

# Mental Capacity Act Update

Find out about Deprivation of Liberty Safeguards arrangements.

***If you work with adults who lack capacity to make some decisions themselves, you need to read this!***

## What's the Mental Health Act about?

The Mental Health Act 2005 provides a legal framework for decision making with adults who lack the capacity to make those decisions themselves, like managing finances and property affairs and health and social care arrangements. The act also covers rules around research, the provision of an Independent Mental Capacity Advocate (IMCA) in certain circumstances and a new offence of the wilful treatment and neglect of an adult who lacks capacity. For more information about the act and the code of practice, go online:

[www.devon.gov.uk/mentalcapacityact](http://www.devon.gov.uk/mentalcapacityact)

## What's new?

### Deprivation of Liberty Safeguards, (DoLS)

The Deprivation of Liberty Safeguards (DoLS) resulted from a European Court of Human Rights ruling referred to as the 'Bournewood Judgement'. That judgement was made in relation to the care and treatment provided by a hospital, to a man who lacked capacity to make decisions on those matters himself. The court ruled that the way in which the man was treated amounted to a deprivation of his liberty and thus his human rights had been breached, particularly article 5. The Mental Capacity Act 2005 was amended to include the Deprivation of Liberty Safeguards which will come in to effect on **1 April 2009**.

Care homes and hospitals, ('Managing Authorities') have specific responsibilities to refer to the Primary Care Trust or Local Authority, ('Supervisory Body') a person whose plan of care is such that for their safety, it is necessary to deprive that person of their liberty. A six stage assessment process undertaken by certain professionals with specific training and skills will form part of that authorisation request process.

A Deprivation of Liberty Safeguards Code of Practice has recently been published which defines what needs to happen and who is responsible. The Department of Health has devised some standardised forms for Managing Authorities and Supervisory Bodies to use to ensure the safeguards are adequately documented. Both sets of documents and more information can be accessed via [www.doh.gov.uk](http://www.doh.gov.uk)

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## Safeguarding Adults and Mental Capacity Act

The Mental Capacity Act 2005 is generally perceived as a piece of safeguarding legislation and Adult and Community Services have endorsed that view by implementing the act and the subsequent Deprivation of Liberty Safeguards under the auspices of the Safeguarding Adults team.

Work is underway to develop policies and procedures relating to the DoLS process and Mental Capacity Act more generally. This is on a multi-agency basis, working closely with care homes and hospitals. An implementation group, acting as a sub-group to the Safeguarding Adults Board, will take forward plans to establish and implement a DoLS service which will be administered and managed within the Safeguarding Adults team.

## Appointments

Advertisements have been made for a Team Clerk and two Safeguarding Adult Officers who will specialise in Mental Capacity and Best Interests Assessments. Emma Craigie has recently been appointed to the post of Mental Capacity Act Project Manager, seconded for 12 months initially from her post as a Safeguarding Adult Officer. Emma will be co-ordinating and managing issues relating to the mental capacity act, initially focusing on the implementation of the Deprivation of Liberty Safeguards.

## Training

Mental Capacity Act training is now managed in alignment with the Safeguarding Adult learning and workforce development pathways. Currently, the pathway for MCA is under review and the awareness sessions (previously run by the Devon Partnership Trust) will continue until the New Year, when e-learning packages will be available for Safeguarding Adults, Mental Capacity Act and Deprivation of Liberty Safeguards. Additional levels of training for MCA and DoLS will be available online later in the spring. Amongst other issues, these sessions will look at implementing the principles of the MCA and DoLS.

For further information about MCA or safeguarding training just contact **Richard Rainbow**, email: [richard.rainbow@devon.gov.uk](mailto:richard.rainbow@devon.gov.uk) Tel. **01392 38 3272**

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*For further information on mental capacity act issues generally, see web pages: [www.devon.gov.uk/mentalcapacityact](http://www.devon.gov.uk/mentalcapacityact) or contact Emma Craigie, Mental Capacity Act Project Manager Tel. **01392 382606** or email [emma.craigie@devon.gov.uk](mailto:emma.craigie@devon.gov.uk)*