mental Capacity Act 2005 and its Code of Practice
- be proficient in record-keeping, with the ability to write clear and reasoned reports

and that:

- mental health assessors must have undertaken the training programme made available by the Royal College of Psychiatrists, and
- best interests assessors must have undertaken training provided, or approved by, specified universities.

A minimum of two assessors are required for each case. An assessor may carry out any assessment for which they are eligible, but the mental health assessment and the best interests assessment must be undertaken by two different people.

Further information is available at:

[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/DH\\_084948](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/DH_084948)

---

<sup>3</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008, [www.opsi.gov.uk/si/si2008/uksi\\_20081858\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081858_en_1)

### Indemnity/insurance for assessors

All assessors must have adequate and appropriate insurance and/or indemnity arrangements. These arrangements may take the form of:

- a policy of insurance
- an arrangement made for the purpose of indemnifying a person
- a combination of a policy of insurance and an arrangement for the purpose of indemnifying a person.<sup>4</sup>

The supervisory body should ensure that assessors have insurance and/or indemnity arrangements in place before appointing them to carry out MCA DOLS assessments.

### Building local partnerships to carry out MCA DOLS assessments effectively

Because of planned changes to regulations, PCTs and local authorities will be able to enter into formal S75 partnerships<sup>5</sup> that help them deliver MCA DOLS more effectively.

For further guidance on partnership arrangements, see the MCA DOLS website at:

[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm)

---

<sup>4</sup> We plan to amend the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008 to include indemnity arrangements.

<sup>5</sup> For more information visit: [www.dh.gov.uk/en/Healthcare/IntegratedCare/Healthact1999partnershiparrangements/index.htm](http://www.dh.gov.uk/en/Healthcare/IntegratedCare/Healthact1999partnershiparrangements/index.htm)

## Next steps once assessments are complete

**If any of the assessments conclude that the relevant person does not meet qualifying requirements, the supervisory body cannot issue a deprivation of liberty authorisation.** The supervisory body must record its decision and notify the following people:

- the managing authority
- the relevant person
- any relevant person's representative (see page 21) if there is a previous authorisation in force
- any section 39A Independent Mental Capacity Advocate (IMCA) involved
- every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

A standard form is available for this purpose.

**If the outcome of all assessments are positive, the supervisory body must issue a standard deprivation of liberty authorisation.**

## Issuing a standard authorisation

It is the responsibility of the supervisory body to set the time period of the standard authorisation. This should be for as short a time as possible and no longer than the time period suggested by the best interests assessor.

The law requires the supervisory body to issue a standard deprivation of liberty authorisation in writing and to include certain details, including the purpose of the deprivation of liberty and its duration. It is also required to keep written records of any standard authorisations issued – a standard form covering the legal requirements is available. It is highly recommended that supervisory bodies use this form.

Once issued, supervisory bodies are required to give a copy of the authorisation to:

- the managing authority
- the relevant person
- the relevant person's representative (see below)
- any section 39A IMCA involved
- every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

Again, a standard form is available for this purpose.

### Appointing a relevant person's representative

As explained above, every person deprived of their liberty must have a 'relevant person's representative' (RPR) who can represent their interests in all matters connected to their deprivation of liberty authorisation. Supervisory bodies must appoint an RPR as soon as possible after a standard authorisation has been issued.

The selection of the RPR is a two-stage process:

#### Selection by the best interests assessor

The best interests assessor must nominate someone to the supervisory body who they think is suitable to be the RPR. This selection may be based on the relevant person's own choice of representative. If the relevant person has capacity and chooses an eligible person, that person must be nominated. If the relevant person lacks capacity, the RPR may be:

- the donee of their lasting power of attorney or a deputy appointed by the Court of Protection (if they have one in place)

- someone nominated by the above mentioned donee or deputy (if they have the authority to make a nomination).

If no eligible person is identified by either route, the assessor must consider who could be the representative. This could be a family member, friend or carer. A standard form is available to assist best interests assessors with selecting a representative and nominating him or her to the supervisory body. Chapter 7 of the MCA DOLS Code of Practice provides more detail on who is eligible to be an RPR.

### Appointment by the supervisory body

Once the supervisory body has received the nomination from the best interests assessor, it must invite the person, in writing, to be the representative. If the person agrees to be the representative, the supervisory body must formally appoint them. Again, this must be done in writing and the letter should set out the role and responsibilities of the RPR.

Supervisory bodies must keep written records of the appointment of the RPR. A standard form is available for this purpose. They must also notify the following people of the appointment:

- the appointed person
- the relevant person
- the relevant person's managing authority
- any donee or deputy of the relevant person
- any section 39A IMCA involved
- every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

### Appointing a paid representative

Where the relevant person does not have a carer or any family member or friends who can fulfil the role of RPR, and the best interests assessor cannot identify anyone else who is suitable, supervisory bodies may appoint a paid representative to perform the role in a professional capacity.

