### Document Control Summary

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<td>Dawn Crowther, Mental Health Legislation Manager</td>
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<td>Standard Operating Procedures (SOPs) Admission to hospital Care Quality Commission Notifications Detention under the MHA or DoLS Independent Mental Capacity Advocates Scheme of Delegation</td>
</tr>
</tbody>
</table>
Contents

1. Introduction ........................................................................................................................................... 3
2. Purpose .................................................................................................................................................. 3
3. Scope ................................................................................................................................................... 3
4. Key definitions ....................................................................................................................................... 5
5. Supervisory Body Contact Details ...................................................................................................... 6
6. Application of DoLS within Trust inpatient areas .............................................................................. 6
7. Urgent Authorisation ............................................................................................................................ 7
8. Standard Authorisation .......................................................................................................................... 9
9. Request for a further Standard Authorisation .................................................................................... 10
10. Review ................................................................................................................................................ 10
11. Transfer of patients .............................................................................................................................. 11
12. Care Quality Commission Notification ............................................................................................ 12
13. Relevant person’s representative ........................................................................................................ 12
15. Treatment ........................................................................................................................................... 14
16. Process for monitoring compliance and effectiveness ......................................................................... 14
17. References ......................................................................................................................................... 14

Change Control – Amendment History

<table>
<thead>
<tr>
<th>Version</th>
<th>Dates</th>
<th>Amendments</th>
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<tbody>
<tr>
<td>V1.1</td>
<td>February 2016</td>
<td>Amended paras 7.3 and 11.4 to reflect the change from use of MCA2 form to Mental Capacity Assessment Form and Best Interest Decisions Making Form</td>
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1. Introduction

1.1 The Deprivation of Liberty Safeguards (DoLS) were introduced into the Mental Capacity Act 2005 (MCA) through the Mental Health Act 2007. These safeguards provide legal protection for vulnerable people who lack capacity to consent to care or treatment which amounts to a deprivation of their liberty and this is not provided under the conditions of the Mental Health Act 1983 (MHA).

1.2 The safeguards apply to individuals of 18 years and over held in hospitals and registered care homes and therefore must be considered for any patient admitted to Trust inpatient facilities.

1.3 This procedure supersedes those detailed on the cover page to this document and must be read in conjunction with the statutory references at 19 below and the Trust Policies and Standing Operating Procedures on the Document Control Summary on the front pages of this document. Specifically, the SOP ‘Detention under the MHA or DoLS’ provides guidance on the circumstances in which the use of DoLS may be appropriate.

2. Purpose

2.1 The purpose of this document is to provide guidance to staff on the processes of making urgent and applying for standard DoLS authorisations, and complying with the required administrative processes for patients subject to DoLS authorisations.

3. Scope

3.1 The MCA policy should be referred to for the wider Trust roles in respect of the legislation.

3.2 This standard operating procedure relates to all staff involved in providing care and treatment to any person being considered for and / or admitted to Trust services in all inpatient settings. It also applies to all staff involved in providing care and treatment in the community where care is being considered that may result in deprivation of liberty for an individual. In addition it informs staff from other agencies involved in the care and treatment of these patients.

3.3 All staff caring for patients should be familiar with the requirements of the MCA, MHA and related documents, and with procedures detailed in the Trust's SOPs. They must pay due regard to the DoLS, MCA and MHA Codes of Practice, apply the Codes’ Guiding Principles when carrying out their work, and ensure they keep up to date with MCA and MHA practice commensurate with their role.
3.4 Specifically this document relates to the following groups who undertake direct key roles in the implementation and delivery of this procedure:

3.4.1 **Team Leaders / Departmental Heads / Ward and Unit Managers**

are responsible for ensuring all staff are conversant with the DoLS, MCA, and MHA Codes of Practice, this procedure and related policies and SOPs. They must be aware of and ensure implementation of the processes and actions that are required to be taken in relation to patients in their service area. They must ensure that all employees in posts in the Trust clinical services are aware of their responsibilities in relation to the Acts and attend appropriate training commensurate with their role.

3.4.2 **Medical Staff / Section 12(2) Approved Doctors / Approved Clinicians**

hold a key role in the processes and actions that are required to be taken in relation to detention and treatment of patients. They must be aware of this procedure and ensure implementation of the processes and actions that are required to be taken in relation to patients for whom they are responsible.

