

A GUIDE TO

Deprivation of Liberty (DoL)

**orders supporting
looked after children
in accommodation**

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Introduction

Court applications to deprive children of liberty rose by 462% from 2018 to 2021 (NFJO, 2022).

This guide is to support the knowledge and understanding of local authorities, registered providers and regulatory inspectors.

The aim of the guide is to provide a framework to inform the practical aspects of working with and supporting children who are deprived of their liberty.

Deprivation of Liberty

The Deprivation of Liberty Safeguards (DOLS) are an amendment of the Mental Capacity Act 2005. They are soon to be replaced by the Liberty Protection Safeguards (LPS) following an amendment in 2019. This has been delayed due to a number of factors including the Covid pandemic. The implementation date is not yet been set.

DoLS offer protection to adults who lack capacity to consent to being deprived of their liberty. The Cheshire West supreme court ruling which took place in 2014, determined the 'Acid Test' for whether an individual who lacks the relevant capacity is being deprived of their liberty. The court determined that the acid test has three criteria that need to be met:

- A) The individual lacks capacity to make a decision about their care and accommodation**
- B) The individual is subject to continuous care and control**
- C) The individual is not free to leave**

It should be noted that when it comes to children and young people the acid test should be nuanced. In determining whether an objective deprivation of liberty is occurring, the child or young person's situation should, with that of a child or young person of the same age and maturity who is free from disability. In other words, a deprivation of liberty will arise if a child or young person with a mental disorder is subject to a level of control beyond that which is normal for a child of their age. Also, case law has confirmed that parents cannot consent to (what would otherwise be) a deprivation of liberty on

behalf of their child (aged 16 or 17) who lacks capacity. But if the child is aged under 16, then in some circumstances a parent can consent to the arrangements, meaning that there is no deprivation of liberty.

Currently DoLS do not apply to under 18-year-olds and LPS will not apply to under 16-year-olds. Children who are looked after and under the age of 18 are increasingly being placed on DoL orders by the courts to prevent them from harm through the use of the Inherent Jurisdiction, subject to section 100 of the Children Act 1989. In England, section 25 of the Children Act 1989 or section 119 of the Social Services and Well-being (Wales) Act 2014 refers to the use of accommodation for restricting liberty. Orders under section 25 or section 119 are made by the court. These are known as secure units. There is a lack of secure accommodation placements nationally for the number of children in the country so alternate provisions are being sought. The DoL orders support the children being placed in the alternate provisions which do not meet secure criteria in section 25 or section 119. In the case of T (A Child) [2021] UKSC 35, the Supreme Court decided that if there were no alternative, and where the child (or someone else) is likely to come to grave harm if the court does not act, they can then be placed in home which deprive them of their liberty. Such imperative considerations of necessity led to the conclusion that the use of inherent jurisdiction must be available in these cases. However, in this decision the court made clear that authorising the use of the inherent jurisdiction in such cases will only be justified in 'imperative conditions of necessity' where there are no alternatives to protect the child.

Who this guide is for:

This guide is for homes supporting children who are looked after and are on DoL orders. **This guide is for:**

- Local Authorities
- Registered Providers
- Responsible Individuals
- Registered Managers
- Frontline staff working with children
- Independent Visitors
- Independent Advocates
- Ofsted

The purpose of the guide:

This guide outlines the information required for accommodations supporting children who are on DoL orders. This guide aims to bridge the flow of information between the court and the children's homes. It also aims to support managers who

are requested to provide information for reviews and court hearings to know what they are legally required to provide. They can also make recommendations within the parameters of the placement they are providing.

The Court Order:

The court order refers to the deprivation of liberty orders. The court in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute.

