

Title: Mental Capacity (Amendment) Bill.

IA No:

RPC Reference No:

Lead department or agency:

Department of Health and Social Care

Other departments or agencies:

Impact Assessment (IA)

Date: 31/01/2019

Stage: Final/Bill

Source of intervention: Domestic

Type of measure: Primary Legislation

Contact for enquiries:

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Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£2,055m	-£1.01m	£0.1m	Not applicable	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Deprivation of Liberty Safeguards (DoLS) provide a legal process to authorise the deprivation of liberty of people in hospitals or care homes who lack mental capacity to make decisions about their care and treatment arrangements. The DoLS process is problematic in that it is complex, overly-bureaucratic and fails to provide safeguards for deprivations of liberty in certain settings. A Supreme Court judgment known as "Cheshire West" widened considerably what was understood to be the cohort of people deprived of liberty, leading to an increase in the number of assessments and authorisations required. The DoLS system has been unable to cope. The result has been non-compliance with the law, and associated breaches of human rights.

What are the policy objectives and the intended effects?

1. To create a new simplified legal framework which is accessible and clear to all affected parties;
2. To deliver improved outcomes for persons deprived of their liberty and their family / unpaid carers;
3. To provide a simplified authorisation process capable of operating effectively in all settings.
4. To ensure that the Mental Capacity Act works as intended, by placing the person at the heart of decision-making and is compliant with Article 8 European Convention on Human Rights.

The intended effects are to ensure increased compliance with the law, improve care and treatment for people lacking capacity and to provide a system of authorisation and robust safeguards in a cost-effective manner.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Status quo.

Option 1: The DoLS fully operationalised.

Option 2: Adjusted Liberty Protection Safeguards (preferred option)

Our preferred model is a variation of the Law Commissions Liberty Protection Safeguards (LPS) model. It is our preference for implementation because this is a proportionate and cost-efficient approach that resolves DoLS problems in a timely way.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/06/24

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Caroline Dinenage:



Date:

8/2/2019

Summary: Analysis & Evidence

Policy Option 0

Description: Business as usual (DoLS at present)

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
2018/19	2019/20	Years 10	Low: £0	High: £0	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	£0	£0
High	N/A		£0	£0
Best Estimate	N/A		£0	£0

Description and scale of key monetised costs by 'main affected groups'

This is the base case which assumes the current system will continue without reform. Costs and benefits of other options are compared with this.

Other key non-monetised costs by 'main affected groups'

We do not consider option 0 to be a viable option. The current system cannot keep pace with the high demand for DoLS authorisations, meaning there has been subsequent non-compliance with the law and potential breaches of human rights.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	£0	£0
High	N/A		£0	£0
Best Estimate	N/A		£0	£0

Description and scale of key monetised benefits by 'main affected groups'

This is the base case which assumes the current system will continue without reform. Costs and benefits of other options are compared with this.

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 1

Description: DoLS fully operationalised

FULL ECONOMIC ASSESSMENT

Price Base Year 2018/19	PV Base Year 2019/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£13,733m	High: -£21,819m	Best Estimate: - £17,646m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£12.16m	1	£1,819m	£13,733m
High	£27.02m		£2,890m	£21,819m
Best Estimate	£ 19.59m		£2,337m	£17,646m

Description and scale of key monetised costs by 'main affected groups'

Costs below are in 2018/19 prices and are based on the number of DoLS applications in 2016/17.
 Transitional training costs are estimated to be £19.59m and ongoing training costs estimated to be £0.9m per year.
 Cost to managing and supervisory bodies is estimated to be £352.56m per year.
 Cost of DoLS in doemstic settings is estimated to be £636.00m per year.
 Legal costs are estimated to be £1,052.43m per year.
 Costs to regulatory bodies are estimated to be £4.78m.
 Average annual costs are calculated by taking the net total cost over the 9 years (excluding transition, non-discounted) and dividing by 9.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

None.

Net Benefit (PV) is calculated by taking the total cost (PV) away from the total benefit (PV).
 As benefits are unquantified the NPV is simply the negative cost.

