



Llywodraeth Cymru
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Revised Standard Forms Guidance for the Mental Capacity Act Deprivation of Liberty Safeguards

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Acknowledgements

A Mental Capacity Act 2005 /Deprivation of Liberty Safeguards (MCA/DoLS) Expert Working Group was created to review and streamline the existing DoLS forms and create a 'Once for Wales' set of forms to promote consistency. The Welsh DoLS Forms were reviewed between November 2014 and March 2015.

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Consultation on the revised forms was held with members from the Expert Working Group and the All Wales DoLS network (consisting of MCA/DoLS leads/practitioners). The comments received were reviewed, and where possible, incorporated into the forms. The forms have been endorsed by the MCA/DoLS multi-agency leadership group, co-chaired by representatives from the NHS in Wales and the Directors of Social Services. We would like to thank all those that gave their time to contribute to the formulation of the new forms.

We are also grateful to Association of Directors of Adult Social Services in England and the Department of Health for sharing their revised forms with us.

Introduction

Since 1 April 2009 any care home or hospital treating or caring for a person in such a way that involves depriving that person of their liberty is required to seek the authority to do so. Both the “Guidance for Supervisory Bodies¹” and “Guidance for Managing Authorities²”, (which will be reviewed and updated accordingly), explain the process that should be followed in order to obtain authorisation.

This guidance contains information about the recommended forms that should be used in the authorisation process. It should be noted that though these forms are not prescribed by statute they have been developed in order to provide a ‘Once for Wales’ solution to promote consistency and clarity for practitioners, patients and families. The forms have been designed to ensure that the correct processes are followed according to the requirements of the Deprivation of Liberty Safeguards (DoLS).

Nothing in this guidance should be taken to replace anything in the Mental Capacity Act 2005 or the statutory Codes of Practice for the MCA and DoLS. The new forms and guidance replaces the previously published forms and guidance dated February 2009.

Terminology used in this Guidance

Throughout this guidance the Mental Capacity Act 2005 is referred to as ‘the MCA’. Where there are references to other statutes, the relevant Act is clearly indicated. A note of some of the other terms used in this guidance is as follows:

- the DoLS – unless noted otherwise this refers to the Mental Capacity Act Deprivation of Liberty Safeguards (as provided in Schedule A1 and 1A to the MCA)
- the Managing Authority – this is the person or body with management responsibility for the hospital or care home in which a person is, or may become deprived of their liberty
- the Supervisory Body – a local authority or local health board that is responsible for considering a deprivation of liberty request received from a Managing Authority or concerns from a third party, commissioning the statutory assessments and, where satisfied with them, authorising a deprivation of liberty
- the relevant person – this is the person who is being cared for or treated and may be deprived of their liberty
- IMCA – an Independent Mental Capacity Advocate (established under the MCA) who provides support and representation for a person who lacks capacity to make specific decisions where the person has no-one else to support them. An IMCA may also be appointed in certain other situations

¹ <https://www.wales.nhs.uk/sites3/page.cfm?orgid=744&pid=36235>

² <https://www.wales.nhs.uk/sites3/page.cfm?orgid=744&pid=36235>

- the MCA Code of Practice – this is the ‘*Mental Capacity Act 2005 Code of Practice*’³ published in 2007
- the DoLS Code of Practice –denotes the ‘*Deprivation of Liberty Safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice*’⁴(published August 2008)
- the Supreme Court Judgment (Cheshire West)⁵ – in the case of “P v Cheshire West and Chester Council, which significantly widened the definition of those that are considered as having their liberty deprived in hospitals and care homes and will therefore need DoLS authorisations. It also widened the scope of those considered deprived without capacity receiving state care in the community
- The “Acid Test” – the test to determine whether the person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to the arrangements set out in the Supreme Court Judgment (Cheshire West).

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf

⁴http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087309.pdf

⁵ http://supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf

The New DoLS Forms

New Form	Previous Form/s	Form Name
1	SA1, UA1	Managing Authority's Request for Standard Authorisation and Managing Authority's Urgent Authorisation.
1a	UA2, UA3	Request by Managing Authority for an Extension to the Urgent Authorisation
1b	SA2 SA3	Report of a Potential Deprivation of Liberty by a Family Member, Friend or Supporter.
2	SA5	Managing Authority's Request for a Further Standard Authorisation.
3	AS1, AS4 AS6, RP1 RP3	Age, No Refusals, Best Interests Assessments and Selection of Representative.
3a	AS3	Mental Capacity Assessment.
4	AS2, AS5 SA8	Mental Health and Eligibility Assessments.
5	SA4	Standard Authorisation Granted.
6	AS7	Standard Authorisation Not Granted.
7	SA9, SA10	Suspension of Standard Authorisation.
8	RP3	Termination of Appointment as Representative.
9	SA11	Standard Authorisation Ceased.
10	SA6, SA7	Review of Current Standard Authorisation.
11	New Form	IMCA Referral.
12	New Form	Notification of Death Whilst Deprived of Liberty.

