

DoLS authorisations [the legal authority to deprive someone of their liberty]

There are two types of DoLS authorisation:

Urgent – a managing authority can authorise the deprivation of liberty of a person for a short period of time through an urgent authorisation. It allows detention for up to 7 days plus a further 7 if the supervisory body considers there are ‘exceptional circumstances’. If an urgent authorisation is made, the managing authority must request an assessment for a standard authorisation immediately.

Standard – the managing authority must request a DoLS assessment from the supervisory body if it is likely that someone is or will need to be deprived of their liberty within 28 days. The supervisory body organises the assessments and these are undertaken by a minimum of two assessors – a mental health assessor [a doctor with an extra qualification to undertake certain assessments for DoLS] and a best interests assessor [BIA - a health or social care professional qualified to undertake certain assessments for DoLS]. A person must meet six criteria for DoLS to be authorised. The supervisory body will set the time period of the detention [up to one year] and conditions can also be attached.

The legal criteria for DoLS

Age – aged 18 or over.

Mental Health – they have a mental disorder [any disorder or disability of the mind]. This includes dementia, learning disability, personality and behavioural changes caused by brain injury or damage [however acquired] and schizophrenia.

Mental Capacity – they lack capacity to decide whether to live in a care home or hospital to receive necessary care or treatment.

Best Interests – they are deprived of their liberty + it is in their best interests to be detained + detention prevents harm to them + is a proportionate response to the likelihood of harm and the seriousness of the harm.

Eligibility – they are eligible for DoLS. This relates to whether the Mental Health Act is already in use or should be used instead. If so, the person will not be eligible for DoLS.

No Refusals – there is no valid and applicable advance decision or lasting power of attorney [with relevant authority] or deputy [with relevant authority] or Court of Protection order that is in conflict with the proposed DoLS authorisation.

Standard DoLS Assessment Process

Step 1

Assess the capacity of people in your care home or hospital to be resident for care or treatment. If they lack capacity assess the restrictions in place on each person.

Step 2

The care home or hospital home identifies that a person needs to be deprived of their liberty. The care home or hospital fills out a DoLS form to apply for a standard authorisation.

Step 3

They send the form to a local authority [also known as the supervisory body under DoLS]. Which local authority will depend on a number of rules but will generally be the placing local authority.

Step 4

The local authority sends official DoLS assessors [mental health assessor and best interests assessor] to determine whether the person meets all the DoLS criteria.

Step 5

The assessors return their assessments to the local authority. If the person meets all the criteria, the local authority will issue a standard authorisation. The local authority has 21 days to give the care home or hospital the result from the date of receiving their request.

Result

The standard authorisation can last for a maximum of 12 months. Conditions may be attached to the authorisation such as the amount of leave a person has. When the authorisation is coming to the end of its duration, the care home or hospital must request a new authorisation from the local authority if the person continues to lack capacity and has restrictions in place meeting the DoLS criteria.

Deprivation of Liberty Safeguards – DoLS

The Deprivation of Liberty Safeguards [DoLS] are part of the Mental Capacity Act 2005 [the Act]. The Act governs the care, treatment and finances of people who lack mental capacity to consent or make decisions for themselves on these matters. It contains the legal authority to provide treatment or care for a person who does not have the mental capacity to consent to it.

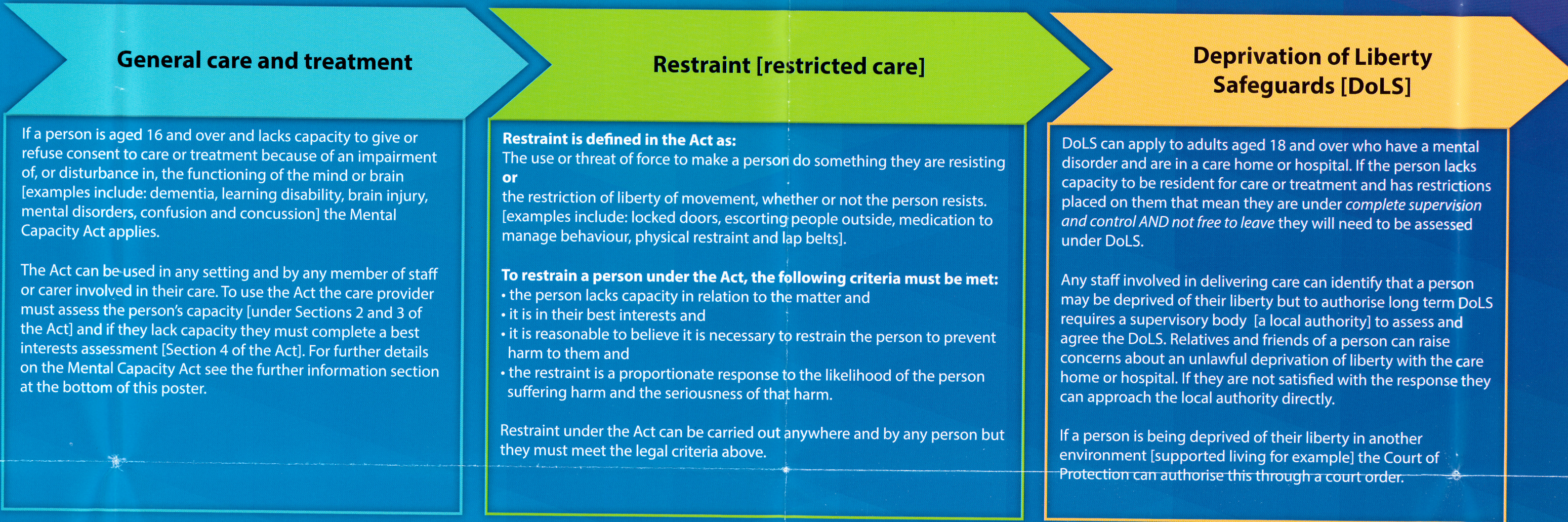
Why do we need to use DoLS?