3.4.3 **Nurses/Professionals in Charge of Wards/Units**

hold a key role in the processes and actions that are required to be taken in relation to the detention and treatment of patients subject to DoLS. They must be aware of this procedure and ensure implementation of the processes and actions that are required to be taken in relation to patients for whom they are responsible. In particular they must ensure that an application is made to the relevant supervisory body when an authorisation is required.

3.4.4 **Registered healthcare professionals**

are accountable for their own practice and must be aware of legal and professional responsibilities relating to their competence, observe this procedure, legislation and guidance as detailed above, and work within the Code of Practice of their professional body.

3.4.5 **Trust employees working in roles to provide healthcare in direct clinical contact with patients**

are responsible for carrying out procedures in line with the standards detailed in this and other related Trust’s SOPs and maintaining their individual competence in the practice of the Acts and attending training as required by their roles.

3.4.6 **The Mental Health Legislation Manager**

is responsible for the development, monitoring and review of this procedure and practice standards, disseminating new guidance as it arises and giving advice to all staff on MCA and MHA issues. This manager is also responsible for highlighting practice issues arising within the Trust, provision of appropriate administration
support in relation to the Acts, education to support the policy standards, advising the Mental Health Legislation Committee that monitors the use of the Acts and reports to the Quality Governance Committee of any issues relating to the implementation of the MCA and MHA Policies and SOPs.

3.4.7 Mental Health Legislation Department staff are responsible for carrying out key roles in the administration and monitoring of DoLS, ensuring compliance with this SOP within their area of responsibility.

4. Key definitions

4.1 The following definitions are specifically referred to in this SOP.

4.1.1 Managing Authority
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. For the purposes of this SoP this is the South Staffordshire and Shropshire Healthcare NHS Foundation Trust.

4.1.2 Relevant person
A person who is, or who may become, deprived of their liberty (patient). The safeguards apply to individuals aged 18 years and over admitted to Trust inpatient units, who have a mental disorder, lack capacity to consent to the arrangements made for their care and treatment and this care amounts to a deprivation of their liberty. Paragraphs 13.55 and 13.56 of the MHA Code of Practice contain guidance on patients who are ineligible for a DoLS authorisation – in particular, those to whom the MHA applies.

4.1.3 Relevant person’s representative
A person, independent of the hospital or care home, appointed to maintain contact with the person and to represent and support them in all matters relating to the operation of the DoLS.

4.1.4 Supervisory body
The local authority that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising the deprivation of liberty. This will be the local authority where the person is ordinarily resident. For the purposes of this SoP as applicable to this Trust, this is most commonly Shropshire Council, Staffordshire Council, Telford and Wrekin Council, or Powys County Council. If the person is of no fixed abode, then the supervisory body is the local authority for the area in which the hospital is situated.
5. **Standard forms and guidance on completion**


5.2 Specific guidance on the completion of these forms is also available on the ADASS website [http://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/](http://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/)

5.3 Standard forms and guidance for Wales as detailed throughout this SOP are available at [Welsh Government | Deprivation of Liberty Safeguards - revised standard forms](http://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/)

6. **Supervisory Body Contact Details**

6.1 **Powys**
   - Telephone: 01597 827133
   - Fax: 01743 255840
   - Email: dols.admin@powys.gov.uk

6.2 **Shropshire**
   - Telephone: 01743 255850
   - Fax: 01743 255840
   - Email: dols@shropshire.gov.uk

6.3 **Staffordshire**
   - Telephone: 01889 256088
   - Fax: 01889 256034
   - Email: deprivationofliberty@staffordshire.gov.uk

6.4 **Telford and Wrekin**
   - Telephone: 01952 580491
   - Fax: 01952 580303
   - Email: telfordandwrekindols@nhs.net

7. **Application of DoLS within Trust inpatient areas**

7.1 Where use of DoLS is identified as being necessary and appropriate in accordance with the Trust SOP ‘Detention under the MHA or DoLS’, the nurse or professional in charge of the ward/unit is responsible for ensuring the prescribed documentation is completed and submitted to the relevant supervisory body, information is provided to the relevant person (patient) and the Mental Health Legislation Department is notified of the application as below.

7.2 Where an admission is proposed and the need for deprivation is planned, the Consultant in Charge of the person’s care, together with the community team must ensure that the request for standard authorisation is made, preferably in advance of the admission where time allows.
7.3 Where DoLS is indicated as being required, this should follow a full assessment of the patient’s capacity being recorded on the Trust’s Mental Capacity Assessment form within the MCA folder in the RiO electronic patient record together with, if required, a Best Interests Decision Making form.

