

Mental Capacity Act 2005
Deprivation of Liberty Safeguards
Standard forms for mental health assessors

Introduction

This guidance booklet is intended for people undertaking mental health assessments for the purpose of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS).

The MCA DOLS apply to people in hospitals and care homes who lack the capacity to consent to the arrangements made for their care or treatment and who need to be deprived of their liberty, within the meaning of Article 5 of the European Convention on Human Rights, in their own best interests and to protect them from harm.

The main legislation relating to the MCA DOLS is sections 4A and 4B of, and Schedules A1 and 1A to, the MCA. It is important to bear in mind though that the MCA DOLS are in addition to other safeguards in the MCA, so any action taken under the MCA DOLS must be in line with the other provisions of the MCA.

Regulations¹ set out the eligibility criteria for MCA DOLS assessors. Assessors will be appointed by a “supervisory body”, which will be the relevant primary care trust or council with social care responsibilities. A standard referral form (Form 29) has been produced for supervisory bodies to use to appoint a mental health assessor. A copy of the form is included in the annex to this booklet.

This booklet is not intended to be a comprehensive stand-alone guide for mental health assessors. Consequently, it does not replicate information available from other sources. It does, however, cross-refer to other sources of information that a mental health assessor may need to consider when undertaking their assessment.

All MCA DOLS assessors should have an applied knowledge of the main MCA Code of Practice² (the main Code). The MCA DOLS supplement to the

¹ The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008, accessible via:
http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/DH_084948

² The main Mental Capacity Act 2005 Code of Practice is accessible via:
<http://www.dca.gov.uk/menincap/legis.htm#codeofpractice>

main Code³ (the MCA DOLS Code) is also an important source of information for assessors.

The role of the mental health assessor

What follows is a brief description of a mental health assessor's role. More detailed information about the role of the mental health assessor is contained in paragraphs 4.33 to 4.39 of the MCA DOLS Code.

The purpose of the mental health assessment is to establish whether the person being assessed has a mental disorder within the meaning of the Mental Health Act 1983. There is, however, one distinction from the Mental Health Act 1983 definition of mental disorder, and that is that the provision for that Act only to apply to a person with a learning disability if the disability is associated with abnormally aggressive or seriously irresponsible conduct on the person's part does not apply for the purposes of the MCA DOLS.

The MCA DOLS mental health assessment is solely intended to determine whether a person has a mental disorder. It is not to decide whether detention under the Mental Health Act 1983 should be used in preference to the MCA DOLS. But a mental health assessor may also be asked to complete the MCA DOLS eligibility assessment (see below), which will require the assessor to consider whether the person being assessed is rendered ineligible for the MCA DOLS because they are, or should be, subject to the provisions of the Mental Health Act 1983 instead.

There is a requirement on a mental health assessor to consider what effect being deprived of liberty will have on a person's mental health, and to notify the best interests assessor accordingly so that the best interests assessor can take the information into account in compiling their assessment (paragraph 4.70 of the MCA DOLS Code).

In addition to completing assessments as part of the standard MCA DOL authorisation process, mental health assessors may be asked to undertake assessments in the context of an MCA DOLS review (Chapter 8 of the MCA DOLS Code).

Rights of MCA DOLS assessors to examine and copy records

All MCA DOLS assessors have a statutory right (paragraph 131 of Schedule A1 to the MCA) to, at all reasonable times, examine and take copies of:-

- any health record,

³ The MCA DOLS supplement to the main Code is accessible via:
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

- any record of, or held by, a local authority and compiled in accordance with a social services function,
- any record held by a person registered under Part 2 of the Care Standards Act 2000,

which the assessor considers may be relevant to the assessment that is being carried out.

Standard forms for assessors

Standard forms have been prepared for completion by MCA DOLS assessors to record the outcome of their assessments. The standard forms are available on the DH website⁴. These are not statutory forms, so there is no absolute requirement to use them. However, their use is recommended since they lead assessors through the assessment process in a way that will enable them to ensure that they properly comply with the requirements of the MCA DOLS legislation, and they will promote a consistent approach to record-keeping.

Standard form 6 is the form for completion by a mental health assessor to record the outcome of their assessment, either as part of the standard MCA DOL authorisation process or in the context of a MCA DOLS review.

A supervisory body might ask a mental health assessor to undertake up to three of the MCA DOLS assessments. The other two potential assessments that a mental health assessor might be asked to undertake, the related standard forms, and the paragraphs of the MCA DOLS Code that contain guidance on the relevant assessment are as follows:-

- Mental capacity assessment: standard form 7, paragraphs 4.29 to 4.32 of the MCA DOLS Code.
- Eligibility assessment: standard form 9, paragraphs 4.40 to 4.57 of the MCA DOLS Code. (Only mental health assessors who are approved under section 12 of the Mental Health Act 1983 are eligible to complete this assessment.)

Copies of the standard MCA DOLS forms that a mental health assessor might potentially be asked to complete are attached in the annex to this booklet.

The outcome of the assessment process

Although it is for a supervisory body to either give or refuse a standard MCA DOL authorisation, it has to do so on the basis of the outcome of the

⁴ Forms and record-keeping guides for supervisory bodies and managing authorities are accessible via: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772. The guide for supervisory bodies includes a full set of the MCA DOLS standard forms.

assessment process. If every assessment comes to the conclusion that the person being assessed meets the MCA DOLS qualifying requirement to which the assessment relates, the supervisory body must give a standard MCA DOL authorisation. If any assessment comes to the conclusion that the person does not meet the relevant MCA DOLS qualifying requirement, the supervisory body may not give a standard MCA DOL authorisation.

If a supervisory body is informed by a MCA DOLS assessor that any qualifying requirement is not met, the supervisory body should inform any assessor still engaged in carrying out an assessment that they are not required to complete it.

It is important that a mental health assessor should give a copy of their mental health assessment report to the supervisory body that has requested it as soon as possible after the completion of the assessment. Similarly, they should give the supervisory body copies of any other of the MCA DOLS assessments that they have been asked to undertake as soon as possible.

Mental health assessors will need to use forms 6, 7, and 9 and need to be aware of form 29.

Form 6: Mental health assessment form

Form 7: Mental capacity assessment form

Form 9: Eligibility assessment form

Form 29: Form by which a supervisory body appoints a mental health assessor

A continuation sheet has been developed as required for forms 6 and 7.