WEST MIDLANDS ADASS

GUIDANCE TO THE REVISED DoLS FORMS 2024

Form	Form Name
1	Standard Request, Urgent Authorisation and Extension to Urgent
2	Request for a Further Standard Authorisation (Current DoLS coming to an end)
3	Age, Mental Capacity, No Refusals and Best Interests Assessments
3B	Further Mental Capacity, No Refusals and Best Interests Assessments on renewal
3	Age, Mental Capacity, No Refusals and Best Interests Assessment as a report
4	Mental Health, Mental Capacity and Eligibility Assessments
4B	Further Mental Health, Mental Capacity and Eligibility Assessments on renewal
5	Standard Authorisation Granted
6	Notice that a Standard Authorisation cannot be granted
7	Suspension of Authorisation
8	Termination of Relevant Person's Representative Appointment
9	Notification that an Authorisation has Ceased
10	Review of Authorisation
11	IMCA Referral

The forms shaded above (namely 1, 2 and 7), are to be used by the Managing Authority. The remainder are Supervisory Body forms. Form 10 is shared by both the Managing Authority, family and friends and Supervisory Body.

Important note: This guidance relates to completion of the forms and will not cover issues of substance such as the meaning of 'deprivation of liberty'. There will however be links to other sources of information and advice.

FORM	TITLE	PAGE
Form 1	STANDARD REQUEST, URGENT AUTHORISATION AND EXTENSION TO URGENT	4
Form 2	REQUEST FOR A FURTHER STANDARD AUTHORISATION	7
Form 3	ASSESSMENTS BY A BEST INTERESTS ASSESSOR	8
Form 3B	ASSESSMENTS ON RENEWAL	14
Form 3	ASSESSMENTS BY A BEST INTERESTS ASSESSOR REPORT STYLE	15
Form 4	ASSESSMENTS BY A MENTAL HEALTH ASSESSOR	16
Form 4B	ASSESSMENTS ON RENEWAL	21
Form 5	STANDARD AUTHORISATION GRANTED	22
Form 6	NOTICE THAT A STANDARD AUTHORISATION CANNOT BE GRANTED	25
Form 7	SUSPENSION OF AUTHORISATION	26
Form 8	TERMINATION OF REPRESENTATIVE	27
Form 9	STANDARD AUTHORISATION CEASED	28
Form 10	REVIEW OF CURRENT AUTHORISATION	30
Form 11	IMCA REFERRAL	32

FORM 1: STANDARD REQUEST, URGENT AUTHORISATION AND EXTENSION TO URGENT

PLEASE NOTE THAT THIS FORM BEGINS WITH A STANDARD REQUEST AND ONLY IN SUDDEN UNFORESEEN CIRCUMSTANCES SHOULD AN URGENT AUTHORISATION ALSO BE GRANTED.

Remember the ideal for DoLS is that a request for a standard Authorisation is made <u>in advance</u> before the need to deprive the person of liberty begins. However, in practice most requests are not made in advance and very few Councils are able to process standard requests within 21 days or Urgent requests within 7-14 days. This is why a prioritisation tool is used.

Page 1: ***This page will take you through the person's basic details.***

It is helpful to assessors to read a summary of **relevant** medical history, details of any sensory loss and communication needs are also very helpful in considering practicable steps to take before carrying out a mental capacity assessment; in particular to help the assessor to know whether any aids or an interpreter, may be needed.

However, the presence of sensory loss or communication needs is not necessarily indicative of a lack of capacity.

Page 2: ***Purpose of the Authorisation - this provides two essential pieces of information.***

This requires a description of the care and treatment being given or proposed as well as a description of restrictions which are in place to ensure the care/treatment can be given. In other words: *Why do you need to accommodate the person in the care home or hospital, in a way that amounts to a deprivation of liberty and what are the restrictions which meet the acid test?*

It is helpful to assessors if this is a concise but detailed summary rather than a vague statement such as "24-hour care".

The following information may be helpful to explain why the person meets the acid test for a deprivation of liberty.:

Deprivation of liberty safeguards: a practical guide | The Law Society

Deprivation-of-liberty-in-the-hospital-setting-November-2019.pdf (39essex.com)

When describing all the restrictions it is helpful if the description covers how frequently they are taking place.

For example, it is better to say: *"Mrs. X has to be reassured and redirected by staff at least 4-5 times a day as she is distressed and wants to leave."*

rather than: *"Mrs. X says she wants to leave."*

It is better to say: *"1:1 support is in place at all times of day, when John is in his room or moving around the building when he has meals or takes part in social events. However, at night there is less support as there is a sleeping night and no checks are made beyond the routine checks."*

rather than: *"John has 1:1 support."*

Page 2: What is an Interested Person?

An interested person is any of the following:

- The relevant person's spouse or civil partner
- Where the relevant person and another person of the opposite sex are not married to each other but are living together as husband and wife - the other person
- Where the relevant person and another person of the same sex are not civil partners of each other but are living together as if they were civil partners - the other person
- The relevant person's children and stepchildren
- The relevant person's parents and stepparents
- The relevant person's brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters.
- The relevant person's grandparents or grandchildren.

The form also asks for other people such as anyone caring for the person or interested in their welfare. This could include social workers or care staff.

Page 3: IMCA – Advance Decision – Mental Health Act

IMCA: It is necessary for the Managing Authority to inform the DoLS team if the person will need an IMCA to support them.

The DoLS team at the Supervisory Body will need to make the referral if there is no one appropriate to consult with.

NB: This referral can be at any time so it is a matter of judgement whether to refer to an IMCA before prioritising or at a later stage when allocating to an assessor.

Advance Decisions:

There is also a question about any Advance Decisions to refuse treatment the person may have made.

Mental Health Act 1983:

If there is any aspect of the Mental Health Act that applies to the person, for example they may be subject to a Guardianship Order, then this is where this information should be included, with any relevant detail.

The form should be signed and dated, any care plans should be attached and family or other interested persons should be advised of the request for a DoLS Authorisation. Communication with close family members is very important from the beginning.

Page 4: Important Data Collection

This information is required for the quarterly DoLS returns to the Health and Social Care Information Centre. Please note this information is based on the Adult Social Care collection and the disability here does not refer to mental incapacity but to any other disability that may apply to the person.