This person must not be employed by the supervisory body in any capacity. Nor may they be employed by the relevant person's managing authority where the managing authority is a care home. If the relevant person is deprived of liberty in a hospital, the representative may be an employee of the hospital, but only if their role does not relate to the care or treatment of the relevant person in any way.

Supervisory bodies are required by law to keep a record of the appointment of a paid representative. A standard form is available for this purpose.

Where a paid representative is appointed, the supervisory body must ensure that a Criminal Records Bureau check has been carried out.

### Termination of a representative's appointment

The supervisory body is required to formally terminate an RPR's appointment when the authorisation comes to an end. There may also be circumstances in which a representative's appointment may need to be terminated prematurely, for example, if they indicate that they do not wish to continue in the role or if the supervisory body or managing authority is concerned that the RPR is no longer acting in the best interests of the relevant person. Chapter 7 of the MCA DOLS Code of Practice provides detailed information on the situations in which it may be necessary to terminate a representative's appointment.

Where a supervisory body wishes to terminate a representative's appointment, it should give notice to them setting out the date on which the appointment terminates and the reasons for the termination. A standard form is available for this purpose. Supervisory bodies can decide what notice period to give. For example, where a standard authorisation is coming to an end, it may be appropriate to give formal notice to the representative two weeks before the termination date. If the supervisory body wishes to terminate the appointment because they have concerns that the representative is not acting in the relevant person's best interests, it may be appropriate to give a shorter notice period.

The supervisory body must record the termination of the appointment in writing and send copies to:

- the relevant person
- the relevant person's managing authority
- any donee or deputy of the relevant person
- any section 39A IMCA involved
- every interested person named by the best interests assessor in their report as somebody they may have consulted in carrying out their assessment.

A standard form is available for this purpose.

### When should a standard authorisation be reviewed?

Supervisory bodies are responsible for reviewing standard authorisations. They have the discretion to carry out a review at any time it appears appropriate to them to do so. However, they are legally required to carry out a review where the relevant person, their RPR or the managing authority requests one. Standard letters are available to the relevant person and their representative respectively for the purpose of requesting a review from the supervisory body.



There is a standard form available to managing authorities for the purpose of requesting a review. Supervisory bodies should expect to receive this form from managing authorities seeking reviews.

In addition to the above, supervisory bodies are also legally required to review an authorisation if:

- the relevant person no longer meets the age, no refusals, mental capacity, mental health or best interests requirements (see pages 16–17)
- the relevant person no longer meets the eligibility requirement because they object to receiving mental health treatment (see pages 16–17) in hospital and they meet the criteria for detention under section 2 or 3 of the Mental Health Act 1983 (see below about arrangements for the suspension of an authorisation when the eligibility requirement is not met for a short period)
- there has been a change in the relevant person’s situation and, because of the change, it would be appropriate to amend or delete an existing condition of the authorisation or add a new condition
- the reasons why the person now meets the qualifying requirements are different from the reasons recorded at the time that the authorisation was given.

If a supervisory body receives a request for a review, it must assess which, if any, of the qualifying requirements should be reviewed and record its decision. A standard form is available for this purpose. The supervisory body should then commission the assessments required and inform the relevant person, their representative and the managing authority that a review is being carried out. A standard form provides a means for supervisory bodies to inform interested parties that a review is being carried out.

The assessment process for a review of the qualifying requirements is the same as for a standard authorisation. The outcome of the assessments should be recorded by the assessors and copies provided to the supervisory body. It is recommended that assessors use standard forms to record the outcome of review assessments.

Once the supervisory body has received the assessment results, it must decide whether the person still meets the qualifying requirements for being deprived of their liberty. If the qualifying requirements are not met, the authorisation must be terminated. If the assessments illustrate that deprivation of liberty is still necessary, the supervisory body must consider whether the conditions attached to the authorisation need to be amended. A standard form is available for the supervisory body to record the outcome of the review.

### What if a standard authorisation needs to be terminated?

If a standard authorisation comes to an end, with no fresh authorisation replacing it, or a review concludes that it should be terminated, the relevant person should cease to be deprived of their liberty immediately. **It would be unlawful to continue to deprive someone of their liberty, leaving the managing authority open to legal challenge.**

Supervisory bodies should always check that managing authorities have care plans in place to ensure that the relevant person is cared for in a way that means they are no longer deprived of their liberty.

If a managing authority believes that a person should continue to be deprived of their liberty beyond the period permitted by the authorisation, they should apply for a new authorisation. It is not possible to renew deprivation of liberty authorisations.

If an authorisation is terminated, the supervisory body must record this and give notice in writing to the following people:

- the relevant person
- the relevant person's representative
- the managing authority
- every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

A standard form is available for this purpose.