The forms shaded above should be used by the Managing Authority and the remainder should be used by the Supervisory Body. Forms 1a and 10 are shared by both Managing Authority and Supervisory Body.

FORM 1: MANAGING AUTHORITY'S REQUEST FOR STANDARD AUTHORISATION AND MANAGING AUTHORITY'S URGENT AUTHORISATION

Summary

This form should be used where the Managing Authority is seeking a standard authorisation from the Supervisory Body. Authorisation will be required if the Managing Authority is caring for or treating a person who does not have capacity to consent to whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given that care (and treatment) and it is necessary to do so in such a way that means the person will be deprived of their liberty.

When the Supervisory Body receives this form they should instruct particular assessors to carry out various assessments to determine whether an authorisation should be granted. It is therefore important that the Managing Authority completes this form fully and includes as much relevant information as it can.

The second part of the form should be completed where the Managing Authority has made an urgent authorisation to deprive the relevant person of their liberty and is seeking a standard authorisation from the Supervisory Body. The urgent authorisation should be for no longer than 7 days unless the Supervisory Body has extended the authorisation by a further 7 days (Form 1a refers).

Page 1

Routine questions in relation to the person and the setting including contact details of the Managing Authority and Supervisory Body where the form should be sent and details of Care Co-ordinator/Care Manager.

A care coordinator is the person acting on behalf of the mental health service provider who has responsibility for appointing them to act as the care coordinator. The care coordinator works with the relevant patient and service providers to agree outcomes which the provision of services are designed to achieve, prepare a care and treatment plan for the individual, and oversee and keep under review the delivery of the services and outcomes recorded in those plans.

A care manager is usually the social worker responsible for an individual's package of care. Communication needs include the need for a signer, professional interpreter and/or other aids for example talking mats.

Relevant medical history refers to both physical and mental health and their impact on the relevant patient's capacity and/or need for particular care or treatment.

Page 2

The nature of the proposed deprivation of liberty

A description should be given of the basis upon which the care and/or treatment that the person is receiving on a day-to-day basis amounts to a deprivation of their liberty.

The ACID Test: (see page 4 for an explanation).

In addition, a copy of the Care Plan should be attached to this form, which should describe the restrictions already in, or proposed to be put in, place which are necessary to ensure the person receives care and treatment. If not in the care plan, details should be given of personal care, mobility, medication, support with behavioural issues, the choice of care offered to the person and any medical treatment they received.

A description should be given of why less restrictive options are not possible including the risk of harm to the person.

Information about interested persons and others to consult- including relationship to person being deprived of their liberty

The form provides a non exhaustive list of interested persons and others who assessors will wish to consult. The names and addresses of the persons should be added in this section.

Page 3

Is it necessary for an Independent Mental Capacity Advocate (IMCA) to be instructed?

Consideration must be given to whether an IMCA should be instructed based on the information provided by the Managing Authority. If so the Supervisory Body should make the referral.

Is there a valid and applicable advanced decision

Any advance decisions to refuse treatment that the person has made should be included. Advance decisions are made under the Mental Capacity Act 2005. Whether a person has an advance decision should be considered when the person is admitted to the care home or hospital.

Is the person subject to some element of the Mental Health Act 1983?

This should be completed if the Managing Authority is aware of any aspect of the Mental Health Act 1983 that applies to the person, for example, if subject to a Guardianship. If so details should be given.

Relevant person's wishes/feelings

This should include the relevant person's wishes, beliefs and values (present and past) so far as they can be ascertained, and whether they have/have not been met.

It will be important to note whether the person is objecting to care and treatment for their mental disorder, and if so, what are they objecting to. If the person is objecting to care and treatment for their mental disorder, only the Mental Health Act 1983 can be used to deprive that person of their liberty.

Signing the form

The form should be signed and dated by the person that has the authority to do so on behalf of the Managing Authority and should confirm that any interested persons have been advised of the request for a DoLS Authorisation.

The form should then be sent to the Supervisory Body

Page 4

Managing Authority's urgent authorisation

Note: This part of the form should only be completed 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 is being considered.

In the vast majority of cases it should be possible to make sure that a Standard Authorisation is requested ahead of the need for the deprivation of liberty to begin.

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

The tick boxes are sufficient as all relevant information should have been provided earlier in the form.

The Managing Authority should sign and date the urgent authorisation section and send the form to the Supervisory Body.

Important Data Collection

This information is required for monitoring purposes.

FORM 1A: REQUEST BY MANAGING AUTHORITY FOR AN EXTENSION TO THE URGENT AUTHORISATION

Summary

An extension to an urgent authorisation should only be granted if there are exceptional reasons why the request for a standard authorisation cannot be dealt with within the period of the original urgent authorisation. The Managing Authority may ask the Supervisory Body to extend the duration of the urgent authorisation for a maximum of a further seven days.

An urgent authorisation can only be extended once.

Page 1

See Guidance notes for Form 1.

Page 2

The Managing Authority should record the reasons for making the request and must notify the relevant person, in writing, that they have made the request.

