



Law
Commission
Reforming the law

Review of the Deprivation of Liberty Safeguards

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Why this project?

House of Lords PLS report 2014

- DoLS legislation “not fit for purpose”
- “better implementation would not be sufficient to address the fundamental problems identified”

Cheshire West [2014] UKSC 19

- Expanded definition of deprivation of liberty
- DoLS applications up 14 fold (of which only 43% were completed)

Stage 1: Pre consultation

Summer 2014 – July 2015

Meetings with stakeholders and drafting of consultation paper

Stage 2: Public consultation

7 July 2015

Publication of consultation paper with provisional proposals for reform

7 July – 2 Nov 2015

Public consultation on the proposals

25 May 2016

Publication of interim statement

Stage 3: Final report and draft Bill

13 March 2017

Publication of final report (setting out final recommendations and draft Bill), consultation analysis and impact assessment

The case for reform

- ❖ Poorly drafted, complex & overly bureaucratic
- ❖ Ill-suited & inadequate terminology
- ❖ Limited scope
- ❖ Disconnect with the MCA
- ❖ Scale of the problem post *Cheshire West*
- ❖ In most cases safeguards are not delivered

The Liberty Protection Safeguards

The concept of deprivation of liberty

- ❖ No statutory definition of DoL – it has the same meaning as Article 5 ECHR
- ❖ Advance consent – new statutory provision to consent to a DoL

Authorising arrangements

- ❖ Arrangements can be authorised which enable care or treatment of a person (aged 16+) which give rise to a deprivation of liberty
 - Can be in any setting or multiple settings
 - Can include arrangements for transport
- ❖ Cannot be used to authorise restricted contact with friends/family or the delivery of care or treatment

Who is the responsible body?

- ❖ if the arrangements are in a hospital, it is the “hospital manager” (eg the trust)
- ❖ if the arrangements are via NHS CHC, it is the CCG or LHB
- ❖ otherwise it is the “responsible local authority” (the authority meeting the person’s needs or in whose area the person is ordinarily resident)

Conditions for an authorisation

- ❖ **Capacity assessment:** lack of capacity to consent to the arrangements, and provision for fluctuating capacity
 - ❖ **Medical assessment:** person is of unsound mind
 - ❖ **Necessary and proportionate assessment:** risk of harm to self or others
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- Minimum of 2 assessors
 - Increased ability to use previous and equivalent assessments

Operational independence

**Independent
reviewer**

**Approved Mental
Capacity Professional**

Safeguards

- ❖ Rights to regular reviews
- ❖ Rights to advocacy or an appropriate person
- ❖ Rights of legal challenge to Court of Protection
- ❖ Duty on prescribed bodies to monitor and report on the operation of the scheme

Wider reforms of the MCA

- ❖ amendment of s4 best interests checklist to give ascertained wishes and feelings “particular weight”
- ❖ s5 defence against criminal/civil liability not available to professionals making key decisions (eg moving P to long term accommodation or restricting P’s contact with others) unless they document how they have complied with the wider provisions of the Mental Capacity Act (eg by confirming the steps taken (unsuccessfully) to help P make their own decision and why it is believed that P lacks capacity)

Next steps ...?



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