Court orders will vary depending on the Court where they are issued. Generally, the order will list the following :

- Family court name, the child's name, and the judge's name.
- It will list the applicant which is the local authority.
- The parents/carers of the child and the child.
- It will list recitals from the hearing which is certain information or facts. As an example, if a respondent supports/opposes the making of the deprivation of liberty order.
- It will then declare that it has been lawful, and in the child's best interests to deprive them of their liberty.
- The order should highlight the service or accommodation that will support the child.
- The order will show an expiry date and stipulate when to submit details to the court for review.
- It will then list the respects in which the child can be deprived of their liberty.

Please note the section of the order which highlights:

All parties must immediately inform the allocated judge as soon as they become aware that any direction given by the court cannot be complied with and to seek in advance an extension of time to comply.

Or

Any deterioration or improvement in the conditions must be considered for a review of the order.

Practice guide issued by the President of the Family Division 2019.

<https://www.judiciary.uk/publications/practice-guide-placements-in-unregistered-childrens-homes-in-england-or-unregistered-care-home-services-in-wales-2/>

The management of the court order:

This section gives guide on the practicalities and risk assessment when managing the DoL orders directly in a home. This section is relevant to registered providers, registered managers, and responsible individuals.

The matters listed in the order may vary but tend to cover the following areas

- That carers (staff), have permission to prevent the child from leaving the home except under supervision of staff.
- If the child attempts to leave the property without the supervision of staff, then the use of physical restriction of movement is to be implemented.
- In the event the child leaves the home, staff are to follow and if the child goes out of sight, then the police should be called.
- The home must make every attempt to keep the child safe. This can include the use of more advanced security systems such as door alarms, monitor sensors and external CCTV.
- The homes locality risk assessment (regulation 46 The Children's Homes Regulations 2015) must be up to date and relevant to whether it is suitable to support the child.
- There must be clear impact risk assessments to determine the home's suitability for the child and the impact on any other children in the home.
- In the event of specific security measures such as additional monitors and security – written consent must be obtained from the local authority placing the child. The child must be made aware of security measures in the home.
- 'Missing from home protocols' which are designed to support effective collaborative safeguarding responses from all agencies when a child goes missing must be maintained and up to date.
- Local police to be kept informed through the 'Philomena Protocol' where in place or through joint working protocols. The Philomena Protocol is a scheme that asks carers to identify children who are at risk of going missing and information that can help them be found quickly and safely such as previous locations and acquaintances. The Philomena Protocol is not in place in all local authorities. Where it is not in place there will be similar initiatives such as joint protocols for missing children.
- Staff supporting the child must have up to date training in restriction of movement and be prepared to keep the children and young people safe when necessary.
- Children's homes are not secure accommodation provisions. The locking of doors is considered a physical restriction and should be included in any plans to safeguard the child or children effected.
- That the child will have no access to their own phone.

The management of the court order:

- That the child may have supervised calls to approved contacts. Conversations with solicitors and guardians may be in private.
- The home must make every effort in this area to keep the child safe.
- The child may arrive having not given their phone over to the local authority or they may have concealed a phone. The order can give the carers the right to remove the phone – however, this should not be removed from under personal garments. If a phone is concealed in such a manner, please refer to risk assessments. It is advised that individual homes seek protocol from local police on this area. This should be a feature in the locality risk assessment.
- If a child comes into possession of a phone or the phone has not been removed, the local authority must be notified immediately if this is not in compliance with the court order.
- There will be no access too other electronic devices if outlined in the order.
- This includes that the child may not access laptops, consoles, or smart televisions unsupervised.
- Laptops are at times used as part of education, but this will need to be fully supervised and removed at the end of each session.
- Password protection and parental settings must be on all devices.
- If there are other children in the home this must be included in the impact assessment to highlight how this is managed if the children are on very different plans.

Additional advice

It is good practice for homes supporting children who are deprived of their liberty to review their safety daily. This can include perimeter checks, monitoring device checks and window or door lock checks. Smart televisions need to have functionality for access to social media removed

or protected and Wi-Fi codes must be hidden from the settings on any device. Managers must ensure that every reasonable step has been taken to comply with the court order. If the home is unable to implement the court order, then a review will be required.