Page 5: Urgent Authorisation

Although the original intention was that an Urgent Authorisation would be for “sudden unforeseen needs” in practice this has not been the case and Managing Authorities often use Urgent Authorisations. There was an expectation that in most cases it should be possible to plan ahead and make sure that a Standard Authorisation is requested ahead of the need for the deprivation of liberty to begin. Since the Supreme Court decision in 2014 this has not been the case.

Most Councils have backlogs of requests for standard authorisations and some have backlogs of requests for urgent authorisations. All Councils use a prioritisation tool to determine those who need to be assessed more quickly.

An Urgent Authorisation should only be given 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 (which is also expected to be necessary), is being considered. There are some situations where an Urgent Authorisation is generally not needed, such as:

- Someone has developed a mental disorder because of a physical illness which can be treated and treating it will rapidly resolve the mental disorder. An example of this would be someone currently confused due to a urinary tract infection, but when treated with antibiotics the confusion usually resolves within a negligible period of time.
- Where a person is in accident and emergency or a care home and it is anticipated that in a matter of hours the person will no longer be there.

The tick boxes are straightforward however, it is important to note that these tick boxes indicate that all six requirements are met to authorise the urgent authorisation.

Once it is signed and dated it is granted for a period of up to seven calendar days and comes into force at the time it is signed.

NB: Once completed this is the actual authorisation it is not a request for an urgent authorisation. The urgent is granted by whoever completes the form.

Page 6: Request for an Extension of the Urgent Authorisation

The intention of adding the request for an extension of an Urgent Authorisation to the initial form is to identify this at the beginning due to the unprecedented numbers of applications which have continued to rise following the Supreme Court Judgement in 2014.

The DoLS Code of Practice describes that an Urgent Authorisation can be extended if there are “exceptional reasons” why the Standard Authorisation cannot be dealt with within the seven days. Although the DoLS code of practice is out of date it is clear that:

- A decision about exceptional reasons must be soundly based and defensible.
- It would not usually be justified due to staff shortages.

NB: An Urgent Authorisation can only be extended once.

FORM 2: REQUEST FOR A FURTHER STANDARD AUTHORISATION

A Further Standard Authorisation is a new request for the same person.

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 can request a review (Form 10) or inform the Council that an authorisation is no longer needed and it will be ceased (Form 9)

If, 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 and should not be left to the last moment.**

Councils can utilise proportionate assessments for some renewals but can only do this if they receive the Form 2 in plenty of time.

The amount of information needed when a Further Request for Authorisation is being made, is much less than the initial requirement as the Supervisory Body will have already received a great deal of personal details and comprehensive information and will have carried out the necessary assessments to grant an initial Authorisation.

This form is short and should assist Managing Authorities to request further authorisations in a timely way. The purpose of the authorisation is now a statement 'This continues to be so that the person can be lawfully deprived of their liberty in order to continue to receive care/treatment.'

If there are any changes to the care plan since the last authorisation then details can be added.

FORM 3: AGE, MENTAL CAPACITY, NO REFUSALS, BEST INTERESTS ASSESSMENTS

This form covers all 4 separate assessments, the assessor will indicate whether they have completed 3 or 4. It also covers the appointment of a representative.

Should any individual assessment be required for another purpose, the appropriate pages can be removed and used as a stand-alone assessment.

It is important to tick which assessments have been completed as some Supervisory Bodies commission doctors for the Mental Capacity assessment and some use BIAs only. For this reason, the mental capacity assessment is included in both Form 3 and Form 4 and it is up to the Supervisory Body to make it clear to their assessors which assessments they are required to complete. It is not advisable to ask both professionals to complete the mental capacity assessment to avoid any discrepancies.

Page 1: Routine questions in relation to the person and the setting

Page 2: Details of those who have, or have not been consulted

This section is where the names of any interested persons who have been consulted are recorded and if relevant, the name of anyone it has not been possible to consult and why.

Sometimes the assessment must proceed without anyone being consulted due to shortage of time, or if the interested person is on holiday, sick or unavailable for another reason.
The BIA must consult the Managing Authority, the wider consultation is to satisfy the best interests requirements of s4 MCA.

NB: It is important to note that not all interested persons have to be consulted but any who are consulted must be detailed in the Form 3 (Schedule A1 para 40 (2))

Page 2: Documents Seen

There is now a short statement to confirm that relevant documents have been seen and there are no concerns. If there are any concerns, these will be recorded in the body of the assessment and may lead to conditions being set or recommendations being made. The Schedule requires a BIA to 'have regard to' the following:

- The conclusions of the DoLS mental health assessor, which they should be notified of (this is either in person or by reading their Form 4)
- Any needs assessment (this is an assessment in relation to the person being accommodated in the care home or hospital and carried out by either the MA or the SB)
- Any relevant care plane (this describes how the persons needs will be met when they are in the care home r hospital and will have been prepared by either the MA or the SB)

This is the primary documentation to support the BIAs assessment but they will usually read other notes such as daily records in the setting. There s no need to produce a record of the documents seen but the BIA will exercise professional curiosity as to the dates, reviews and so on. Any cause for concern will be highlighted in their report.

Page 2: Mental Capacity Assessment

There is a box to detail how the BIA has complied with the second guiding principle of the MCA – supported decision-making.

The BIA should add here how they supported the person, such as using communication aids, interpreters, pictures etc. It is also useful to say if more than one visit took place in order to see the person at the best time.

The assessment then continues with the four elements of the functional test.

It is most important that the person knows why you are there and what you are doing, in other words they must be informed that you are carrying out a mental capacity assessment although the language used may vary according to the persons communication needs.

The assessor should bear in mind that this is a functional test and give thought to how this is recorded. There will be occasions when triangulation of information occurs such as when the person has executive dysfunction. Their verbatim account will be supplemented by observation and by the views of others; this could be care staff and or family members.

The assessor should identify the salient points in line with best practice, record them and then provide a verbatim account of the conversation with the person. Remember the persons dignity at all times in writing the account and be mindful of who may subsequently read the report.

It is important to complete each of the four elements even if it is clear that the person cannot understand the information. Best practice would still address in brief their ability to retain and use and weigh it.

Following this the assessor is asked to confirm whether there is a mental impairment and if so whether this is the cause of the functional inability.