Some people in care homes and hospitals are not free to do what they want, when they want, like other adults because they lack the mental capacity to make their own decisions and therefore need control and supervision to protect them from harm. The purpose of the DoLS process is to check whether a person in a care home or hospital needs a level of care which means they are under complete supervision and control AND not free to leave. If they are, it means they are deprived of their liberty and the DoLS procedures need to be followed. DoLS ensures the person is provided with safeguards in the form of legal rights and protection which are listed below. It also provides the care home or hospital looking after them with the legal authority to keep them under this level of care and supervision.

The Supreme Court has decided* that a person is deprived of their liberty if they are:

under complete supervision and control AND not free to leave

Both parts of this test must apply. If they do apply and the person is in a care home or hospital, the care provider must use DoLS to provide them with the legal authority to keep the person under this level of supervision. This legal authority is required by the care home or hospital even if the patient or resident appears content, the families involved agree with the care and the care provided is good. Staff in care homes and hospitals should consider their own freedoms and compare them with the person they are caring for. Regardless of a person's care needs, staff should ask themselves whether they would feel they were a free person or whether they would feel they were deprived of their liberty if they were under the same rules and restrictions.



Rights and Protection: every person under a standard DoLS has the following rights and protection

Representative	A person independent from the local authority, care home or hospital whose role is to keep in contact with and provide support to the person under DoLS. Usually a family member or a friend. The representative can ask for a review, make a complaint and apply to the Court of Protection. They can also ask for support from an independent mental capacity advocate [IMCA].
Review	A standard DoLS authorisation can be reviewed. The local authority carries out reviews and the person, their representative or the care home or hospital can request one at any time. If the person's circumstances change, a review should be requested. A review can result in the DoLS being discharged or the conditions being changed.
Court of Protection	The person or their representative [or a lasting power of attorney or deputy] can appeal directly to the Court of Protection at any time. The court has the power to end a DoLS authorisation, vary the period of detention or vary the conditions attached. Other people can also apply to the court but have to obtain the court's permission first. The court can also authorise a deprivation of liberty in any place that is not a care home or hospital. Tel: 0300 456 460 www.gov.uk/apply-to-the-court-of-protection
Advocacy	The right to free and independent advocacy [an independent mental capacity advocate known as an IMCA] for those being assessed and those under DoLS. The advocate will help the person or their representative to understand their rights, the reasons for, and the effect of being under DoLS. The advocate can support the person or their representative to request a review or appeal to the Court of Protection. The supervisory body appoints advocates.
Care Quality Commission	The Care Quality Commission [CQC] monitors the use of DoLS and produces an annual report on its findings. Care homes and hospitals must inform the CQC whenever a DoLS authorisation or DoL court order [in supported living for example] is authorised. There is a standard form for this on the CQC website. Tel: 03000 616161 www.cqc.org.uk

Managing Authority Care homes and hospitals, in which people are resident under DoLS, are known as managing authorities.	Supervisory Body Under DoLS, a local authority is known as the supervisory body. They are responsible for considering requests for DoLS authorisations, arranging assessments and authorising detention under DoLS. In Wales, a supervisory body is either a local authority or a Health Board.	Codes of Practice There are two statutory codes of practice, which care staff are under a duty to 'have regard to': the Mental Capacity Act Code of Practice and the Deprivation of Liberty Safeguards Code of Practice.	* Supreme Court judgment on Deprivation of Liberty In the case of P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19, the Supreme Court ruled on when a person receiving care would be deprived of their liberty. It can be downloaded from: www.BooksWise.org.uk
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Further Information