Other key non-monetised benefits by 'main affected groups'

United Kingdom: greater compliance with international human rights obligations.
 Reduced exposure to damages for unauthorised deprivations of liberty.
 Improved health outcomes as everyone who requires an authorisation receives one.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Sensitivities are detailed, where necessary, within the evidence base, as are assumptions.

Risks:

- The court system simply cannot cope with the large numbers of court authorisations required and delays undermine the system.
- The system continues to be seen as inefficient and wasteful, and is not taken up by those who require it.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 2

Description: Adjusted Liberty Protection Safeguards (LPS)

FULL ECONOMIC ASSESSMENT

Price Base Year 2018/19	PV Base Year 2019/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £1,153m	High: £3,224m	Best Estimate: £2,055m

COSTS (£m)	Total Transition		Average Annual	Total Cost
	(Constant Price)	Years		
Low	£11.85m	1	£184.77m	£1,405m
High	£28.11m		£228.89m	£1,754m
Best Estimate	£19.47m		£204.44m	£1,561m

Description and scale of key monetised costs by 'main affected groups'

Below are the costs per year, in 2018/19 prices and are based on the number of DoLS applications in 2016/17 increased to account for demographic change.
 Cost of authorisations and reviews by care settings assumed to be zero as the functions for care homes build on the role they perform currently.
 Cost of admin is estimated to be £47.14m per year.
 Cost of reviews (and new 'necessary and proportionate' assessments in care homes) estimated at £19.91m per year
 Cost of Advocacy estimated at £27.69m per year
 Cost of approval by AMCPs is estimated to be £10.91m per year.
 Costs to the courts and other legal costs are estimated to be £35.58m per year.
 Cost to regulators (CQC) is estimated to be £7.31m per year.
 Average annual costs are calculated by taking the total cost over the 9 years (excluding transition, non-discounted) and dividing by 9. The first year is a transitional year.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition		Average Annual	Total Benefit
	(Constant Price)	Years		
Low	£0	1	£339.28 m	£2,559m
High	£0		£660.09 m	£4,978m
Best Estimate	£0		£479.50 m	£3,616m

Description and scale of key monetised benefits by 'main affected groups'

In this IA we have not costed any benefits that the preferred model will bring about in terms of quality of life gains. However, we have costed the cost savings of the new system relative to DoLS at present. We then project these annual savings forward, adjusting using a demand index and discount them. We then report the average annual benefits (excluding transition, non-discounted) over a nine-year period by taking the total benefit and dividing by 9. Net Benefit (PV) is calculated by taking the total cost (PV) away from the total benefit (PV).

Other key non-monetised benefits by 'main affected groups'

Incapacitated adults: greater empowerment and equality and improved care outcomes.
 United Kingdom: greater compliance with international human rights obligations.
 Families and carers: greater certainty and empowerment.
 Removes uncertainty of care providers waiting for assessments to be completed.
 NHS and local authorities: greater compliance with the law, freed up resources from efficiency gains.

Sensitivities are detailed, where necessary, within the evidence base, as are assumptions. Direct impact on business (Equivalent Annual) is the estimated familiarisation cost to care providers in the transitional year. We estimate no additional costs to business after this. While there are benefits to business, such as the removal of uncertainty, we have not monetised these.

Unit costs assumptions

1. We have assumed that the Personal Social Services Research Unit (PSSRU) Unit Costs of Health and Social Care¹ published in December 2018 provides the best evidence in relation to unit labour input costs which feeds into the overall training costs calculations where relevant.
2. We have also assumed the comprehensive work undertaken by the Law Commission on reforming the DoLS system over a three-year period (2014 – 2017)² continues to represent the best available evidence on other unit costs excluding training costs. As such, various unit costs are sourced from the Law Commission's Mental capacity and Deprivation of Liberty Impact Assessment (IA) and uplifted to 2018/19 prices. Unit costs are detailed in the Annex pages.

Risks

1. Costs of the proposed preferred option materially exceeds our estimates which will reduce the quantified benefits.
2. Data from different sources have been combined and broad assumptions applied in order to generate estimated costs. Changing these assumptions could alter the estimated scale of cost impacts.

Mitigation of these risks includes approaching the whole process conservatively in relation to costs/benefits and using best estimates from the best available evidence. This is the approach taken here.