8. Urgent Authorisation

8.1 Where it is necessary to deprive someone of their liberty in their best interests before standard authorisation can be obtained, the nurse/professional in charge of the ward/unit can give urgent authorisation whilst standard authorisation is sought.

8.2 An urgent authorisation should not be used where there is no expectation that a standard authorisation will be needed.

8.3 Where consideration is being given to depriving a person of their liberty in an emergency, carers and relatives of the person should be consulted and their views taken into account and recorded in the patient’s health record, before a decision to give an urgent authorisation is taken.

8.4 The nurse/professional in charge of the ward/unit must make the decision based on what is in the relevant person’s best interests and be able to show that they have made a reasonable decision based on their professional judgement and taking into account all relevant factors.

8.5 Where urgent authorisation is to be granted, the nurse/professional in charge of the ward/unit must decide the period for which the authorisation is given but this cannot exceed seven days.

8.6 The authorisation must be given using form 1 (see link at 5.1 above) for English residents and form 1 (see link at 5.3 above) for Welsh residents, and must be submitted immediately on completion via fax to the relevant Supervisory Body office (see 6 above).

8.7 The Mental Health Legislation Department (MHLD) on the Redwoods site must be informed of the application as soon as it has been submitted (or on the next ‘working day’). For wards on the Redwoods site, the form must be forwarded to the MHLD who will scan and upload onto the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. For other sites, the MHLD must be notified by telephone on 01743 210013 and the initial DoLS form 1 scanned and uploaded on the ward. The MHLD will then monitor and action any further submissions required.
8.8 The MHLD will enter the Urgent Authorisation in the ‘legal status’ field in the patient’s RiO record – this will ‘pull through’ to the front demographic sheet for the patient.

8.9 The MHLD will arrange for a copy of the urgent authorisation and information regarding the authorisation to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

8.10 The nurse/professional in charge of the ward/unit the relevant person is on must take all practical and possible steps to ensure that they understand the effects of the authorisation and their right to challenge this through the Court of Protection.

8.11 An urgent authorisation will cease automatically at the end of seven days. The authorisation will also terminate if the supervisory body gives notice that a standard authorisation will not be given.

8.12 Where authorisation ceases, the MHLD will write to the relevant person, family or carer, and any IMCA involved, notifying them of the outcome.

8.13 Where the request for standard authorisation cannot be dealt with within the period of the urgent authorisation, the MHLD must request an extension to the duration of the urgent authorisation for a maximum further period of seven days by completing page 7 of form 1 (see link at 5.1 above) for English residents and page 4 of form 1a (see link at 5.3 above) for Welsh residents, and submitting this to the relevant supervisory body by fax. The MHLD will arrange for a copy of the extension request to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

8.14 Where the supervisory body grants the extension, (page 7 of form 1 for England, form 1a for Wales) the MHLD will scan and upload the authorisation into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. The MHLD will arrange for a copy of the extension authorisation to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

8.15 Trust staff on the ward/unit the relevant person is admitted to must take all practical and possible steps to ensure that they understand the effects of the extension and their right to challenge the authorisation through the Court of Protection.

8.16 Where the supervisory body decline to extend the urgent authorisation, reasons will be provided. These will be scanned and uploaded into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. The MHLD will arrange for information about the reasons to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.
9. Standard Authorisation

9.1 The application for standard authorisation should be submitted immediately on completion via fax to the relevant Supervisory Body office (see 6 above) using form 1 (see link at 5.1 above) for English residents and form 1 (see link at 5.3 above) for Welsh residents.

9.2 The nurse/professional in charge of the ward (Consultant if patient is in the community) should tell the relevant person’s relatives and/or carers, and any Independent Mental Capacity Advocate already involved in the person’s case that it has applied for an authorisation of deprivation, unless it is impracticable, impossible or undesirable in terms of the interests of the person’s health or safety to do so. Anyone caring for the person or interested in their welfare must be given the opportunity to give their views.

9.3 The MHLD on the Redwoods site must be informed of the application as soon as it has been submitted (or on the next ‘working day’). For wards on the Redwoods site, the form must be forwarded to the MHLD who will scan and upload onto the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. For other sites, the MHLD must be notified by telephone on 01743 210013 and the initial DoLS form 1 scanned and uploaded on the ward. The MHLD will then monitor and action any further submissions required.