The assessment ends with a clear conclusion, taking note of the causal nexus by ensuring the assessor clearly records why the person's inability to make the decision is because of the impairment or disturbance in the functioning of their mind or brain.

Mental Capacity Guidance Note Capacity Assessment March 2023.pdf (39essex.com)

Page 3: No Refusals Assessment

This assessment is short and to the point and does not need explanation. Note, however, that it is the view of any welfare LPA or welfare Deputy that counts. So, if a property and affairs LPA/Deputy objects, that does not necessarily prevent the use of DoLS.

Page 3: Best Interests Assessment

All the boxes should be ticked to confirm the requirements are met.

***Short summary of the Background Information**:*
This should be brief information as relevant to the questions of necessity and proportionality. It may include a very short pen picture of the person and a short chronology of the care and support to date which ultimately resulted in their accommodation in the current setting.

***Views of the Relevant Person**:*
Stating the person's views and expressing them clearly helps towards the decision as to their best interests. However, this should not be cut and pasted from elsewhere and used in several different places. This makes for difficult reading for family members. Use the person sown words where possible.

NB: remember the form is to be viewed as a whole and information only needs to appear once to avoid unnecessary duplication.

Views of Others:
This is to meet the requirement of s4(7) of the MCA for best interests decision making (Mental Capacity Act 2005 (legislation.gov.uk). The views of those consulted should be recorded to find out

- whether they believe that depriving the person of their liberty is in their best interests to protect them from harm.
- whether the restrictions are necessary to enable the care or treatment the person needs to be delivered.

NB: The focus of the consultation is on the restrictions amounting to a deprivation of liberty and the persons best interests, it is not a care plan review or an opportunity to collect and record wider views about the care package itself.

Is a Deprivation of Liberty Actually Occurring?
The assessor will record their view as 'Yes' or 'No' (however it should be noted that the answer will certainly be 'Yes' if filling in this form).

Within the next box the assessor needs to address the acid test and whether it is met.

The concrete situation of the person should be described in terms of restrictions which give rise to a deprivation of liberty.

All restrictive measures should be described along with the manner in which they are implemented, their duration, and the effect they have on the person.

Each aspect of the acid test must be described, but with clear evidence demonstrating analysis of the complex issues rather than narrative. There is no need to reference case law such as Cheshire West or earlier European case law to establish this.

The subjective element will be evidenced by the Mental Capacity Assessment.

There should be a short statement as to why the placement is imputable to the state.

Page 5:
The assessor is now asked to consider why the deprivation of liberty is necessary to prevent harm to the person. This involves a description of the risks of harm to the person that could arise which make the deprivation of liberty necessary. Support this with examples and dates where possible. Include severity of any actual harm and the likelihood of this happening again to justify depriving a person of liberty.

Include particulars of the harm that will be avoided by depriving the person of liberty.

The following box is about proportionality.

It is not necessary to repeat any information in this box, having already described the harm and the risks to the person, the assessor should now say why depriving liberty is a proportionate response.

It might be useful to explain why less restrictive options are no longer viable with reference to what else has been explored and why the likelihood and severity of the harm justifies a step as serious as depriving the person of liberty.

Page* 6:* A burden and benefits analysis should be carried out if there is more than one option. Please note this is not a consideration of every hypothetical option but only of the actual available and reasonably foreseeable options on the table. Prior to this there will usually have been a decision about care or treatment which provides the options to consider.

NB: Sometimes there is only one option.

Is the best interests requirement met?

The assessor needs to determine, having analysed all the relevant information, whether the deprivation of liberty is in the person's best interests.

This should have a clear connection with the statutory checklist for best interests decision making in s.4 MCA Mental Capacity Act 2005 (legislation.gov.uk) however, the checklist is not exhaustive, issues of culture should be addressed here and the best interests decision should have regard to the person's emotional, social and psychological wellbeing as well as their physical wellbeing.

NB: If the deprivation of liberty is found not to be in the persons best interests, then either the arrangements must be changed to less restrictive arrangements or a Court application may be needed.

Guidance on best interests decision making can be found here:
Mental Capacity Guidance Note: Assessment and Recording of Capacity | 39 Essex Chambers

The BIA must make a decision on the length of time they propose for the authorisation and give a short rationale for this.

Page 7: BIA's Recommendations about Conditions

The BIA can recommend conditions and any variation in conditions if the assessment follows a review. Conditions must

- relate to the deprivation of liberty,
- have been discussed with the Managing Authority and
- be achievable by the Managing Authority.

There is an added box where the BIA can identify issues that would not fit the criteria as a condition of the Authorisation but which may need addressing. Most commonly here an assessor will note decisions that need formalising under the MCA.

NB: It is really important that a BIA ticks whether they wish to be consulted again if anyone acting for the Supervisory Body subsequently decides not to accept the conditions that have been recommended.

Page 7: Selection and Recommendation of Representative (RPR)

The final page of the assessment is the selection and recommendation of representative. There are several options:

- The person may have the mental capacity to select the representative (and may or may not wish to do so).
- If not then someone else may have the power to make the selection by virtue of a health and welfare LPA or deputyship appointment.
- If neither of these options is possible then the BIA recommends a RPR to the Supervisory Body.

The BIA is also charged with confirming that the person proposed as representative is eligible for the role, no matter who has selected them. In practice this means the BIA must confirm that the proposed representative is —

- 18 years of age or over.
- able to and would keep in contact with the relevant person and willing to be their representative.
- represent and support the relevant person in matters relating to or connected with the deprivation of liberty.
- not financially interested in the relevant person's managing authority.
- not a relative of a person who is financially interested in the managing authority.
- not employed by, or providing services to, the relevant person's managing authority, where the relevant person's managing authority is a care home.
- not employed to work in the relevant person's managing authority in a role that is, or could be, related to the relevant person's case, where the relevant person's managing authority is a hospital.
- not employed to work in the supervisory body that is appointing the representative in a role that is, or could be, related to the relevant person's case.

In addition, the BIA must confirm that the proposed representative would, if appointed —

- maintain contact with the relevant person,
- represent and support the relevant person in matters relating to or connected with the deprivation of liberty.

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.