It is for the Supervisory Body to determine what constitutes exceptional reasons. The DoLS Code of Practice states that “because of the seriousness of the issues involved, the Supervisory Body’s decision must be soundly based and defensible. For example, it would not usually be appropriate to use staffing shortages as a reason to extend an urgent authorisation.”

The DoLS Code of Practice gives examples of when an extension may be justified, including where:-

- it is not possible to contact a person whom the best interests assessor needed to contact, and
- the assessment could not be relied upon without their input, and
- the extension for the specified period would enable them to be able to be contacted.

Signing the form

The form should be signed and dated by the person that has the authority to do so on behalf of the Managing Authority. The form should then be sent to the Supervisory Body.

The form should be signed and dated by the person that has the authority to do on behalf of the Supervisory Body.

FORM 1b: REPORT OF A POTENTIAL DEPRIVATION OF LIBERTY BY A FAMILY MEMBER, FRIEND OR SUPPORTER

Summary

This form is a request to the Supervisory Body to decide whether there is an unauthorised deprivation of liberty and may be completed by any person who believes that the relevant person is being unlawfully detained. Any person who has concerns is advised to raise them directly with the Managing Authority. The Managing Authority may decide to make a request for authorisation or to take other steps to address these concerns. If these concerns are not addressed then that person has the right to ask the Supervisory Body to investigate the circumstances in which that person is being detained and confirm whether or not there is an unauthorised deprivation of liberty.

Page 1

See Guidance notes for Form 1.

Details should also be given about why the concerned person believes the relevant person's liberty is being deprived. The Supervisory Body will only instruct an assessor to make further enquiries if there appear to be grounds to suggest that there is an unauthorised deprivation of liberty. It is therefore important that the form contains as much detail as possible about why the person has concerns and it is helpful if this is to be supported by other relevant documentation. The author of the form may continue on more than one page if necessary.

Confirmation should be given that that the concerned person has requested that the Managing Authority change the care arrangements or made a request for a standard authorisation.

Page 2

Signing the form

The form should be signed by the person reporting a potential deprivation of liberty and should state their relationship to the relevant person.

FORM 2: MANAGING AUTHORITY'S REQUEST FOR A FURTHER STANDARD AUTHORISATION

Summary

This form should be used where the Managing Authority is seeking a further standard authorisation from the Supervisory Body.

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 should 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.

Page 1

See Guidance notes for Form 1.

The nature of the proposed deprivation of liberty

Details should be given of why the person's liberty is deprived such that the requirements of the acid test continue to be met. The current care plan, any other relevant details and confirmation that interested persons have been informed of the request for a further DoLS authorisation should also be added. Any changes in the care plan, medical information, person's behaviour or visitors since the current standard authorisation was given should be highlighted, and an explanation of why a further authorisation is necessary should be given.

Note: Regulation 13 (3) of the Assessment Regulations provides that if the information provided in the initial request for a standard authorisation (using Form 1 for example) is unchanged it does not have to be provided again in the request for a further authorisation. Therefore if the information is the same add "as set out in request made [date]" in the relevant box.

FORM 3: AGE, NO REFUSALS, BEST INTERESTS ASSESSMENTS AND SELECTION OF A REPRESENTATIVE

Summary

This form covers 3 separate assessments and the selection of a representative. Should the requirements of any assessment not be met the remaining assessments need not be completed unless they have been specifically commissioned by the Supervisory Body.

Page 1

See Guidance notes for Form 1.

Age Assessment

The date of birth, or estimated age if unknown, constitutes the age assessment. If there is any uncertainty with this section, additional information should be provided at the end of the form.

Page 2

Details of those who have, or have not been consulted

Details of those who have been consulted, and if relevant, the name of anyone it had not been possible to consult and why should be provided.

Applicable documents relating to the assessment such as current care plan, medical notes, daily record sheets and risk assessments should be identified.

Page 3

No Refusals Assessment

Please tick if you can confirm that there is not a valid Advance Decision, Lasting Power of Attorney or Deputy for Health and Welfare in place (1).

Please tick the appropriate box to identify whether the standard authorisation would/would not conflict with an advance decision to refuse medical treatment; or a decision by a Lasting Power of Attorney or Deputy for Health and Welfare (2 and 3)

Page 4

Best Interests Assessment

Summary

The Best Interest Assessor (BIA) must determine whether a deprivation of liberty is occurring, or is likely to occur. If this is the case, an assessment must be made as to whether the deprivation is in the best interests of the person, is necessary to prevent harm and is a proportionate response to the likelihood and seriousness of that harm (ScheduleA1 paragraph 16).

Matters taken into consideration and background information

The matters the BIA has taken into account should be confirmed, including the background and historical information relating to the current or potential deprivation of liberty. For a review, previous conditions should be looked at and comments included on previous conditions set.

Views of the relevant person

The views of the relevant person should include details of their past and present wishes, values, beliefs and matters they would consider if able to do so.

Views of others

The views of interested persons who have been consulted in carrying out the assessment in relation to best interests, in accordance with the MCA should be recorded here.

