

Rights and Protection

DoLS provides a series of rights and protective mechanisms for those affected by it. Many of these rights are required under the European Convention on Human Rights. It is important for assessors, care providers and others affected by DoLS to be informed and aware of these rights. Further detail on these rights are given in the chapters that follow. A standard DoLS rights leaflet for staff and others can be found later in this book and an animated film on DoLS rights is available at: www.edgetraining.org.uk.

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| Legal criteria | The legal criteria for DoLS set a minimum standard that must be met to deprive a person of their liberty. The criteria for DoLS are multi-faceted but perhaps one of the most important is the best interests assessment. This assessment means several factors are considered including the views of the person concerned, those of their family and less restrictive options. |
| Professional assessors | Health and social care staff, who have undertaken specialist training to become DoLS assessors, are responsible for assessing whether a person meets the legal criteria for a standard DoLS authorisation. |
| Appeal | There is a right of appeal to the Court of Protection at any time whilst under DoLS (known as a Section 21A application). In addition, the person's representative has the same right of appeal. Other people such as advocates, with permission from the court, are also able to appeal. |
| Review | A standard DoLS authorisation can be reviewed at any time (formally known as a Part 8 Review) and this can be requested by a number of different people for various reasons. A review means one or more professional assessors considers whether the legal criteria of the DoLS are still met. |
| Representative | Every person under a standard DoLS authorisation has a representative appointed for them. The purpose of the role is to support the person and ensure their rights are accessible. They can appeal directly to the Court of Protection. |
| Advocacy | Every person under DoLS has the right to access an Independent Mental Capacity Advocate (IMCA). |
| Conditions | Every standard DoLS authorisation can have conditions attached by the local authority. These are designed to improve the care of the person concerned by reducing or mitigating the impact of restrictions. |
| Informed of rights | Care homes and hospitals are legally required to immediately inform a person of their rights under DoLS, both verbally and in writing. |
| Copies of assessments | Copies of all assessments must be given to the person under DoLS and their representative. This means both can see the reasons and evidence for the DoLS and if they are not satisfied challenge it. |
| Flexible duration | Rather than a standard duration for each individual under DoLS, the local authority can set a date that reflects the view of the assessors about the most appropriate (proportionate) duration. The <i>maximum</i> period that may be set for each standard authorisation is 12 months. |
| Independent monitoring | The independent health and social care statutory inspection bodies for England and Wales are legally required to monitor the operation of DoLS. |

Liberty Protection Safeguards

LPS has similar (but diluted) rights to those listed above and these are detailed in each of the relevant chapters.

Taken from: S Richards & AF Mughal *Deprivation of Liberty Safeguards (DoLS) Handbook (2nd Edition)*

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