FORM 3B: AGE, MENTAL CAPACITY, NO REFUSALS, BEST INTERESTS ASSESSMENTS AND SELECTION OF REPRESENTATIVE ON RENEWAL

To some extent this form replicates the original form 3. It is intended as a more pragmatic, proportionate form where a further authorisation is required. There will initially be some screening for suitability. In general, this form is for a settled placement, where there are no objections from the person or their representative or any family members and nothing has changed since the last authorisation. As the Form proceeds the BIA must be certain it is appropriate to continue. If at any time facts emerge which cast doubt on this, the BIA should revert to a full Form 3

Page 1: Factual details of the person and the setting

Page 1: Details of those consulted.

It will be adequate for a Form 3B to consult the care home or hospital and then the representative and therefore ensure there are no issues which would suggest a Form 3 is needed. Further consultation is unlikely to be needed.

Page 2: There is a mental capacity assessment included and there is also a version of this Form without a mental capacity assessment. An equivalent assessment may be used or the DoLS Mental Health Assessor may be asked to carry out the mental capacity assessment. On some occasions this will be completed again by the BIA. In this case, the steps described for Form 3 will be helpful.

Page 3: The BIA confirms that all the requirements are met and then confirms that the facts remain as they were in the last full Form 3

Page 4: There is the option for the BIA to provide a summary of additional information, this would include updating any minor factual details, or any additional restrictions in place or any changes in the care plan which do not substantially affect the previous decision. If there are any substantial changes this would require a new Form 3. An example of this would be to note that the persons mobility has reduced since the last assessment or that they are no longer taking part in a particular activity.

The rest of the form continues as the Form 3.

FORM 3 REPORT STYLE: A new version of Form 3

This Form is made up entirely of content from the Form 3 that assessors are used to, albeit in a different format. The initial pages can be completed as a Form 3 and the guidance above can be followed.

Page 4: This page is where assessors will notice the difference. The different elements for the assessor to address are taken from the existing Form 3 'boxes.'

The views of the person and others and background information do not appear as separate fields but **must** be included in the overall report.

The BIA will address all the following elements in this report, giving a strong voice to the person's wishes and feelings, beliefs and values. It is important that the report focuses on analysis of whether the matters set out below are met, rather than on history and narrative. The four elements described below should not be numbered in the report.

1. **The conclusion as to whether the restrictions amount to a deprivation of liberty –** here the assessor will explain their rationale as to why the concrete situation of the person meets the objective element with reference to the acid test of complete or continuous spervision and control and why the person is not free to leave. The subjective element is demonstrated as met by the mental capacity assessment which can be referenced and the question of imputability will be referenced briefly.
2. **The necessity to deprive liberty –** this will be an analysis of the harm which would otherwise occur which makes depriving liberty necessary.
3. **The proportionality of the response –** this is where the impact on the person will be considered, this will be a useful place to record their views and the impact of their views not being adherered to. A small amount of background information will help to set the scene as to why the retrictions which amount to a deprivation of liberty, are propprtionate**.**
4. **Best interests -** this is the overall analysis by reference to the above and s4 of the MCA. The views of the person and the views of others will be referenced as well as why this is the least restrictive option, in order to arrive at a decision on whether depriving the person of liberty, is in their best interests. The responses from those consulted should be recorded in relation to the best interests decision. If there is more than one available option, the BIA can describe the benefits and burdens of each as part of their report and in arriving at a conclusion as to best interests.

The remainder of the form in relation to conditions, recommendations and recommendation of representative identical to the previous Form 3 and the above guidance can be used.

This form is being introduced to improve quality and also provide some efficiencies of time. Often BIA assessments appear repetitive because information is cut and pasted into different areas of the form. This is confusing for the person and their family members and also difficult to read for anyone who eventually authorises the deprivation of liberty for the Supervisory Body.

The aim is to encourage one report, written by the BIA, as described in the DoLS Code of Practice 4.72, which encompasses all the necessary elements and encourages a focus on their analysis rather than repetition of facts.

FORM 4 MENTAL HEALTH, ELIGIBILITY, MENTAL CAPACITY ASSESSMENTS

This form covers 3 separate assessments. Should any individual assessment be required for another purpose, the appropriate pages can be removed and used as a stand-alone assessment. The assessor should indicate which assessments they have completed.

Page 1: Routine questions in relation to the person and the care setting
Page 1: Mental Capacity Assessment, if this is to be completed

The first box ensures compliance with the second statutory principle: – the need to support decision-making. The assessor should add here how they sought to support the person to make the relevant decision. For example:

- Did you use communication aids, interpreters, pictures, ensure someone familiar was there to support the person etc?
- Say if more than one visit took place in order to see the person at the best time.
- Was there a specific reason why the efforts taken did not succeed?

The assessment then continues with the four elements of the functional test.

Following this the assessor is asked to confirm whether there is a mental impairment and if so whether this is the cause of the functional inability.

The assessment ends with a clear conclusion, taking note of the causal nexus by ensuring the assessor clearly records why the person's inability to make the decision is because of the impairment or disturbance in the functioning of their mind or brain.

Guidance can be found here:
Mental Capacity Guidance Note: Assessment and Recording of Capacity | 39 Essex Chambers

Page 3: Mental Health Assessment

The following guidance is taken from the Code of Practice to the Mental Health Act 1983 (2015) as to the meaning of 'mental disorder':

2.4 Mental disorder is defined for the purposes of the Act as 'any disorder or disability of the mind'. Relevant professionals 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.

2.5 Examples of clinically recognised conditions which could fall within this definition are

- Affective disorders, such as depression and bipolar disorder
- Schizophrenia and delusional disorders
- Neurotic, stress-related and somatoform disorders, such as anxiety, phobic disorders, obsessive compulsive disorders, post-traumatic stress disorder and hypochondriacal disorders
- Organic mental disorders such as dementia and delirium (however caused)
- Personality and behavioural changes caused by brain injury or damage (however acquired)
- Personality disorders

- Mental and behavioural disorders caused by psychoactive substance use
- Eating disorders, non-organic sleep disorders and non-organic sexual disorders
- Learning disabilities
- Autistic spectrum disorders (including Asperger's syndrome)
- Behavioural and emotional disorders of children and young people

NB: this list is not exhaustive.

Having identified the mental disorder, providing a rationale and details of the person's symptoms, diagnosis and behaviour, the assessor must 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 must be relayed to the best interests assessor to inform their assessment.

