

What are the
Mental Capacity
Act 2005
Deprivation of
Liberty Safeguards?

What are the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS)?

Do you work in a hospital or care home that provides care for people who can't make decisions about their care or treatment?

A new system which applies to all hospitals and care homes begins on 1 April 2009.

Some people living in hospitals and care homes can't make their own decisions about their care and/or treatment because they lack the mental capacity to do so. They need more care and protection than others to ensure they don't suffer harm. Caring for and treating people who need extra protection may mean restricting their freedom to the point of depriving them of their liberty.

The European Court of Human Rights has said that the rights of people who can't make decisions and who need to have their liberty taken away in hospitals and care homes must be strengthened. People's liberty should not be taken away if they can be cared for in a less restrictive way.

The MCA DOLS will protect people who can't make decisions about care or treatment, who need to be cared for in a restrictive way. For example, some people who have dementia, a mental health problem or a severe learning disability.

The law says the MCA DOLS must be used if people need to have their liberty taken away in order to receive care and/or treatment that is in their best interests and protects them from harm.

What does the law say hospitals and care homes must do?

For every person living in the hospital or care home who lacks capacity, you should think about the following questions:

- Does the care and/or treatment being provided take away the person's freedom to do what they want to do to the extent that they are being deprived of their liberty?
- Do you believe that the care and/or treatment is in the person's best interests?

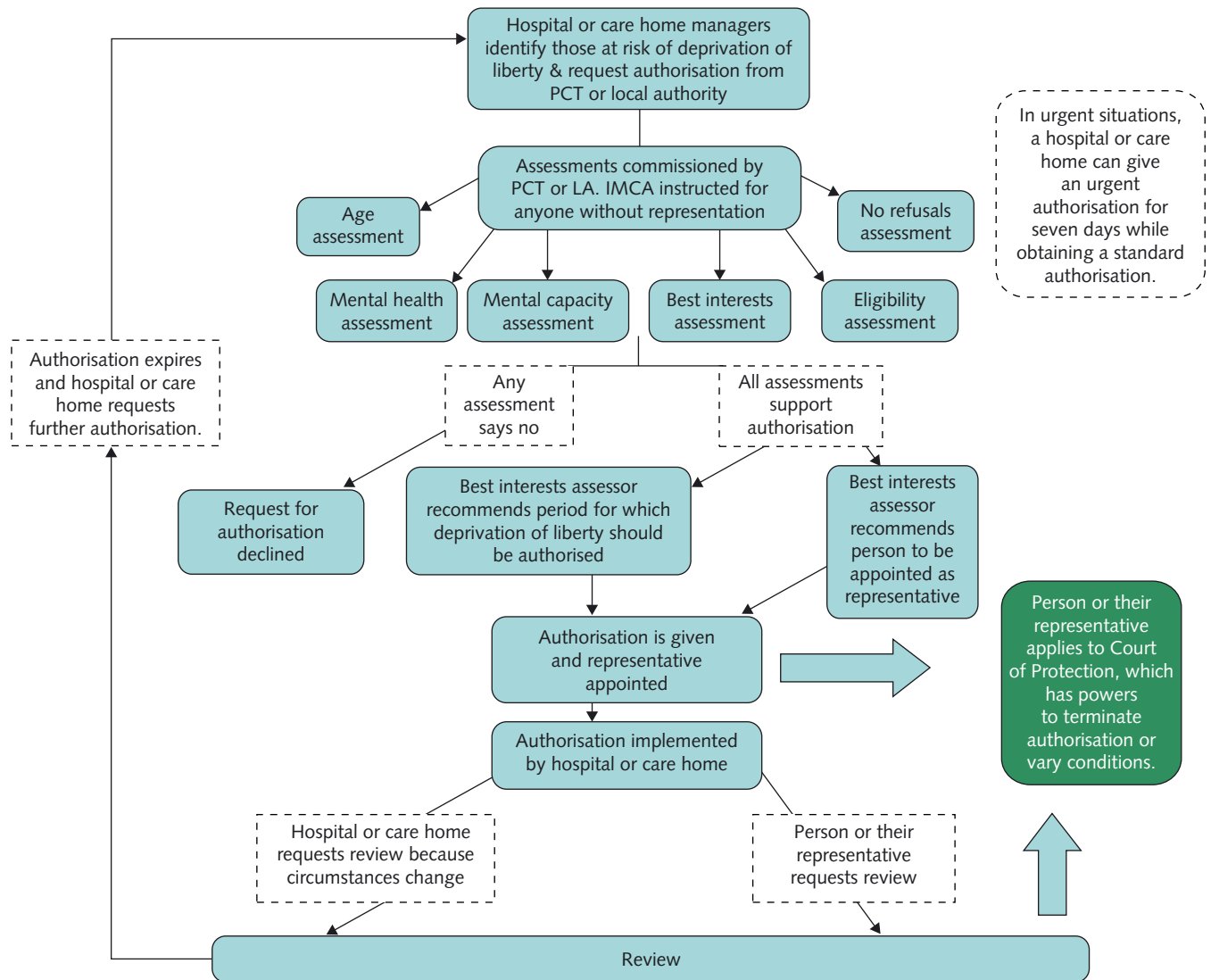
If the answer to these questions is 'yes', you need to ask yourself whether the care and/or treatment could be given in a way which does not take away the person's liberty. If the answer to this question is 'no' and the person cannot be (cared for and/or treated) in any other way, the Primary Care Trust – PCT (for hospitals) or the local authority (for care homes) must be asked to carry out an assessment to decide if it is right to take away the person's liberty.

Not every assessment will result in an authorisation. However, once a person in a hospital or care home has an MCA DOLS authorisation, a representative is appointed to support them and look after their interests.

The hospital or care home (together with their PCT or local authority) must:

- Make regular checks to see if the authorisation is still necessary
- Remove the authorisation where it is no longer necessary
- Provide the person who has an MCA DOLS authorisation and their representative with information about the authorisation and their rights and entitlements

Overview of the MCA DOLS process



If the person deprived of their liberty or their representative does not agree with the decision to deprive them of liberty, the new system gives them the right to appeal against the decision in a court.

When will the system be needed?

The MCA DOLS are for people who are aged 18 and over in NHS hospitals, or in independent hospitals or care homes that are registered under Part 2 of the Care Standards Act 2000.

The Government expects that there will be more people in care homes than in hospitals who will have an MCA DOLS authorisation.

The Government thinks that only a small number of people will need an MCA DOLS authorisation.

Before thinking about applying for an authorisation, hospitals and care homes are expected to think about providing care in different ways which avoid depriving someone of their liberty.

Record-keeping

Hospitals and care homes must keep detailed records as part of the MCA DOLS process. To help with this record-keeping requirement, and to make sure the administration of the MCA DOLS systems is as simple as possible, a number of standard forms have been developed for hospitals and care homes as well as PCTs and local authorities. Use of the forms will help ensure that hospitals and care homes do as the legislation requires them to do and keep their records up to the required standards.

Further information about the MCA DOLS

If you want to find out more, contact your local Regional MCA DOLS lead.

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Or visit our website at:

<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

This leaflet is available in other languages and alternative formats on request.

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Information on the new MCA DOLS is brought to you by the following organisations:



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