BUSINESS ASSESSMENT (Option 2)			
Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
1.01	N/A	-1.01	0.5

¹ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

² <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

Evidence Base

1. Originality/ Introduction

- 1.1 This is a final stage impact assessment for the Mental Capacity (Amendment) Bill. It evaluates options for reforming the Deprivation of Liberty Safeguards (DoLS) system.
- 1.2 The preferred option under consideration is an adjusted version of the Liberty Protection Safeguards (LPS) proposed by the Law Commission in their 2017 impact assessment¹.
- 1.3 We use the Law Commission IA as our basis, but have amended it to reflect the changes we have made to their draft bill. In the current DoLS system care providers must request a series of six assessments which are repeated each year for each affected service user. There will now only be three assessments for a single authorisation.
- 1.4 This policy applies to both England and Wales. Therefore, all cost and benefits apply to both England and Wales. As much of the data used applies to England only, we make adjustments to account for costs and benefits arising in Wales. Unless otherwise stated we have updated the figures with the latest NHS Digital data (2016/17) and inflated to 2018/19 prices.

2. Background

- 2.1 Article 5 of the European Convention on Human Rights (ECHR) guarantees the right to personal liberty and security, and provides that no one should be deprived of their liberty in an arbitrary fashion. The Deprivation of Liberty Safeguards (DoLS), introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007, provide a legal process for authorising deprivations of liberty in hospitals and care homes in specific circumstances.
- 2.2 The DoLS were a response to the European Court of Human Rights case of *HL v United Kingdom*.² The court held that the common law process in place did not provide the necessary procedural safeguards demanded by Article 5 of the ECHR. The DoLS were introduced to remedy the breaches of Article 5 outlined in the *HL v United Kingdom* judgment.
- 2.3 The Supreme Court judgements, *P v Cheshire West and Chester Council* and *P v Surrey County Council*³ (known as “Cheshire West”) gave a significantly wider definition of deprivation of liberty than that which had been previously understood. The Court held that a person who lacks capacity to consent to their confinement will be deprived of liberty where they are under continuous supervision and control and are not free to leave, irrespective of whether or not they appear to object to that state of affairs (subject to the deprivation of liberty being the responsibility of the state). At this time, the House of Lords, in their post-legislative review into the Mental Capacity Act, found that DoLS ‘were not fit for purpose’ and recommended replacing DoLS with a simpler system.⁴

¹ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related>

² (2005) 40 EHRR 32 (App No 45508/99).

³ [2014] UKSC 19, [2014] AC 896.

⁴ House of Lords Select Committee on the Mental Capacity Act: Report of Session 2013-14: Mental Capacity Act 2005: Post-legislative Scrutiny (2014) HL 139.

2.4 Since these judgments the DoLS regime has struggled to cope with the increased number of cases. According to the Law Commission, in 2013/14, prior to the Supreme Court ruling in Cheshire West the total number of DoLS application in England was 13,715. The most recent data from NHS Digital shows that the number of DoLS applications in England has increased to 217,235 in 2016-17⁵. Furthermore, these figures do not capture people who are deprived of liberty in settings not covered by the DoLS, including supported living, shared lives and private and domestic settings – where the only available mechanism to provide Article 5 safeguards is via authorisation by the Court of Protection.⁶ We estimate that there are around 53,000⁷ cases involving deprivations of liberty in these settings.⁸

2.5 In response to the House of Lords report, in 2014 the government tasked the Law Commission with completing a report into Mental Capacity and Deprivation of Liberty Safeguards. The Law Commission published their report in March 2017 and recommended replacing the current DoLS system as a matter of urgency with Liberty Protection Safeguards⁹. The government responded to the Law Commission in March 2018 and stated they would legislate for this after considering the details of the proposals and ensure a new system would fit with the conditions of the health and social care sector.¹⁰

2.6 The DoLS have a significant impact on various user groups. Overwhelmingly those subject to DoLS are older people, many of whom have dementia. However, younger adults with learning disabilities and people with mental health problems are often subject to DoLS as well. Institutions, such as the NHS and local authorities are impacted, as well as the health and social care workforce.