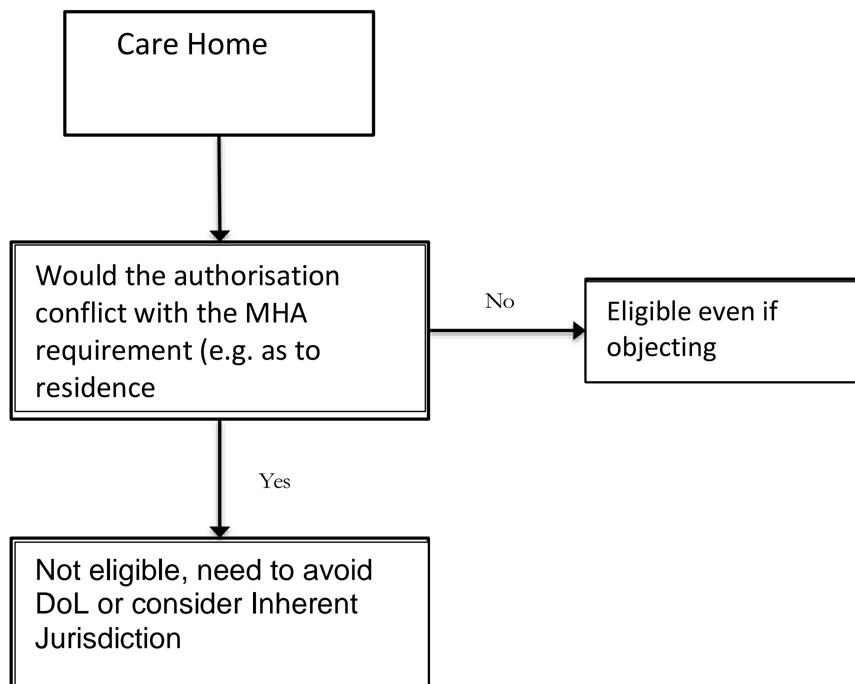
Page 4: Eligibility Assessment

Case A:

If the person is currently detained under one of the stated sections of the 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.

Cases B-C:

A person can be subject to both a DoLS authorisation and one of these 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 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.

Case D:

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.

Case E:

This relates solely to hospitals, not care homes. It is sometimes difficult to determine which regime of safeguards should be used but here are some rules of thumb:

1. A person with the relevant capacity who agrees to hospital admission is a voluntary patient.

2. A person with the relevant capacity who refuses hospital admission cannot be detained unless the MHA is applicable.

3. 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 psychiatric treatment and could not be detained under MHA ss2 or 3 (whether they object or not); or

    (c) They are detained for psychiatric treatment and "could" be detained under MHA ss 2 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 psychiatric treatment, could be detained under MHA ss 2 or 3, and are 'objecting'.

A common eligibility difficulty relates to those, typically with dementia or learning disability, who are not actively trying to leave a ward that is registered to take MHA patients. The flowchart below identifies which regime is applicable. It is important to bear in mind:

Purpose

- No distinction is drawn in the legislation between "active" and "passive" psychiatric treatment.

- The primary purpose of the deprivation of liberty is to provide either physical or psychiatric treatment. There are no other alternatives: it is one or the other.

- Where the person may regain capacity or where it fluctuates, this is likely to indicate use of the MHA (see MHA Code of Practice (2015), para 13.54).

Medical treatment for mental disorder

- “Medical treatment for mental disorder” means 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. Habilitation means equipping someone with skills and abilities they have never had, whereas rehabilitation means helping them recover skills and abilities they have lost.

- “Symptoms and manifestations” include the way a disorder is experienced by the individual concerned and the way in which the disorder manifests itself in the person’s thoughts, emotions, communication, behaviour and actions. Not every thought or emotion or every aspect of the behaviour, of a patient suffering from mental disorder will be a manifestation of that disorder.

‘Could’

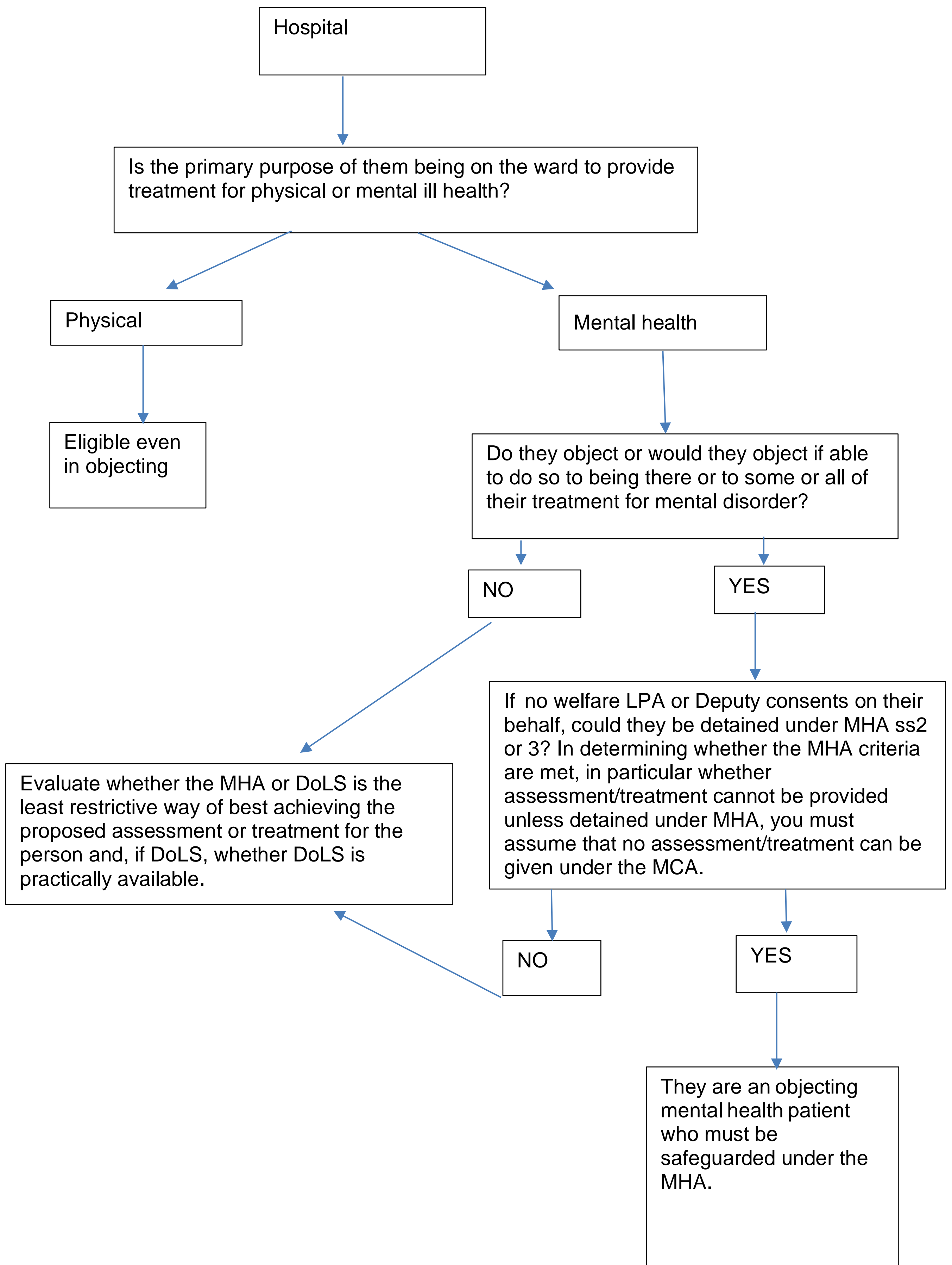
- In determining whether the person ‘could’ be detained under MHA ss 2 or 3, you must assume that absolutely no care or treatment could be provided under the MCA in their best interests.

