

**Being able to make choices
about your life and your care –
changing the law to do with
mental capacity**



Our booklet in easy read

Who we are and what we do

We are the **Law Commission**.

We are an **independent body**. We look at the law and propose changes to make it better.



We want to change the law to do with keeping people safe when they can't make decisions about how their care or treatment should be provided.

We had a **consultation** to ask what people thought about our plans to change the law.



This report tells you about the changes we want to make to the law to keep people safe when they can't make decisions about how their care or treatment should be provided.

Mental capacity

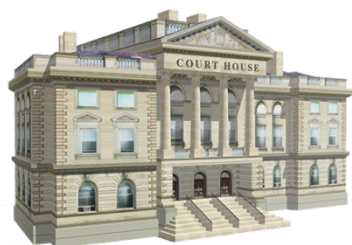
Being able to decide things in your life and your care depends on your **mental capacity**.





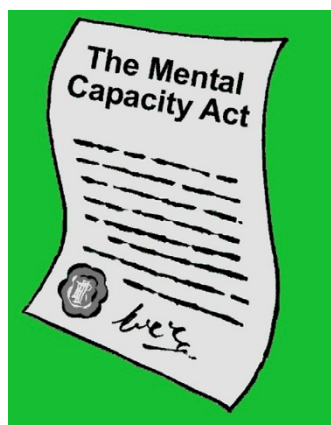
Some people are not able to make decisions about the care or treatment they need, and how it should be given to them.

If someone gets care or treatment in a way that they do not choose, because they are not able to, then they still need to be kept safe.



Keeping people safe may lead to them losing their **liberty**. When this happens the law needs to check that this is done for the right reasons.

We are not happy with the way the law keeps people safe if they cannot decide about how their care or treatment is provided and lose their **liberty**. We want to change this.



People who cannot make their own decisions are protected by the **Mental Capacity Act**.

The **Deprivation of Liberty Safeguards** or **DoLS** for short, are part of the **Mental Capacity Act**.

They are the rules for people who lose their **liberty**.





The rules protect people who need to stay somewhere because it is the best thing for them.

The **DoLS** are supposed to keep people safe if they lose their **liberty** and

- Have to go into a care home
- Have to go into hospital



We want to change the **DoLS**. We do not think they are used in the right way.

We do not think the **DoLS** work well with the **Mental Capacity Act**, which is a good law. We want to stop using **DoLS** and replace it with something better.



We are writing a new Bill called the **Mental Capacity (Amendment) Bill**. The Government have to agree with what the Bill says before it can become law.

Changing DoLS

We want the **DoLS** to stop and have **Liberty Protection Safeguards** instead. The new safeguards will work better to keep people's rights



safe. The new safeguards will apply to more places than the **DoLS**.



They will keep people safe by law in

- Care homes
- Hospitals
- **Supported living** – supported living is when you have a place to live but also have support.
- **Shared housing** – this is a place you share with a paid carer.
- **Private housing** – this is where you pay rent or you own the house.



The new safeguards will also be able to keep people safe when people



- Are told that they have to live in more than one place
- Get their care or treatment in more than one place
- Have to move between places to get care or treatment.



We want to keep people safe in a way that is not hard for you or your family.



At the moment, the DoLS are for people who are 18 years or over.

We want the new **Liberty Protection Safeguards** to include people who are 16 years or over.



We want the **Liberty Protection Safeguards** to be managed in a good and responsible way.

Who manages the safeguards will depend on who is making decisions about a person's care and treatment.

For example

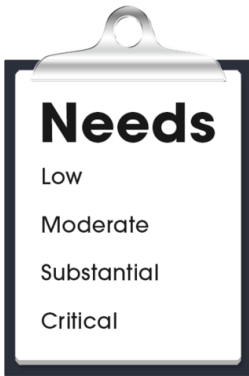
If you are in hospital, the hospital manager would be responsible for your care.



Getting an assessment

The **Liberty Protection Safeguards** means that every person must be checked to see if they can decide things for themselves.





They will have a

- **Capacity assessment** – this is a check to see if you can decide how your care or treatment should be given to you.
- **Medical assessment** – this is a check to see if you have a mental health condition that makes you unwell.
- **Assessment of care** – if it is the best thing for you to get care that results in you losing your **liberty**, without you choosing it yourself.



For example, you might need to go into hospital but cannot choose this yourself. It might mean someone else decides this so that

- You get the care you need
- You are kept safe.



Our new Bill says the assessment has to decide

- If getting care which results in them losing their **liberty** is the best thing for the person
- If the person would be harmed or not safe if they **did not** get care that they need which results in them losing their **liberty**.





The people in charge of your care or treatment will also speak to people who know you and ask what they think is best and safe.

Sometimes the person may have asked someone else to decide what happens with their care or treatment.



This is called giving someone **power of attorney**. But a person with the power of attorney cannot agree to you losing your **liberty**. We will make the law as clear as we can on this.



The new law will make professional people who know about mental capacity check that all the decisions made are right and keep people safe.

The organisation that decides your care will need to keep a record of what happens.



For example, if the NHS sends you to a care home, then they need to record what happens. This information might go in your care plan too.



You can be allowed to lose your **liberty** for up to 12 months. During this time there will be checks on what is best.

Then you might be allowed to lose your **liberty** for another 12 months and then for up to 3 years.

But your safety and freedom will always be checked.



If you do not need to lose your **liberty** then the organisation that put you there will change this.

They will always check that you are safe before they change your care.



Keeping you safe

The new law will say that you can only be kept somewhere you did not choose if you are not able to decide things for yourself.

Your situation will be reviewed at different times to check that you are OK and nothing needs to change.





You have the right to an **advocate** to speak for you – if you want one.

This can be a big help in keeping you safe. For example, you might ask your carer to speak for you. Your advocate can

- Say what you want to happen with your care
- Give you support.



If you think you have been taken into care or had treatment you did not want and lost your **liberty**, then you can go to court.



Government bodies in England and Wales will check that the law is working to keep you safe in care.

The new law will work alongside the law called the **Mental Health Act** to make sure that you are kept safe.



We want Government to think about joining both laws together in the future.



Putting you at the centre of your care

Any care you get has to be the best thing for you. This is the law. We know you are not always listened to. And you get care that is not right or you did not want.



We want you to say what you want to happen with your care – if you can. This is in our new Bill.

We will make sure

- You get a proper assessment
- The things in your care plan happen
- Your views are always given importance.



We will make sure the organisations that decide your care follow the **Mental Capacity Act**.

There will always be a written record of what happens to you.



You might need support to make a decision. We want to make the law stronger about this.

You should get the chance to decide your care when you can before it happens.