### Can an authorisation be suspended?

It is possible to suspend an authorisation for a period of up to 28 calendar days under exceptional circumstances. This may be necessary, for example, because the relevant person is detained in hospital under the Mental Health Act 1983. Supervisory bodies are responsible for authorising the suspension and re-instatement of authorisations on application from a managing authority. Standard forms are available for this purpose.

## 5. Further sources of information and guidance

If you want to find out more about what MCA DOLS mean for you or your organisation, visit the website at:

[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm)

You can contact the team in writing at:

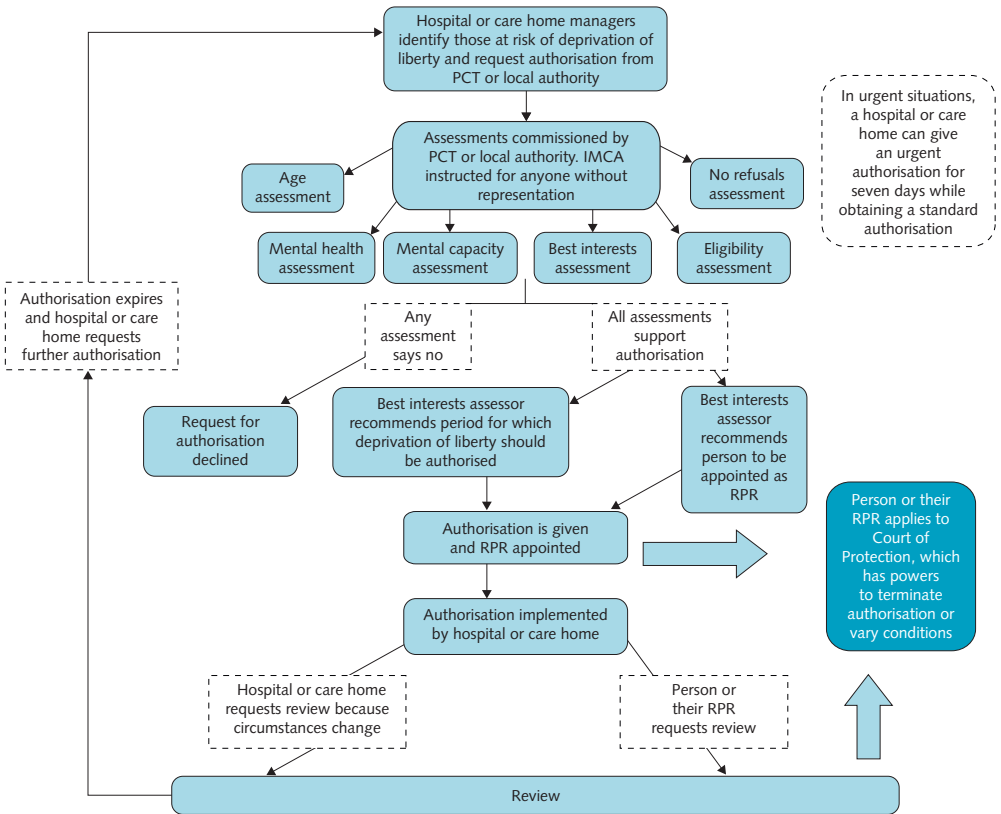
MCA DOLS Implementation Programme  
Department of Health  
Wellington House, Room 124  
133–155 Waterloo Road  
London SE1 8UG

Email: [dols@dh.gsi.gov.uk](mailto:dols@dh.gsi.gov.uk)

Information on the Mental Capacity Act Deprivation of Liberty Safeguards is brought to you by the following organisations:



## Appendix: An overview of the MCA DOLS process



Other booklets in this series include:

- OPG601** Making decisions... about your health, welfare or finances. Who decides when you can't?
- OPG602** Making decisions: A guide for family, friends and other unpaid carers
- OPG603** Making decisions: A guide for people who work in health and social care
- OPG604** Making decisions: A guide for advice workers
- OPG605** Making decisions: An Easyread guide
- OPG606** Making decisions: The Independent Mental Capacity Advocate (IMCA) service
- OPG608** Deprivation of Liberty Safeguards: A guide for hospitals and care homes
- OPG609** Deprivation of Liberty Safeguards: A guide for relevant person's representatives

Making decisions booklets are available to download at:  
[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

If you want to find out more about what the Deprivation of Liberty Safeguards (DOLS) mean for you or your organisation, the DOLS Code of Practice, which explains in detail how the DOLS' processes and procedures work, can be downloaded at: [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

Or you can visit the website at:  
[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm)

Making decisions booklets are available in English, Welsh and Braille formats. There is also an Easyread booklet and Easyread Audio version. Contact the Office of the Public Guardian for more information.

- OPG607** Deprivation of Liberty Safeguards: A guide for primary care trusts and local authorities

© Crown copyright 2009

292785/OPG607 1p 500k Feb09 (HOW)