‘Objects’

- A person ‘objects’ 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.
- Bearing in mind that the person lacks capacity to make the decision, 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 (see MHA Code of Practice (2015) para 13.51).

Choice of regime?

- Where the person is deprived of liberty for the primary purpose of giving medical treatment for mental disorder, could be detained under MHA ss2 or 3, and is not objecting, and would not object if able, to any of that treatment, only then is there a choice.
- Neither DoLS nor the MHA has primacy over the other in this context.
- The choice should never be based on a general preference for one regime or the other. Nor should it be assumed in the abstract that one regime is less restrictive than the other. Both are based on the need to impose as few restrictions as possible and both provide safeguards, albeit of a differing nature.
- In deciding in the particular circumstances of the individual’s case which regime is the least restrictive way of best achieving the proposed assessment or treatment, consider:
    - What is in their best interests;
    - Likelihood of continued compliance and triggers to possible non-compliance and their effect on the regimes’ suitability;
    - Whether DoLS is practically/actually available.
- Crucially, the person must be safeguarded under one of the regimes.


Hospital
Is the primary purpose of them being on the ward to provide treatment for physical or mental ill health?
Physical
Mental health
Eligible even in objecting
Do they object or would they object if able to do so to being there or to some or all of their treatment for mental disorder?
NO
YES
If no welfare LPA or Deputy consents on their behalf, could they be detained under MHA ss2 or 3? In determining whether the MHA criteria are met, in particular whether assessment/treatment cannot be provided unless detained under MHA, you must assume that no assessment/treatment can be given under the MCA.
Evaluate whether the MHA or DoLS is the least restrictive way of best achieving the proposed assessment or treatment for the person and, if DoLS, whether DoLS is practically available.
NO
YES
They are an objecting mental health patient who must be safeguarded under the MHA.

FORM 4B: MENTAL HEALTH, ELIGIBILITY, MENTAL CAPACITY ASSESSMENTS ON RENEWAL

This new form mirrors the Form 3B completed by BIAs. It will not require a visit. It requires the assessor to confirm that everything remains as it was when the last assessment was carried out.

This involves reading the last assessment and contacting the care home to determine if anything has changed.

If there have been any changes which substantially affect the diagnosis, the persons eligibility or how they are affected by being deprived of liberty, then a full Form 4 should be completed.

Supervisory bodies will screen for suitability before allocating but additional information may come to light which necessitates a full Form 4.

Page 1: Factual details and confirmation that the person still has a mental disorder. This is followed by confirmation that their mental health is not likely to be affected by being deprived of liberty.

Page 2: Is confirmation that the person is still eligible for DoLS.

This is followed, where required by a mental capacity assessment and guidance for this is as provided elsewhere.

FORM 5: STANDARD AUTHORISATION GRANTED

This is the formal Authorisation which is given by the Supervisory Body and authorises that the deprivation of liberty is in the person's best interests and will state for how long.

Page 1: The formal details of the authorisation

The Supervisory Body will add detail here the person's name and the address of care home or hospital that the authorisation relates to.

The date and time the authorisation commences will be stated along with the date it will cease to be in force.

There should be a clear rationale given for the time period. If the Supervisory Body has reduced the time recommended by the 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.

The purpose of the authorisation is now stated as 'so that the person can be lawfully deprived of liberty in the hospital or care home so that they can receive care/treatment there'

Page 1-2: Conditions and recommendations

Conditions - There are spaces for the conditions recommended by a BIA, please note these may also have been modified by the Supervisory Body.

The Supervisory Body may decide not to accept some recommendations as to conditions but must check whether the BIA has asked to be consulted about this. Removing a condition may in some cases affect the BIAs view as to best interests.

The Supervisory Body may add conditions itself and there is a space to note these.

Conditions must relate to the deprivation of liberty and should not relate to care planning issues. To determine whether the condition is legitimate, a useful question 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.

Recommendations, actions and / or observations for care manager / social worker / commissioner / health professional

BIAs often become aware of deficits in the care planning process which need to be addressed but are not legitimate conditions.

There is space to record these observations. Most Supervisory Bodies will have some assurance arrangements for such observations. It may be, for example, that a best interests decision has not been made regarding a long-term placement. The BIA may want to highlight this here. Another example would be where someone's medication needs reviewing.

Page 2: ***Assessments and evidence received.***

The Supervisory Body confirms it has received assessments and has seen evidence that each requirement has been met.

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

Page 3: ***Supervisory Body signature and confirmation of scrutiny***

The Supervisory Body (usually the person will be called an 'Authoriser') notes its scrutiny of the assessments. This person is confirming but not recording the detail of their scrutiny.

Although the form now asks only for a signature this is because it has reverted to the original DH model in the original forms of 2009. Nonetheless this still requires careful examination of the assessments provided, careful scrutiny of the conclusions and must only be signed if the Authoriser accepts all the findings within the assessments.