9.4 The MHLD will arrange for information regarding the application to be sent to the relevant person, family or carer identified in the application, and to any IMCA involved.

9.5 The nurse/professional in charge of the ward/unit the relevant person is resident on must take all practical and possible steps to ensure that they understand the effects of the application.

9.6 Where the supervisory body grants the authorisation, the MHLD will scan and upload this into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. The supervisory body will arrange for written information to be sent to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

9.7 The MHLD will regrade the patient’s legal status in the patient’s RiO record to ‘Standard Authorisation’ – this will ‘pull through’ to the front demographic sheet for the patient.

9.8 Trust staff on the ward/unit the relevant person is admitted to must take all practical and possible steps to ensure that they understand the effects of the authorisation and their right to challenge this in the Court of Protection, right to request a review, and to have an IMCA instructed.
9.9 The MHLD will monitor the time period the authorisation has been granted for and ensure that any conditions attached to the authorisation are brought to the attention of the nurse/professional in charge of the ward.

9.10 Where the supervisory body decline to approve the standard application, reasons will be provided. These will be scanned and uploaded into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’. The supervisory body will arrange for information about the reasons to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

9.11 The Trust is responsible for ensuring that no deprivation of liberty takes place without authorisation being applied for and granted. Where an application is refused, the consultant in charge of the person’s care, together with the care co-ordinator and ward staff must ensure that a multi-disciplinary review of the relevant person’s actual or proposed care arrangements takes place immediately to ensure that a deprivation is not allowed to continue without necessary legal authority, or to consider whether a MHA assessment may be required.

10. Request for a further Standard Authorisation

10.1 The MHLD will monitor the time period all standard authorisations have been granted for and will contact staff on the ward the relevant person is resident on 2 weeks prior to the authorised expiry date to review whether the DoLS is still necessary.

10.2 Where ward staff confirm this is required, the MHLD will submit a ‘Further Request for Authorisation’ via fax to the relevant supervisory body by completing form 2 (see link at 5.1 above) for English residents and form 2 (see link at 5.3 above) for Welsh residents.

10.3 The MHLD will scan and upload the request into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’.

10.4 The MHLD will arrange for a copy of the request to be given to the relevant person, family or carer identified in the authorisation, and to any IMCA involved.

11. Review

11.1 The consultant in charge of the patient’s care, in conjunction with the nurse/professional in charge of the ward/unit, has a duty to monitor on an ongoing basis the case of any person deprived of their liberty on their ward/unit.
11.2 The care plan should set out clear roles and responsibilities and confirm under what circumstances review is necessary.

11.3 The statutory grounds for a review are:

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

11.3.2 The person no longer meets the eligibility requirement because they now object to receiving mental health treatment in hospital and they meet the criteria for detention under the Mental Health Act 1983;

11.3.3 There has been a change in the situation and it would be appropriate to delete, change or add a condition;

11.4 When changes in the regime to be used are indicated due to a change in the patients' capacity to consent to the admission and/or treatment, a record of the reasons for the change must be recorded on the Trust’s Mental Capacity Assessment form within the MCA folder in the RiO electronic patient record together with, if required, a Best Interests Decision Making form.

11.5 The nurse/professional is responsible for notifying the MHLD at the Redwoods wherever a review is required, including where a person is to be discharged.

11.6 The MHLD will complete form 10 (see link at 5.1 above) for English residents and form 10 (see link at 5.3 above) for Welsh residents and submit this via fax to the relevant supervisory body.

11.7 The MHLD will scan and upload this into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’, and will regrade the patient’s legal status in the patient’s RiO record to ‘Standard Authorisation’ as necessary – this will ‘pull through’ to the front demographic sheet for the patient.

12. Transfer of patients

12.1 If a person subject to a standard authorisation is to be moved to a different ward/unit, hospital or care home to the one defined in the authorisation, and the new placement will again involve a deprivation of liberty, the managing authority of the new placement must request a new authorisation. The application should take place prior to the move taking place.

12.2 Where the move has to take place before this can be arranged, the new placement must give an urgent authorisation whilst a new standard one is sought.
13. Care Quality Commission Notification

13.1 The Trust has a statutory duty to inform the Care Quality Commission (CQC) of the outcome of all DoLS applications made.

13.2 The MHLD, on receipt of the outcome of an application, will complete the ‘Application to deprive a person of their liberty and its outcome’ standard form and submit this via secure email to HSCA_notifications@cqc.org.uk.