Page 5

Best Interests Assessment cntd.

Is the Person Deprived of Their Liberty?

The assessor should record their view as 'Yes' or 'No'. If no then the remainder of the form does not need to be completed

If yes, the assessor should provide evidence that conditions of the acid test have been met.

The **objective** element provides evidence of confinement in a particular restricted space over a not negligible period of time.

The **subjective** element should be evidenced by a lack of valid consent to be confined in the hospital or care home to receive care and/or treatment.

The placement was imputable to the state should include a statement of why it was, for example, where the person's placement has been commissioned by a Local Health Board or Local Authority.

For self-funders, the date should be stated when the local authority became aware that a deprivation of liberty had been occurring.

The deprivation is necessary in order to prevent harm to the person

The assessor should consider why the deprivation of liberty is necessary to prevent harm to the person. Details of the harm to the person could experience should be given, supported by dated examples where possible. Details of any actual harm, its severity, and likelihood of re occurrence should be given.

Page 6

Least restrictive options

Section 4 of the Mental Capacity Act 2005, the DoLS Code of Practice and all other relevant circumstances should be considered in determining whether any care or treatment should be provided in a way that is less restrictive of the person's rights and freedom of actions. Evidence of the options considered should be provided. In line with best practice, this should consider not just health related matters but also emotional, social and psychological wellbeing. An analysis of the benefits and risks of each option identified should be provided.

Outcome of Assessment

The assessor should then confirm the deprivation of liberty is a proportionate response given the likelihood that the person will otherwise suffer harm and the seriousness of that harm and the reasons for that conclusion.

Page 7

Best Interests Requirement is not met

This contains two sections, with one section to be ticked:

1. for the reasons given above it appears that the person is, or is likely to be deprived of their liberty but is not in their best interests and;
2. the deprivation of liberty under the Mental Capacity Act 2005 is not appropriate, and unless the deprivation of liberty is authorised under other statute, the person is, or is likely to be, subject to an unauthorised deprivation of liberty.

It should also recommend raising an adult safeguarding concern if an unauthorised deprivation of liberty is likely to be continuing. The assessor should discuss the options with the Managing Authority to immediately reduce restrictions to avoid the unauthorised deprivation.

Best Interests Requirement is met

The maximum period it is appropriate for the person to be deprived of their liberty, including reasons, should be given (not to exceed one year). Confirmation should be given of when the Standard Authorisation should come into force.

Page 8

Best Interest Assessor's Recommendations about Conditions

The BIA should make recommendations about conditions and any variation in conditions if the assessment is following a review.

Individual supervisory bodies may have guidance on the use of conditions. The BIA should identify whether they wish to be consulted or not if any of the recommended conditions are not imposed. Any other relevant information should be included on this page.

Selection of Representative

The person's capacity to select a representative should be identified. If not then someone else (a health and welfare LPA or deputyship appointment) may have the power to make the selection of a representative and their reasons should be given here.

If neither of these options is possible then the BIA should recommend a Responsible Person Representative (RPR) to the Supervisory Body. The BIA is charged with confirming that the person proposed as representative is eligible for the role, whoever has selected them.

In *AJ v A Local Authority* [2015] EWCOP 5, it was decided that "it is likely to be difficult for a close relative or friend who believes that it is in P's best interests to move into residential care, and has been actively involved in arranging such a move, into a placement that involves a deprivation of liberty, to fulfil the functions of RPR, which involve making a challenge to any authorisation of that deprivation. BIAs and local authorities should therefore scrutinise very carefully the selection and appointment of RPRs in circumstances which are likely to give rise to this potential conflict of interest."

The person acting as RPR must, in particular, ensure that the relevant person is supported to bring a speedy challenge to their authorisation before the Court of Protection if the person shows (whether expressly or by their actions) that they wish to do so, and whether or not the RPR thinks such a challenge is in their best interests. If you are unsure that the RPR would act in this way you should not select them for the role.

Signing the form

The form should be signed by the BIA.

FORM 3a: MENTAL CAPACITY ASSESSMENT

Summary

Assessment of the person's mental capacity to consent to whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care (and treatment). The assessment process should halt if the person is found to have that capacity.

This form should only be completed by a person who is also eligible to be a Best Interest Assessor (BIA) or a mental health assessor.

Page 1

See Guidance notes for Form 1.

Page 2

Details of those who have, or have not been consulted

Details of those who have been consulted, and if relevant, the name of anyone it had not been possible to consult and why should be provided.

Applicable documents relating to the assessment such as current care plan, medical notes, daily record sheets and risk assessments should be identified.

Page 3

Mental Capacity Assessment

A description should be given of the steps that have been taken to support the relevant person to participate in the decision making process.

The Assessment contains two stages 1) to identify the impairment of, or disturbance in the functioning of the mind or brain, and 2) the four elements of the functional test.

The assessor should clearly record why the person's inability to make the decision is because of the impairment or disturbance in the functioning of their mind or brain.

Page 4

Outcome of assessment

This section contains three options and only one box should be ticked.