Schedule A1 of the MCA explains the process of assessment and authorisation. It must be noted that there is no process of review of assessments but a much simpler process is described than has become custom and practice.

Duty to give authorisation.

50 (1) The supervisory body must give a standard authorisation if—

(a) all assessments are positive, and

(b) the supervisory body have written copies of all those assessments.

(2) The supervisory body must not give a standard authorisation except in accordance with sub-paragraph (1).

(3) All assessments are positive if each assessment carried out under paragraph 33 has come to the conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

Over time the term Authoriser has been used, which is not described in the Schedule and the role and function of this Authoriser has grown. This has been due, in part, to case law such as Neary below which emphasised the importance of scrutiny before signing, however there is no requirements that the detail of scrutiny should itself be recorded.

The case of *London Borough of Hillingdon v Neary* emphasised the importance of proper scrutiny of assessments and criticised perfunctory perusal:

http://www.bailii.org/ew/cases/EWHC/COP/2011/1377.html

http://www.39essex.com/cop_cases/london-borough-of-hillingdon-v-neary-2/

Page 4: Appointment of Representative

NB: It is very important to note that this page is to be sent ONLY to the person proposed as representative.

Firstly, it is necessary to identify who has proposed the person to be appointed as Representative. This will either be the person being deprived of liberty, or a person acting under a welfare LPA, or the BIA who will have identified a family member or confirmed that there is someone appointed to act for the person who will also carry out this role. These details will have been given on Form 3.

This should also contain evidence that the person selected is eligible for the role (see guidance above pages 12-13 for explanation) The BIA must 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 will need to be identified to do it (sometimes this person will be paid, other times they may be a volunteer.)

NB: There is the option to pay the person in this role but no requirement that they must be paid.

At this stage, if a person 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 whom they will refer and so these details will go in here.

Those signing Authorisations on behalf of the Supervisory Body must 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.

This page **repeats** the earlier information and allows for a signature. Once the RPR receives the authorisation paperwork they will remove, sign and return this back page to the Supervisory Body.

FORM 6: NOTICE THAT A STANDARD AUTHORISATION CANNOT NOT GRANTED

This form is issued if, after receiving some or all assessments, it is clear that the requirements are not met.
This form can also be used when some, all or no assessments have been completed but the person dies or is discharged from the care setting, therefore the full authorisation process cannot be concluded as there will be no authority to proceed.

Due to the backlog many Councils have experienced in processing their applications since 2014 it may be the case that by the time an application can be processed it is no longer actually needed. For example, because the individual's circumstances have changed in that time. These applications are currently also classed as not granted.

It is a matter of common sense whether to provide a Form 6 or not. For example, an application may have been made for someone and during the time they are waiting the person dies. It would not seem respectful to send out a Form for a process which hasn't commenced and which the family may, as yet be unaware of.

The Schedule requires that notice is given to:

- The Managing Authority
- The person
- Any 39A IMCA
- Every interested person consulted by the BIA

However, the circumstances where an authorisation cannot be granted is very different than what was originally envisaged.

Where at least one assessment has been carried out and the person has failed to meet the requirement it will always be best practice to issue a notice. In many of the administrative situations where authorisations cannot be granted in may not always be necessary.

There are also a few situations where a request for Standard Authorisation can be withdrawn. A request for a Standard Authorisation would be classified as "withdrawn" only in rare situations. For example:

- Where an application has been submitted in error
- Where an application ceases due to an administrative matter rather than a substantive issue
- Where within the initial moments of an urgent authorisation (before any assessments have been conducted) the person dies or is discharged.

Page 1: *Contains all the relevant details*

The Supervisory Body will indicate why it is prohibited from giving a Standard Authorisation in relation to the named person and will detail which requirements were not met.

If a person fails one requirement, then all other assessments must stop.

There is also an opportunity here to record other reasons why an authorisation cannot be granted such as the death of the person.

No scrutiny is required.

FORM 7: SUSPENSION OF AUTHORISATION

Regulations allow for an Authorisation which is currently in force ***to be suspended only when the person is no longer eligible for DoLS because of a conflict with the MHA.***

This is usually because the person has been detained in a hospital under the MHA but, as can be seen from the form, it can also be because there is now some conflict with a requirement imposed on the person by the MHA.

Note, therefore, that the Authorisation need not be suspended if, for example, the person is admitted to a general hospital on physical ill health grounds.

Page 1: *Allows you to give notice that the Authorisation is suspended.*

The Managing Authority must send this combined form to the Supervisory Body. This will enable the Managing Authority to report the position after 28 days using the same form.

Page 2:

After 28 days the Managing Authority should inform the Supervisory Body whether the person has returned within the time period and so the Authorisation is once again in force. If the person has not returned within this time period, the Authorisation will cease to be in force at the end of the 28 day period.

In practice this form is not used very often.

Most Managing Authorities seek guidance on what to do in other situations, such as, where a person who is subject to an Authorisation has been admitted to an acute hospital, or another temporary setting or is temporarily absent for another reason. There is currently no form to cover this scenario. However, the most pragmatic approach seems to be as follows:

- If the new setting requests an Authorisation, then the existing one is automatically ended and so you do not need to do anything.
- Alternatively, if the absence is likely to be short and no DoLS Authorisation is requested by the new setting, again - do nothing.
- This will leave the Authorisation in place for when the person returns.
- If the absence is likely to be for a long period, or there is a likelihood the person will not return to your setting, use the relevant section in Form 10 - Review to inform the Supervisory Body so the DoLS Authorisation can be reviewed and ceased.

FORM 8: TERMINATION OF REPRESENTATIVE

In some circumstances it may be necessary to terminate the role of the person who is acting as representative. 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 can be terminated:

- If the Authorisation ends and a further Authorisation is not requested or granted
- The person who is being deprived of liberty objects 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 is keeping in touch or acting in the person's best interests, the Supervisory Body should seek clarification from the representative before terminating their appointment.

Page 1: This has names and addresses and allows the Supervisory Body to indicate the reason for the termination.

Page 2: The Supervisory Body would give reasons in full if the representative is:

- not maintaining contact
- no longer eligible
- no longer acting in the person's best interests

The representative is 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 will terminate as stated on page 1.