3. Problem under consideration

3.1 The table below provides a summary of the key features and the identified problems with the current DoLS system [option 0 – status quo].

Table 1: Current DoLS system [Option 0] – Key features and associated problems

Key features	Associated problems
A focus on deprivation of liberty	Other relevant rights are omitted
Scope restricted to care homes and hospitals	Cases outside these settings are dealt with by courts at much greater cost
Uniform approval scheme	Fails to recognise that different cases warrant different treatment
No clear accountability for compliance with authorisations and conditions	Lack of effective oversight, and poor compliance
Relies on ill-suited and cumbersome terminology	Reluctance to make referrals and out of kilter with modern health and social care functions

⁵ Mental Capacity Act (2005) Deprivation of Liberty Safeguards (England), NHS-Digital (2017) https://files.digital.nhs.uk/pdf/8/5/dols_1617_england_final_report.pdf

⁶ At present, the DoLS only apply to hospitals and care homes. A deprivation of liberty in any other setting must be authorised by the Court of Protection. These settings could include care provided in the person's home, supported living (accommodation which has been adapted or intended for occupation of adults with needs for care and support) and shared lives accommodation (a service that normally involves placements of people in family homes where they receive care and support from a shared lives carer and have the opportunity to be part of the carer's family and support networks).

⁷ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (page 24)

⁸ We have estimated this figure by using estimates from the Association of Directors of Social Services of the number of deprivation of liberty cases in private setting placements commissioned by local authorities (see <http://www.communitycare.co.uk/2015/06/17/councils-failure-make-court-applications-leaving-widespread-unlawful-deprivations-liberty-year-cheshire-west-ruling/>), the numbers of persons falling under NHS continuing healthcare and estimates of the number of self-funders who would fall within our system.

⁹ Law Commission: Report into Mental Capacity and Deprivation of Liberty Safeguards (2017)

¹⁰ <http://qna.files.parliament.uk/ws-attachments/861932/original/180314%20Response%20to%20Law%20Commission%20on%20DoLS%20-%20final.pdf>

DoLS designed with expectations of a relatively small number of cases	Cases are not being assessed within the required timeframes or at all, and a significant back log of cases
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The main issues with DoLS at present are described below:

Limited in scope and cost ineffective

3.2 The DoLS only apply in care homes and hospitals. This means authorisation of deprivations of liberty outside these settings, such as in supported living and private and domestic settings, are dealt with by the Court of Protection. This is a more expensive process for local authorities and NHS bodies (compared to authorisations under the DoLS), and results in increased stress for the person concerned and their family or unpaid carers.

Length and complexity of legislation

3.3 The legislation which set up the DoLS has been described as “tortuous and complex”.¹¹ This has meant that it has not been understood by either those administering the scheme or those subject to it. This can damage outcomes for users and make carers jobs harder than necessary. Mr Justice Charles, Vice President of the Court of Protection, described the experience of writing a judgment in a case involving the DoLS as feeling “as if you have been in a washing machine and spin dryer”.¹²

Overly complex system

3.4 The current DoLS system requires six separate assessments to be carried out for each application and every application needs to be approved by a Best Interests Assessor (BIA). An authorisation can last up to 1 year in a single location. A separate application also needs to be completed when care is received in a different location. This means people who receive respite care or have a planned hospital admission are likely to end up with multiple applications, which places an unnecessary burden on individuals and their families.

Ill-suited and outdated terminology

3.5 The terminology used in the DoLS – including terms such as “standard authorisations” – has been criticised as cumbersome and failing to reflect modern health and social care functions. The Law Commission found in their engagement that the label “Deprivation of Liberty Safeguards” is also seen as stigmatising and may make care providers reluctant to seek authorisations.

Scale of the problem

3.6 The Government’s original impact assessment, completed in 2008, considered that very few people who lack capacity would need to be deprived of liberty, with expected cases beginning at 5,000 in the first year but dropping to 1,700 in the following years. Their worst-case scenario assumed that a total of only 21,000 people in England and Wales would be subject to the DoLS. In fact, the number of cases was initially higher than expected, with 7,157 in 2009/10. This number then rose to 11,887 in 2012/13.

