

# Mental Capacity (Amendment) Bill: Reforming the Deprivation of Liberty Safeguards (DoLS)

## Summary Brief

The Mental Capacity (Amendment) Bill is a Government bill that reforms the **Deprivation of Liberty Safeguards (DoLS)** scheme. DoLS are safeguards that protect people who need to be deprived of their liberty as part of their care but don't have the capacity to consent. For example, a care home may have a key pad on the door to stop residents from leaving the site for their own safety. If a person does not have the capacity to consent to that arrangement, the care home needs to get a DoLS authorisation to ensure adequate safeguards are available to the person subject to them. DoLS often apply to people with conditions such as dementia, some types of autism, learning disability and acquired brain injuries.

## The current situation

- The DoLS system is widely recognised as being in desperate need of reform, and failing to provide vulnerable people with the protections they need. There are currently **over 125,000** people in England whose DoLS authorisation application is in a backlog meaning they are being deprived of liberty but are not receiving the essential safeguards. The current process is complex and bureaucratic. In 2014 the House of Lords concluded that DoLS **'were not fit for purpose'** and recommended reform.
- The number of applications continues to increase. 227,400 DoLS applications were received in 2017-18, up 4.7% from previous year.
- Applications are supposed to be authorised (or not) within 21 days, but they rarely are because of the backlog. Care homes and hospitals instead rely on 'urgent authorisations' to make their arrangements legal.
- Our proposals, the Liberty Protection Safeguards (LPS), are based on the Law Commission's recommendations after over three years of engagement with service users, care providers, and local authorities.

## Key Issues, resolved by changes proposed in the Bill: repairing a broken system to protect people

### **1. Currently too technical and complex, seen as legal "rubber-stamping"**

The new system is simpler and will work better with existing care planning processes. This means that, unlike in DoLS, LPS are considered in the earlier stages of care planning, rather than being authorised retrospectively. Some of the care home duties under LPS are aligned with existing duties in the Care Act (2014).

### **2. DoLS is burdensome on care providers and local authorities. The system can't cope with numbers post-Cheshire West**

The new system will be streamlined and more efficient, freeing up resources which can be used to deliver care. It reduces duplication by building on the existing care planning process, and simplifies the assessment process. Existing assessments can be re-used where appropriate, for example relying on existing medical diagnoses. Setting out the meaning of a deprivation of liberty will provide clarity and ensure that applications are not being made unnecessarily.

### **3. DoLS does not put the person at the heart of the system**

Under LPS there is a clear duty to consult with the person, and others such as families and carers, to ensure their wishes and feelings are heard. The reformed model will be more focused around the person. The person has a right to representation and support from an 'appropriate person', or an Independent Mental Capacity Advocate. Where there are objections raised, an independent Approved Mental Capacity Professional will review the arrangements. LPS will also apply to home and community settings, so people can access protections quicker than the current Court of Protection process.

### Hypothetical Case Study: Sylvia

Sylvia receives a diagnosis of dementia, and over time finds that she and her family are no longer able to manage her care at home. Her Local Authority places Sylvia in a care home and considers that a deprivation of liberty may be necessary as Sylvia's dementia means that she no longer has capacity to keep herself out of the way of harm, and is, for example, no longer road safe. To prevent her from wandering away from the home, the care home places Sylvia in a part of the care home that has key pad accessibility and makes an application to the local authority for a DoLS authorisation. Due to the backlog in assessments the local authority is unable to assess Sylvia. This leaves her in a position where the care home place restrictions on her without any oversight. It is several months before assessments are completed and an authorisation is given, during which time Sylvia is without the safeguards which ensure that the restrictions are necessary and proportionate.

### ***Under LPS:***

- The assessments are completed earlier in the process, so if changes are needed to Sylvia's arrangements, or if there is less restrictive care available elsewhere, this can be addressed before it is too late and arrangements are in place
- Sylvia has a valid dementia diagnosis and has had her capacity assessed. These will be used as part of the LPS arrangements so she doesn't have to undergo cumbersome duplicates of assessments unnecessarily
- Sylvia and her family will be consulted with earlier in the process, so her wishes and feelings can be considered sooner. Her family members or carers, who will often know Sylvia best, can play a stronger role within the Liberty Protection Safeguards model