Signing the form

The form should be signed by the person completing the assessment.

FORM 4: MENTAL HEALTH AND ELIGIBILITY ASSESSMENTS

The form covers 2 separate assessments, Mental Health and Eligibility. Should the requirements of any assessment not be met the remaining assessments need not be completed unless they have been specifically commissioned by the Supervisory Body.

Page 1

See Guidance notes for Form 1.

Page 2

Mental Health Assessment

The assessment of whether the relevant person meets the mental health requirement should be recorded. The relevant person should meet this requirement if they are suffering from a mental disorder. A mental disorder as defined, for the purpose of the MCA, as “any disorder or disability of the mind”. This section should only be completed by a section 12 approved doctor (under the Mental Health Act 1983) or a registered medical practitioner who the Supervisory Body considered had relevant experience in the diagnosis or treatment of mental disorder. They should determine whether a patient has a disorder or disability of the mind in accordance with good clinical practice and accepted standards of what constitutes such a disorder or disability.

Having identified the mental disorder, providing a rationale and details of the person’s symptoms, diagnosis and behaviour, the assessor should detail whether, and if so the extent to which, the person’s mental health and wellbeing is likely to be affected by being deprived of their liberty. This information should be relayed to the Best Interest Assessor (BIA) to inform their assessment.

Page 3

Eligibility Assessment

Summary

This form should record the eligibility assessment that is the interface between the safeguards and the Mental Health Act 1983. In some cases a Managing Authority may have sought a standard authorisation in relation to a relevant person who is also subject to requirements of the Mental Health Act 1983. Only in limited circumstances should a relevant person who is subject to the Mental Health Act 1983 also be eligible for the purposes of the safeguards.

Only those eligible to carry out a mental health assessment or a best interests assessment are able to carry out the eligibility assessment (as set out in the Mental Capacity (Deprivation of Liberty: Assessment, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009. They should also be familiar with Schedule 1A of the Act and with paragraphs 4.41 to 4.51 of the Code of Practice.

Detained under the Mental Health Act 1983

If the person is currently detained in hospital under one of the stated sections of the Mental Health Act 1983 (MHA), they are not eligible for either a DoLS authorisation or a Court of Protection authorisation. Their Article 5 rights are protected by the MHA and MHA Part 4 governs their psychiatric treatment. Their physical treatment is governed by the common law (if they have capacity) or the MCA (if they do not). In the unusual situation where physical treatment itself amounts to a deprivation of liberty (e.g. enforced caesarean section, forced feeding), an application to the High Court to invoke the inherent jurisdiction will be necessary to authorise it.

Persons subject to the Mental Health Act 1983 in the community

A person can be subject to both a DoLS authorisation and particular provisions of the MHA provided there is no conflict between the MHA requirements and the proposed plan. For example, where someone lacks the relevant capacity, and is to be accommodated in a care home on section 17 leave, conditional discharge, or Community Treatment Order (CTO), any deprivation of liberty will need to be authorised separately under DoLS. If they do not satisfy the six assessments, legal advice may be required.

If the person is subject to section 17 leave, conditional discharge, or CTO, and needs to be deprived of liberty in hospital to receive care and treatment consisting in whole or in part of treatment for mental disorder, they will be ineligible for DoLS. So the MHA recall process will be required instead. If, however, the hospital treatment is solely for physical ill health, the person is eligible for DoLS.

Guardianship

A person can be subject to both a DoLS authorisation and guardianship provided there is no conflict between the MHA requirements and the proposed plan. Note that the use of guardianship itself does not amount to a deprivation of liberty; but the intensity of the accompanying care plan has the potential to do so. Where someone subject to guardianship requires hospital treatment in circumstances amounting to a deprivation of liberty, they are eligible for DoLS if the primary purpose is to give treatment for physical ill health (even if the person objects). If the primary purpose is to give treatment for mental disorder, they object (or would object if able) to being there or to some or all of the mental health treatment, and there is no welfare LPA or deputy consenting on their behalf, they are not eligible for DoLS. Consideration would therefore have to be given to providing the necessary safeguards under the MHA.

Hospital Cases only

This relates solely to hospitals, not care homes. Factors to be considered include:

A person lacking the relevant capacity to consent or refuse hospital admission can be subject to DoLS if:

- (a) They are detained for physical treatment (whether they object or not); or
- (b) They are detained for their mental disorder and could not be detained under MHA s2 or 3 (whether they object or not); or

- (c) They are detained for their mental disorder and “could” be detained under MHA s2 or 3 but are non-objecting (or, if they do object, a welfare LPA or deputy consents to what they object to).

Therefore, a person lacking capacity to consent or refuse hospital admission cannot be subject to DoLS if they are detained for treatment for their mental disorder, could be detained under MHA s2 or 3, and are ‘objecting’.