FORM 9: STANDARD AUTHORISATION CEASED

A standard authorisation ceases to be in force when the period stated in the authorisation ends. It can cease earlier if it is reviewed and found to be no longer required.

A standard authorisation will also cease if a different standard authorisation is given as only one authorisation can be in force at any one time.

An example of this would be as follows, a standard authorisation is in place at Care Home A for twelve months, before the end date the person is moved to care Home B who now request an authorisation. When the authorisation is granted at Care Home B the authorisation ceases at Care Home A.

The Form should be provided to all of the following:

- the managing authority of the relevant hospital or care home;
- the relevant person;
- the relevant person's representative;
- every interested person consulted by the best interests assessor.

This form covers the variety of circumstances whereby the Supervisory Body may need to cease an existing DoLS Authorisation.

The Authorisation has expired:

Ideally an authorisation should not expire it should be renewed where it continues to be required. However, the Supervisory Body may 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.

This form confirms that it ceased to be in force:

If the authorisation has been reviewed and the person no longer meets the requirements for being deprived of their liberty, the authorisation will be ended and ceases 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 will bring an existing Authorisation to an end.

There is, in this case, no need for the first Managing Authority to do anything. This is the simplest way a DoLS Authorisation is ceased following a move.

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.

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 will 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 or shall no longer have effect:

If the Court of Protection is involved, due to the issue of deprivation of liberty or some other welfare issue, the Court may declare that an Authorisation is invalid. In this case the Supervisory Body will terminate the Authorisation from the date stated.

Ceased to be in force for some other reason:

Finally, there is the option of "some other reason". This section should be used if any other scenarios arise.

FORM 10: REVIEW OF CURRENT AUTHORISATION

Previously the review process was cumbersome and required a number of forms to be completed. Not only was this arduous for the Supervisory Body but also meant the person being deprived of liberty and often their families / carers received numerous different forms.

The process is now captured on one form shared between the Managing Authority and the Supervisory Body.

Page 1:

This has details of the person being deprived of their liberty and also of the person or organisation requesting the review. It may be an IMCA who requests a review or it may be a family member. Sometimes a review request may 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 can be transferred to the form.

The grounds for review are stated at the bottom of page 1. In essence the grounds for a review of a DoLS authorisation are:

1. The person no longer meets one of the requirements.
2. The reason why they meet one of the requirements is different.
3. There has been a change in the person's circumstances and the conditions need to be varied.

This is summarised on the form as:

- The person may no longer meet at least one of the requirements or the reason why they meet the requirements has changed or
- The conditions attached to the Authorisation need to be varied because there has been a change in the person's circumstances. This second option is for a review of conditions **only** and does not require a full best interests review.

The person or agency requesting the review will provide details.

Page 2: The Supervisory Body's decision following a review request

There are now three options for the Supervisory Body:

1. First, there is the option that the Supervisory Body do not consider there are grounds for review. Therefore, the Authorisation will stay in place and the dates will be entered.

NB: It is important to note that any review of an existing DoLS Authorisation can only be considered within the given time period. Often Managing Authorities will request reviews when the Authorisation is almost at an end. In this scenario it is better to advise them to request a Further Authorisation using Form 2, when all requirements will be assessed again.

2. The Supervisory Body has decided the grounds are met and will now commission at least one assessment in relation to this.

3. The Supervisory Body has decided that the conditions should be reviewed and has instructed a Best Interests Assessor.

Page 2: Outcome of the Review of requirements

There are three possible outcomes following the review:

1. At least one of the requirements was not met and therefore the Standard Authorisation will cease and the date of that will 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 varied will have been described in summary in the table above but will 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 will continue to be in force until the date the Authorisation was originally given. This outcome may also be supplemented by a change in conditions.

Page 2: Outcome of a review of conditions

It is important to note that it is possible to request a review of conditions alone. 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 can 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 must obtain a new assessment.

Once it is decided that this is a review of conditions only this situation the Supervisory Body has two options:

1. It may find that there has been a change in the person's case but this does not require a change in conditions *or*

2. There has been a change in the person's case as a result of which the conditions need to be varied and they are noted on this page.

FORM 11: IMCA REFERRAL

This form is relatively unchanged from the original form. However some Councils and some advocacy providers may have their own referral forms.

Page 1 ***This is for relevant names, addresses and contact details***
Page 2 ***This allows for selection of the type of IMCA referral.***

There are three types of IMCA referrals.

Type 1 – 39A - (commonly referred to as an ***a****ssessment or* ***a****uthorisation IMCA)*

There two possible appointments under this heading:

- 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 must be appointed.

- 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 ***c****over 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 ***d****emand IMCA)*

There are three 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 will benefit from the support of an advocate.
- The relevant person's representative will benefit from the support of an advocate.

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

Sending documentation following the DoLS process

1. If an Authorisation is granted the Supervisory Body (SB) must give a copy of the authorisation to each of the following—
   - the relevant person's representative.
   - the managing authority of the relevant hospital or care home.
   - the relevant person.
   - any section 39A IMCA.
   - every interested person consulted by the best interests assessor.

In practice this means sending the Form 5 to each of the above, ideally assessors should have asked for email addresses and secure email can be used.

2. If the authorisation cannot be granted the SB must give notice of this to each of the following—
   - the managing authority of the relevant hospital or care home.
   - the relevant person.
   - any section 39A IMCA.
   - every interested person consulted by the best interests assessor.

In practice this means sending Form 6, however the Schedule did not anticipate the large numbers of not granted cases where no assessments have been carried out and the person has moved or died. It is not practical or pragmatic to issue a Form 6 in many of these circumstances.

3. The supervisory body must give copies of the assessment to all of the following whether they are positive or not.
   - the managing authority of the relevant hospital or care home.
   - the relevant person.
   - any section 39A IMCA.
   - the relevant person's representative.

NB: Assessments are not routinely sent to every interested person who has been consulted. This protects the persons dignity and confidentiality of their circumstances.

4. If the BIA alerts the SB to an unauthorised deprivation of liberty, the SB must notify the following:
   - the managing authority of the relevant hospital or care home.
   - the relevant person.
   - any section 39A IMCA.
   - any interested person consulted by the best interests assessor.

This does **not** mean sending them the BIA assessment but does mean alerting them to an unauthorised deprivation of liberty.