13.3 The MHLD will maintain a central record of applications made with outcomes, and notifications sent to the CQC.

14. Death of a person subject to DoLS

14.1 There is a requirement for the Trust to notify the local Coroner of the death of any patient subject to a DoLS authorisation.

14.2 The nurse/professional in charge of the ward must notify the MHLD at Redwoods of any such death.

14.3 The MHLD will complete form 12 (see link at 5.1 above) for all English residents and form 12 (see link at 5.3 above) for Welsh residents who are deceased whilst subject to DoLS and submit this via fax to the relevant local Coroner’s office, and the Supervisory Body who have issued the DoLS authorisation. In addition, for Welsh residents, a copy of form 12 must be sent to any IMCA instructed for the person, any person named by the Best Interest Assessor in their report as an interested person, as the person’s GP.

14.4 The MHLD will scan and upload this into the RiO patient record under ‘MCA – Deprivation of Liberty Safeguards’, and will regrade the patient’s legal status in the patient’s RiO record to ‘Standard Authorisation’ as necessary – this will ‘pull through’ to the front demographic sheet for the patient.

15. Relevant person’s representative

15.1 The supervisory body will appoint a relevant person’s representative for every person to whom they give a standard authorisation for deprivation of liberty.

15.2 The role of the representative is to:

15.2.1 maintain contact with the relevant person, and
15.2.2 to represent and support them in all matters relating to the deprivation of liberty safeguards, including, if appropriate triggering a review, using the Trust’s
complaints procedure on the person’s behalf, or making an application to the Court of Protection.

15.3 The MHA Administrator for the ward/unit will provide information to the representative covering:

15.3.1 the effect of the authorisation
15.3.2 their right to request a review
15.3.3 the formal and informal complaints procedures that are available to them
15.3.4 their right to make an application to the Court of Protection to seek variation or termination of the authorisation, and
15.3.5 their right, where the relevant person does not have a paid ‘professional’ representative, to request the support of an IMCA.

15.4 In order to fulfil their role, the representative must maintain sufficient face-to-face contact with the relevant person to ensure their best interests are being safeguarded. Ward staff must facilitate visits by the representative at reasonable times.

15.5 Where ward staff do not believe the representative is maintaining an appropriate level of contact, they should in the first instance raise the matter with the representative to see if any problems can be resolved informally. If, following this, the representative still does not maintain what ward staff believes to be an appropriate level of contact, they may need to consider informing the supervisory body via the MHLD. Frequency of visits recorded in the patient’s health record will support this consideration.

16. Independent Mental Capacity Advocate (IMCA)

16.1 Where there are no appropriate relatives/carers to consult during assessments, the nurse in charge of the ward/unit must ensure that when making an application for standard authorisation the supervisory body is notified and appointment of an IMCA requested. The IMCA’s role in this context is to give information or make submissions to the assessors, receive copies of assessments from the supervisory body and of standard and urgent authorisations from the supervisory body and the Trust and to apply to the Court of Protection for a person’s case to be heard if necessary.

16.2 Both the relevant person deprived of their liberty under a standard authorisation and their representative have a statutory right of access to an IMCA. Their role is to help them understand the effects of the authorisation, and how to trigger a review or challenge in the Court of Protection. The IMCA can also provide support in a review or challenge.
17. Treatment

17.1 Whilst the purpose of the deprivation of liberty may be to provide treatment for a condition, the deprivation authorisation itself does not authorise treatment. Treatment that is proposed may only be given with the individual’s consent or in accordance with the wider provisions of the Mental Capacity Act 2005 (see Trust MCA policy and ‘Detention under the MHA or DoLS’ SOP).

18. Process for monitoring compliance and effectiveness

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<th>Monitoring method</th>
<th>Individual/department responsible for the monitoring</th>
<th>Frequency of the monitoring activity</th>
<th>Group or committee/forum which will receive the findings/monitoring report</th>
<th>Committee/individual responsible for ensuring that the actions are completed</th>
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<td>Number of applications for DoLS</td>
<td>Report</td>
<td>MHLM</td>
<td>Quarterly</td>
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19. References

Mental Capacity Act 2005 (amended 2007)

Mental Capacity Act Deprivation of Liberty Safeguards - Guidance to the Forms (2015) ADASS
http://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/


Deprivation of Liberty Safeguards Policy. Staffordshire County Council

Mental Health Act 1983 (amended 2007)