Medical treatment for mental disorder

- ‘Medical treatment’ which is for the purpose of alleviating, or preventing a worsening of, a mental disorder or one or more of its symptoms or manifestations,
- ‘Medical treatment’ includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care,
- ‘Symptoms’ and ‘manifestations’ of the mental disorder may be evident in the person’s thoughts, emotions, communication, behaviour and actions and may include the way a disorder is experienced by the individual concerned. Not every thought or emotion, nor every aspect of the behaviour of a patient suffering from mental disorder, will be a manifestation of that disorder.

‘Objects’

- A person could ‘object’ if they are objecting (or would object if able to) to either being accommodated in hospital for psychiatric treatment or to some or all of their medical treatment for mental disorder,
- In determining whether they object (or would object if able to), regard must be had to all the circumstances so far as they are reasonably ascertainable including the person’s behaviour and their wishes, feelings, views, beliefs and values at present and from the past (if it is still appropriate to have regard to them),
- Decision-makers should err on the side of caution and, where in doubt, take the position that a patient is objecting.

Least restrictive option

- A description should be given of the least restrictive way of providing the proposed care and treatment.

Confirmation of request for Mental Health Act 1983 Assessment

If use of the safeguards is not the most appropriate way of ensuring person receives the care and treatment required consideration should be given if appropriate to a request for a mental health act assessment. Confirmation of that request should be detailed.

Signing the form

The form should be signed by the person completing the assessment.

FORM 5: STANDARD AUTHORISATION GRANTED

Summary

The formal authorisation given by the Supervisory Body to authorise that the deprivation of liberty is in the person's best interests and including how long the authorisation will last.

Page 1

See Guidance notes for Form 1.

Page 2

The date and time the authorisation commenced should be stated along with the date it should cease to be in force. There should be a clear rationale given for the time period. If the Supervisory Body reduced the time recommended by the Best Interest Assessor (BIA) they should offer an explanation as to why, so that those receiving the assessments and paperwork are able to understand why the time period granted is different than that recommended by the BIA.

Details should be given of the care or treatment the Standard Authorisation enables the relevant person to be given.

Page 3

Conditions to which the standard authorisation is subject

The Supervisory Body should detail any conditions which can include those recommended by the BIA and any additional conditions to be noted.

Removing conditions suggested by the BIA should usually be discussed with the BIA. Conditions should relate to the deprivation of liberty and should not relate to care planning issues and it can be useful to ask is:

“If the person were not deprived of liberty would they still need this?”

If the answer is “No”, it is a legitimate condition; if the answer is “Yes” it is likely to relate to basic care planning and not be legitimate.

Page 4

Supervisory Body's Scrutiny of Assessments

The Supervisory Body should confirm it has received assessments and seen evidence that each requirement has been met and should note its scrutiny of the assessments. This scrutiny should contain reference to:

- why the authoriser agrees that a deprivation of liberty is occurring – what evidence has convinced them of this,
- what harm the person would otherwise encounter,
- why deprivation of liberty is proportionate to that harm,

- why there no less restrictive options available.

The Supervisory Body should also note if it is relying on an equivalent assessment which has been carried out within the last 12 months and provides the evidence required.

Appointment of Representative

The individual who proposed the person to be appointed as representative should be identified. This will either be the person being deprived of their liberty, or a person acting under a welfare lasting power of attorney, or the BIA. These details should have been given on Form 3.

The Supervisory Body should also confirm the representative meets the eligibility requirements. The BIA should confirm the representative's eligibility no matter who has selected the representative.

If the BIA was unable to identify anyone to carry out this role then a person should be paid to do it (known as a Paid Person's Representative (PPR)). At this stage, if a PPR is to be appointed the Supervisory Body may not know the name of the person who will act in this role but will know the name of the agency to which they will refer and so these details should be included.

Those signing Authorisations on behalf of the Supervisory Body should be alert for any representatives who have been selected but do not appear to the "Authoriser" to be eligible. In this case the BIA must be asked to provide further scrutiny.

Page 5

Duplicate for signature

The page repeats the earlier information and allows for a signature. Once the RPR or PPR receive the authorisation paper work they should remove, sign and return the back page to the Supervisory Body.

FORM 6: STANDARD AUTHORISATION NOT GRANTED

Summary

This form should be issued if, after receiving some or all assessments, it is clear that the requirements have not been met. This form should also be used when some, all or no assessments have been completed but the person dies or is discharged.

A request for a standard authorisation should be classified as “withdrawn” only in rare situations. For example:

- where an application had been submitted in error,
- where an application ceased due to an administrative matter rather than a substantive issue,
- where an urgent authorisation had just be made (before any assessments have been conducted) and the person had died or been discharged.

Page 1

See Guidance notes for Form 1.

Page 2

The Supervisory Body’s decision

The Supervisory Body should state why it is prohibited from giving a standard authorisation in relation to the named person and detail which requirements were not met and that the assessments did not take place before a person was discharged or may have died.

Evidence of Supervisory Body scrutiny

The Supervisory Body should confirm it has scrutinised the assessments (if they were carried out) and explain why they concur with the findings of the assessors. In some cases although the person may not be deprived of liberty there could be actions that could raise adult safeguarding concerns. If the Best Interest Assessor (BIA) had not already done so then the Supervisory Body should consider its actions in relation to this.