DoLS Assessment Tool A simple assessment tool for care homes, hospitals and other care providers which provides guidance on assessing whether a person is deprived of their liberty. Download from: www.BooksWise.org.uk	Books <i>Working with the Mental Capacity Act 2005</i> and <i>Working with the Mental Health Act 1983</i> by Steven Richards and Aasya F Mughal. Available from: www.amazon.co.uk	App A practical mini guide to all of the key parts of the Mental Capacity Act. Search 'Mental Capacity Act' in iTunes and Google Play. Created by: www.BooksWise.org.uk	Posters This poster and others on the Mental Capacity Act and the Mental Health Act are available from: www.matrixtrainingassociates.com	Codes of Practice Mental Capacity Act 2005 and DoLS Codes of Practice. Can be downloaded from: www.mentalhealthlaw.co.uk
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WHEN IS A PERSON BEING DEPRIVED OF THEIR LIBERTY?

A person can only be deprived of their liberty under DoLS if they lack the mental capacity to give consent to be in a care home or hospital for care and/or treatment. Once capacity has been assessed, the starting point for assessing whether a person is being deprived of their liberty is to consider the restrictions present in their care plan. This is the case even if the purpose of the restrictions is to keep the person safe and enable them to have as full a life as possible. For example, in the case of an older person in residential care with dementia who lacks capacity to be resident for that care, the restrictions could be that: 1. they have to live in the care home 2. they cannot go outside unless escorted 3. they cannot discharge themselves as they are not able to live at home safely.

What are restrictions?

Restrictions could include: chemical [sedation or other medication to control behaviour], physical [holding a person or moving a person somewhere], restricted access to the outside world [locked doors or escorted outside], restricted contact with others [access to visitors is limited], discharge [requests by family to discharge the person are refused].

Once the restrictions in place have been assessed, staff need to question whether the combination and degree/intensity of the restrictions in a person's care plan mean they are under *complete supervision and control AND not free to leave*. If the answer is yes the person is being deprived of their liberty and the local authority DoLS team should be contacted for further assessment by completing the appropriate DoLS application form. This does NOT mean the care is poor or inappropriate but rather it is a statement of fact that the care required to keep the person safe is, in law, also depriving them of their liberty.

1. COMPLETE SUPERVISION AND CONTROL:

This can happen even if the doors are not locked and the person is not subject to 1:1 observations. The person may still be supervised or controlled to ensure their safety. Examples include: supervision to ensure a person washes themselves when needed, set meal times and supervision to ensure people do eat. It is likely if you provide care to people who lack capacity to be resident and have 24 hour staffing and those people are not free to discharge themselves, you will need legal authority to deprive them of their liberty [through DoLS or a court order].

AND

2. NOT FREE TO LEAVE:

Even if a person can go out every day, they are *not free to leave* if they would not be allowed to discharge themselves permanently and live elsewhere. This applies even if the person does not have anywhere else to live and has never asked or attempted to leave. Staff should ask themselves if this person suddenly said they wanted to leave and were not coming back would they be allowed to go.

Questions

If the person and their family are content with the care and placement is this still a deprivation of their liberty?

Yes - it can be if the person is subject to *complete supervision and control AND is not free to leave*.

The person goes out every day, is this still a deprivation of liberty?

Yes - it can be if they are required to have another person with them [escorted]. Even if they are unescorted, if staff decide when they can go out, how long for and would take steps to bring the person back if they did not return, the person may be deprived of their liberty.

The person has never said they want to leave, has never tried to leave and does not have anywhere else to live.

This can still be a deprivation of liberty as the question remains: is the person subject to *complete supervision and control AND not free to leave*. If they cannot permanently leave or discharge themselves from the placement, they are not free to leave.

We are not a care home or hospital so we cannot use DoLS, so none of this applies to us?

Wrong! Even if you are not a care home or hospital, if you provide care to people that lack capacity [to be resident for care or treatment] and those people are subject to *complete supervision and control AND not free to leave*, you are depriving them of their liberty. The difference is that instead of DoLS being used, you will need the legal authority from an order of the Court of Protection. This is particularly relevant for supported living placements. Contact your local authority DoLS lead for further guidance.

We don't have any locked doors, do we still need to use DoLS?

Yes - it is not about whether the doors are locked but whether people are free to leave. Not just for trips outside but free to discharge themselves and live somewhere else.