The review of the DoL order:

- The DoL order for children under the Inherent Jurisdiction must be reviewed in line with the order set by the judge.
- The DoL order does not normally exceed a 12-month period.
- During the reviews, the local authority which is responsible for the child must provide an update and recommendation to the court. This will assist the court in determining if the order is to be extended or removed. It may also be altered in respect of the areas in which the child will be deprived of their liberty.

Information request

As part of the court process there may be a request for the home to submit documents as part of the proceedings. This may be a request from the court or from the local authority to support its application.

These may include the following:

- Statement of purpose
- Locality risk assessment
- Individual home risk assessment
- Individual impact and matching assessment
- Ofsted reports where applicable
- Regulation 44 reports where applicable
- Education arrangements
- Therapeutic input

The statement of purpose

Schedule 1 of the Children's homes regulations 2015, outlines the matters to be included in the Statement of Purpose. This includes a statement of the range of needs of the children for whom it is intended that the children's home is to provide care and accommodation. The description of the accommodation offered by the home includes how the accommodation

has been adapted to the needs of the children. For a home supporting a child being deprived of their liberty the arrangements must be included in the Statement of Purpose. Schedule 1 must also include the details of the experience and qualification of staff. This is applicable to the management of children being deprived of their liberty.

Impact of quality of care and location

The Children's homes Regulation 2015 states the need to understand the impact that the quality of care provided in the home is having in the progress and experiences of each child, regulation 13(2)(f). Regulation 46 includes a review of the premises annually. This includes consideration to requirement in regulation

12(2)(c). To ensure that the premises used for the purpose of the home are located so that children are effectively safeguarded. These aspects must be considered in terms of supporting children under deprivation of liberty court orders.

Further information request

This section outlines the request for information from the courts to local authorities and homes. Please see appendix 1 for further details.

For review hearings the local authority will be required to submit updates to the court. This will either support a request for an extension to the DoL order, or to have them removed.

The following may be requested:

- Overview of any significant events that are not in compliance with the DoL order.
- Outline of the progress of the child in terms of key areas such as: Education, enjoyment and achievement, health, well-being, and other areas relevant to the child's progression. This

will be outlined in the local authority care plan. This is then linked to the placement plan of the provision supporting the child, regulation 14.

The home caring for the child will be responsible for compiling regular reports on progress in all areas. Any assessments such as psychological assessments and educational assessments will be relevant to monitoring outcomes and progress.

In terms of recommendations for step down, extension or removal of DoL orders – this sits with the responsible local authority. The provision supporting the child can offer factual progress based reports.

Planning and advice

Additional Information

- If the date on the order has expired and there is no update from the local authority as to the status. It would be unlawful to deprive the child of their liberty.
- If the home feel the child has improved significantly, for example, if they feel the child should be given trust that oppose the order, such as time unsupervised, the local authority must be informed immediately. If the home and the local authority feel it does not breach any provision in the order and there is no grave concerns then this may happen. The home should receive authorisation in writing. While the order is still in date, the terms of the order can be re-applied if needed.

Relevant documents

- The Children Act 1989
- The Mental Capacity Act 2005
- The Mental Capacity (Amendment) Act 2019
- The Children's Homes Regulations 2015
- The Care Standards Act 2000

Appendices

Appendix 1

RACI table for provision of information to the court

INFORMATION	LOCAL AUTHORITY	REGISTERED MANAGER	REGISTERED PROVIDER	EDUCATION	THERAPY/ ASSESSMENTS
Initial information for the court hearing	A	C	R	I	I
Progress report in well-being and safety areas	A	R	I	C	C
Education report	A	C	I	R	I
Therapeutic report	A	C	I	I	R
Recommendations to the court for step down, extension or removal of DoLS	A/R	C	I	I	C
Exit plans	A/R	C	I	I	C

R – Responsible

A – Accountable

C – Consulted

I – Informed