Appears to be an unauthorised deprivation of liberty

If it appears that a person (following a best interest assessment report) is or is likely to be subject to an unauthorised DoL it should state it. In addition, the authoriser should consider whether a Safeguarding Adult Referral should be made.

FORM 7: SUSPENSION OF STANDARD AUTHORISATION

Summary

Regulations allow for an authorisation which is currently in force to be suspended when the person is no longer eligible for DoLS because of a conflict with the Mental Health Act 1983 (MHA).

Page 1

See Guidance notes for Form 1.

Page 2

To give notice that the authorisation is suspended.

The Managing Authority should give the reason why the person is no longer meets the safeguards eligibility requirements, and that the person is accommodated elsewhere and the form should be sent to the Supervisory Body.

If after 28 days the eligibility requirements are met again and the person returns to the care home or hospital, the Managing Authority should inform the Supervisory Body so the suspension can be lifted and the authorisation is once again in force.

If the person has not returned within this time period, the authorisation should cease to be in force at the end of the 28 day period.

FORM 8: TERMINATION OF APPOINTMENT AS REPRESENTATIVE

Summary

In some circumstances it could be necessary to terminate the role of the person who is acting as representative. The grounds for terminating an appointment are set out on the form and the Supervisory Body should delete as appropriate. The date on which the appointment is to come to end should be inserted. The representative must be notified of this before it happens and given the opportunity to comment. They must not be told retrospectively.

The role of representative is a key role in the safeguards. However in some specific circumstances this appointment should be terminated, such as:

- If the authorisation ends and a further authorisation is not requested or granted,
- the person who is being deprived of liberty had objected to the person appointed as representative and they have capacity to do so and wish someone else to take the role,
- a donee or deputy objects, and this is within their role and they identify someone else to be the representative,
- the Supervisory Body becomes aware that the representative no longer wishes to continue with the role or that they are no longer eligible to,
- the Supervisory Body becomes aware that the representative is not representing the person; they are not keeping in touch, not supporting them effectively or not acting in their best interests,
- the representative has died.

In situations where there is a question over whether the representative has kept in touch or acting is not in the person's best interests, the Supervisory Body should seek clarification from the representative before terminating their appointment.

Page 1

See Guidance notes for Form 1.

Page 2 and 3:

The Supervisory Body should indicate the reason for the termination.

The Supervisory Body should also give reasons in full if the representative is not maintaining contact; no longer eligible; or no longer acting in the person's best interests.

The representative should be able to respond to the reasons given and add clarity by a date set on the form. If this is not forthcoming then the appointment should terminate.

FORM 9: STANDARD AUTHORISATION CEASED

Summary

This form should be used to confirm that an authorisation had ceased to be in force. Any DoLS authorisation should be either reviewed to end it, or be renewed if the person still needs to be deprived of their liberty.

Either the person should continue to require the measures in question which amount to a deprivation of liberty and a further request will be made, or something has changed about their situation or care needs and they may no longer need such measures to be in place.

Page 1

See Guidance notes for Form 1.

Page 2

The form covers the variety of circumstances whereby the Supervisory Body could cease an existing DoLS authorisation.

- the Authorisation has expired - though this should not occur, the Supervisory Body could be told after the event that a person is longer in a care home or hospital and the DoLS authorisation is found to have expired,
- the authorisation has been reviewed and the person no longer meets the requirements for being deprived of their liberty - if, following a review, the person no longer meets the requirements, the authorisation should cease from that date,
- the person has moved and a new standard authorisation has been granted - if a person moves from a care home or hospital to another registered setting and the new setting applies for a DoLS authorisation, this application should bring an existing authorisation to an end. There is, in this case, no need for the first Managing Authority to do anything,
- the person has died - once notified of the death of a person subject to an authorisation; this form should be used to terminate the authorisation. The Supervisory Body should be notified of this, and the Coroner and the person's GP should also be informed using Form 12,
- the person ceased to meet the eligibility requirement at least 28 days ago- this should link with Form 7 - *Suspension of an Authorisation* - and if this form has been completed to suspend an authorisation but if the person has not returned to the relevant care home or hospital within 28 days the authorisation should cease to be in force and the Supervisory Body will confirm this,
- the Court of Protection has made an Order that the standard authorisation is invalid- if the Court of Protection is involved, due to the issue of deprivation of liberty or some other welfare issue, the Court could declare that an authorisation is invalid. In this case the Supervisory Body should terminate the authorisation from the date stated,
- the authorisation ceased to be in force for some other reason-this section should be used if any other scenarios arise.

FORM 10: REVIEW OF CURRENT STANDARD AUTHORISATION

Summary

This form should be used to request the Supervisory Body to carry out a review of the standard authorisation. It could be used where the Managing Authority is required to ask the Supervisory Body to review the authorisation or where the relevant person or their representative is exercising their right to ask the Supervisory Body to carry out a review.

