

# Bi-annual analysis of Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) - April-September 2011

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**Version:** 1.0

**Date of Publication:** 2<sup>nd</sup> December 2011

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# Executive Summary

This is the first bi-annual analysis of Mental Capacity Act Deprivation of Liberty Safeguards (DoLS) Assessments in England, covering the period April to September 2011.

DoLS were introduced in April 2009 as an amendment to the Mental Capacity Act 2005 ("The Act"). The Safeguards provide a framework for approving the deprivation of liberty for people who lack the capacity to consent to treatment or care in either a hospital or care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty. The safeguards legislation provides for an assessment process that must be undertaken before deprivation of liberty may be authorised<sup>1</sup>. These statistics provide official information about authorisation requests under The Act to deprive adults of their liberty and the outcome of such assessments. The DoLS collection is a statutory collection. All 151 Primary Care Trusts (PCTs) and 152 Local Authorities (LAs) in England are required to submit a return even if they are only submitting a nil return to inform of no use of the safeguards.

Aggregate data is collected on a quarterly basis (in July, October, January and April) via the Omnibus system facilitated by the NHS Information Centre. The NHS Information Centre has moved from quarterly to bi-annual publications, plus an annual publication, in line with the Department of Health's (DH) DoLS publication strategy for 2011/12. This will be further reduced to one annual publication from 2012/13.

## Key facts from this publication

The figures show that between 1st April and 30th September 2011:

- 5,472 authorisation requests were completed [i]. 3,963 (72.4%) were received by LAs and 1,509 (27.6%) were received by PCTs [ii].
- 3,079 (56.3%) of the completed assessments resulted in an authorisation.
  - 2,307 (58.2%) of the assessments received by a LA resulted in an authorisation.
  - 772 (51.2%) of the assessments received by PCTs resulted in an authorisation.
- Of the total assessments completed, a slightly higher proportion was for females 2,857 (52.2%) than males 2,615 (47.8%).
- At the end of the reporting period, 30th September 2011, 1,697 people were subject to a current standard authorisation. 1,484 (87.4%) followed a granted LA authorisation and 213 (12.6%) followed a granted PCT authorisation [iii].

[i] One person can have multiple authorisations.

[ii] Supervisory bodies (PCTs or LAs) receive authorisation requests made by managing authorities (hospitals or care homes). A hospital must gain authorisation from a PCT and a care home must gain authorisation from a LA.

[iii] The length of an authorisation can be any period of up to a year for a single authorisation. A requirement to extend beyond a year requires a further authorisation.

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<sup>1</sup> Department of Health, "Mental Capacity Act 2005: Deprivation of liberty safeguards - Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice", August 2008, [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

# Background of the Deprivation of Liberty Safeguards

The Mental Capacity Act Deprivation of Liberty Safeguards (DoLS) came into force on 1 April 2009. They amend a breach of the European Convention on Human Rights and provide for the lawful deprivation of liberty of those people who lack capacity to consent to arrangements made for their care or treatment in either hospitals or care homes, but who need to be deprived of liberty in their own best interests, to protect them from harm.

A supervisory body under the legislation will have statutory responsibility for operating and overseeing the DoLS whilst hospitals and care homes ('managing authorities') will have responsibility for applying to the relevant supervisory body for a Deprivation of Liberty authorisation.

The legislation includes a statutory requirement for all managing authorities as well as supervisory bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the relevant person's representative and the documentation related to termination of authorisation.

## Uses of the information collected

The responsibility for monitoring the operation of the DoLS has been conferred on the new regulator, the Care Quality Commission (CQC). They are obliged by statute to monitor and report on the operation of the Safeguards. Regulations also give CQC the power to require the production of information from both managing authorities and supervisory bodies. In addition, Ministers have asked for additional assurance that the rights and entitlements of people deprived of their liberty under the Safeguards are better protected.

The Care Quality Commission will use this data collection to inform the evidence base for monitoring the operation of the DoLS and to report on activity as requested to the Secretary of State; no separate collection is to be undertaken by CQC.

**Published by The NHS Information Centre for health and social care  
Part of the Government Statistical Service**

ISBN 978-1-84636-630-7

This publication may be requested in large print or other formats.

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