

Deprivation of Liberty Safeguards

Care Homes - Guidance for Registered Persons

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Introduction

The Mental Capacity Act 2005 (MCA) provides the statutory framework for acting and making decisions on behalf of people who lack the capacity to make decisions for themselves. The MCA sets out who can make decisions for a person who lacks capacity, when and how. It ensures decisions are made in the person's best interest and the person is involved in the decision as much as possible.

The Deprivation of Liberty Safeguards (DOLS) were introduced as an amendment to the MCA and came into force in April 2009, providing a legal framework for situations where someone may be deprived of their liberty within the meaning of article 5 of the European Convention of Human Rights (ECHR).

The safeguards help to ensure the correct process is used to protect people's human rights if:

- they lack the capacity to consent to the arrangements for the care they need,
- are under continuous supervision and control
- and are not free to leave.

The DoLS under the MCA allows restraint and restrictions which amount to a deprivation of liberty to be used in hospitals and care homes – but **only if they are in a person's best interests**.

CIW, with HIW, is responsible for monitoring and reporting on the implementation of the Deprivation of Liberty Safeguards in Wales on behalf of Welsh Ministers. An annual monitoring report is laid before the Senedd and published each year.

The role of care home providers

The DoLS legislation aims to protect people in care homes who may need to be deprived of their liberty. It is important providers understand the legal framework of the Mental Capacity Act and all managers and care staff working for them must understand how this should be implemented in practice. Social Care Wales have useful resources.

[The Mental Capacity Act and Deprivation of... | Social Care Wales](#)

Care homes are called 'managing authorities.' The bodies that authorise DoLS applications are called 'supervisory bodies' and care homes must apply to their local authority (LA) for such authorisation. In Wales, the authorising local authority is the local authority in which the individual is ordinarily resident before moving to live in the care home. If you apply for such authorisation to the local authority, you must also notify CIW through your CIW Online account. The notification is called 'DOLs request sent to a supervisory body'.

There are three types of DoLS applications:

Urgent: A care home or hospital can grant itself an urgent authorisation to deprive a person (known as relevant person) of their liberty if required before standard authorisation can be obtained. They must simultaneously apply for a standard authorisation [if not already done]. Where the managing authority has given itself an urgent authorisation and applies for a standard authorisation, the local authority's assessors must complete the assessment within five days of the instruction.

Standard: If a care home or hospital staff complete a standard application, then the assessment required for a standard authorisation must be completed within 21 days from the date the assessors were instructed by the supervisory body.

Further: When an existing DOLS authorisation is coming to an end, and the managing authority concludes that the authorisation needs to continue, a further authorisation should be requested. This can be requested 28 days in advance.

Duties under the Regulation and Inspection of Social Care (Wales) Act

The [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) and the associated statutory guidance sets out requirements on registered providers in relation to the Mental Capacity Act and Deprivation of Liberty Safeguards.

Regulation 29 - The appropriate use of control and restraint.

Statutory guidance

- Where an individual lacks mental capacity to consent to the arrangements for their care and support, service providers follow the statutory principles and provisions of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards, where appropriate.
- Service providers ensure acts of care and support are in the person's best interest and there is lawful authority in place where required

Regulation 31 Deprivation of liberty - An individual must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

Statutory guidance

- Service providers act at all times in accordance with the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards as well as the Code of Practice to the Mental Capacity Act 2005 50 31. An individual must not be deprived of their liberty for the purpose of receiving care and support

without lawful authority. and supplementary Code of Practice for Deprivation of Liberty Safeguards.

- Staff are trained at appropriate intervals and in line with any changes to guidance and legislation to understand their responsibility under the Mental Capacity Act and the Deprivation of Liberty Safeguards.

If a person in a care home is under continuous supervision and control and is not free to leave, and they lack the mental capacity to consent to arrangements for their care and treatment, providers should apply for a Deprivation of Liberty with the local authority, and notify CIW an application has been made.

See **schedule 3 - Regulation 60**

- Notifications by the service provider

Any request to a supervisory body in relation to the application of the deprivation of liberty safeguards (DOLS).

The role of CIW

To enable CIW to fulfil its monitoring and reporting duties it will carry out the following:

When inspecting care homes where a people's liberty may be restricted, CIW will

- Seek evidence of whether and how people are being deprived of their liberty, and if this has been authorised
- Talk to people about their experience
- Speak with staff about their understanding of mental capacity and deprivation
- Look at care planning documentation to ensure it is reflective of the authorisation process
- Check if further applications are made when a DOL authorisation is coming to an end, where appropriate
- Consider if any applications have been made but not authorised
- Discuss any issues with obtaining authorisation

This information, along with notifications of applications, and information collected from local authorities will be monitored by CIW and used to inform its annual DOLS report.