Page 1 (to be completed by the Managing Authority)

This should provide details of the person being deprived of their liberty and also of the person or organisation requesting the review. The following can request a review:

- the relevant person,
- the relevant person's representative,
- the person's Independent Mental Capacity Advocate (IMCA),
- the Managing Authority of the relevant hospital or care home.

Sometimes a review request could 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 should be transferred to the form.

The issue of grounds for review should be stated at the bottom of page 1 and include:

The person no longer meets the age, mental health, mental capacity, best interests or no refusals requirements, or:

The person no longer meets the eligibility requirement because he now objects to receiving treatment for his mental health in hospital and he meets the criteria for detention under a s.2 or 3 of the Mental Health Act 1983 or:

The reason why the person meets a qualifying requirement is not the reason stated in the authorisation, or:

There has been a change in the person's case and, because of that change, it would be appropriate to vary the conditions of the authorisation. (This ground only applies to the best interests requirement).

Page 2

Requests to review, to cease or vary the conditions of a deprivation of liberty

A DoLS authorisation should not simply expire; it should be reviewed to bring it to an end. The exception to this could be if a new setting has requested a new authorisation as described on page 28.

Very often in hospitals and care homes people are discharged without any action being taken in relation to the authorisation. The Managing Authority should 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 believed that the person can be cared for elsewhere. This should generate a best interest decision and the Managing Authority should 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 should be stated. The new address should be included to determine whether the Supervisory Body needs to make contact in relation to a subsequent authorisation. This should be accompanied by the best interest decision that has been made in relation to this decision.

The form should state for review purposes why it is no longer in the person's best interests to remain in the care home or hospital. This should 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 reason that the Supervisory Body does not consider there are grounds for review should be recorded. The authorisation will therefore stay in place and the dates should be entered. It is important to note that any review of an existing DoLS authorisation should be considered within the given time period.

When a request for a review is received and the authorisation is almost at an end it is usually more appropriate to advise them to request a further authorisation using Form 2, when all requirements should be assessed again.

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

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

Outcome of the Review

There are three possible outcomes following the review:

1. At least one of the requirements was not met and therefore the standard authorisation should cease and the date of that should be entered.
2. 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 changed and these should be described in summary in the table above but should also be supported by a full assessment.
3. All the review assessments carried out concluded that the person continues to meet the requirements to which they relate. Therefore the standard authorisation should continue to be in force until the date the authorisation was originally given. This outcome should also be supplemented by a change in conditions.

Review of Conditions

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 should 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 should obtain a new assessment.

Once it is decided that it is only the conditions that are being reviewed the Supervisory Body has two options:

1. there has been a change in the person's care but this does not require a change in conditions; or
2. there has been a change in the person's care as a result of which the conditions need to be varied and need to be noted on this page.

FORM 11: INDEPENDENT MENTAL CAPACITY ADVOCATE REFERRAL

Page 1:

See Guidance notes for Form 1.

Page 2

Type of independent mental capacity advocate (IMCA) referral.

There are three types of IMCA referrals.

Type 1 – 39A - (commonly referred to as an assessment or authorisation IMCA)

There are two possible appointments under this heading:

1. When an urgent authorisation has been given, or a request for a standard authorisation has been made, and the Managing Authority is satisfied that there is nobody whom it would be appropriate to consult in determining what would be in the person's best interests (excluding people engaged in providing care or treatment for the person in a professional capacity or for remuneration), then an IMCA should be appointed.
2. An assessor has been appointed to determine whether or not there is an unauthorised deprivation of liberty, and the Managing Authority is satisfied that there is nobody whom it would be appropriate to consult in determining what would be in the person's best interests (excluding people engaged in providing care or treatment for the person in a professional capacity or for remuneration – that is paid staff).

Type 2 - 39C - (commonly referred to as a cover IMCA)

The person who is deprived of their liberty is temporarily without a relevant person's representative so an IMCA is needed to provide cover.

Type 3 - 39D - (commonly referred to as a demand IMCA)

There are four possible uses of on IMCA under this heading:

- the person who is deprived of their liberty has an unpaid representative who has requested the support of an advocate,
- the relevant person should benefit from the support of an advocate,
- the relevant person's representative should benefit from the support of an advocate,
- without the help of an IMCA, the person/RPR would be:
 - unable or unlikely to apply to Court or request a review, or
 - they have already failed to do so when it would have been reasonable to.

If the referral is for a 39C or 39D IMCA, the duration that the IMCA should be required should be stated here. Any documentation provided should also be noted here.

FORM 12: NOTIFICATION OF DEATH WHILST DEPRIVED OF LIBERTY

This is a form for Managing Authorities who should notify their local Coroner of a death when the person is subject to a DoLS authorisation. Further information can be found at:

<http://www.judiciary.gov.uk/wp-content/uploads/2013/10/guidance-no16-dols.pdf>

The form should be sent to the local Coroner and a copy sent to the Supervisory Body who has issued the DoLS Authorisation, any independent mental capacity advocate (IMCA) instructed for the person, every person named by the Best Interest Assessor (BIA) in their report as an interested person, and the person's GP. This will result in the authorisation being ceased.