¹¹ J v A Local Authority [2015] EXCOP 5 at [27].

¹² House of Lords Mental Capacity Act 2005 Select Committee, Oral and Written Evidence – Volume 1 (A-K) (2014) Q293.

3.7 Since the Cheshire West judgment there has been a significant increase in DoLS applications. In 2016/17 there were 217,235 applications in England. Approximately two million people are thought to lack the ability to make certain decisions for themselves, so there is a chance the number of people subject to DoLS could grow even further.¹³

3.8 The DoLS were designed with a relatively small number of cases in mind, and were not intended to deal efficiently with the present levels of demand. Lack of capacity means there is a building backlog of applications not completed within the year they are received by local authorities. In 2014/15 there were 315 applications carried over from the previous year. In 2016/17, there were 108,545 applications which were not completed.¹⁴

Individuals left without safeguards

3.9 The backlog of cases not being approved by local authorities means that individuals are often left without safeguards for an extended period of time. This means individuals may be receiving inappropriate care and local authorities are not meeting their statutory duties.

4. Rationale for Intervention

4.1 The current legal framework fails to protect the rights of people and establishes a compelling case for reform. More than 125,000 people are being left without the protections they need and over 48,000 have been waiting more than one year for an authorisation¹⁵. This creates a situation where people are being deprived of their liberty without any oversight and can mean that overly restrictive practices are used.

4.2 Inefficiencies in the administration of the DoLS authorisation process creates wastage. This can be ill-afforded under any circumstance, let alone during a time when local authorities and the NHS are reporting budgetary pressures. The upward trend of an ageing UK population inevitably increases the likelihood of longer hospital stays and demands placed on care home beds – and with it increased administrative costs to the public sector.

5. Policy Objectives

- To create a new simplified legal framework which is accessible and clear to all affected parties;
- To deliver improved outcomes for persons deprived of their liberty and their family / unpaid carers;
- To provide a simplified authorisation process capable of operating effectively in all settings.
- To ensure that the Mental Capacity Act works as intended, by placing the person at the heart of decision-making and is compliant with Articles 5 and 8 of the European Convention on Human Rights.

¹³ Social Care Institute for Excellence: Mental Capacity Act 2005 at a glance <https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance>

¹⁴ Mental Capacity Act (2005) Deprivation of Liberty Safeguards, (England) 2016/17, Official Statistics

¹⁵ <https://digital.nhs.uk/data-and-information/publications/statistical/mental-capacity-act-2005-deprivation-of-liberty-safeguards-assessments/annual-report-2017-18-england>

- The intended effects are to ensure increased compliance with the law, improve care and treatment for people lacking capacity and to provide a system of authorisation in a cost-effective manner.

6. Current DoLS procedure

6.1 The DoLS system is used to assess and authorise deprivations of liberty which occur in care homes and hospital settings. Deprivation of liberty also occurs outside DoLS settings, for example in supported living and private domestic settings. We describe both scenarios below.

Deprivation of liberty in care homes and hospital settings

6.2 The DoLS require managing authorities (the hospital or care home where the deprivation of liberty will occur) to apply to supervisory bodies (generally the local authority or, in the case of Wales, also a Local Health Board) where they propose to deprive a person of their liberty (referred to as a DoLS application). The supervisory body, on receiving a DoLS application, must arrange a series of six assessments on matters including whether the person lacks capacity, and whether it is in their best interests to be deprived of liberty, and the deprivation of liberty is necessary to prevent harm to the adult and a proportionate response to the likelihood and seriousness of that harm. At a minimum, these can be completed by two people, a Best Interests Assessor (BIA) and mental health assessor. If all the assessments are “positive” the supervisory body must authorise the deprivation of liberty (referred to as a standard authorisation).

6.3 A standard authorisation must authorise a deprivation of liberty for up to one year. If it is proposed to deprive the person of liberty for a further period, a fresh DoLS application and authorisation are required. The standard authorisation may be subject to a review by the supervisory body at any time, at the request of a managing authority or, an individual or their representative (referred to as an internal review).

6.4 In addition, in certain scenarios, an urgent authorisation may be granted in lieu of a standard authorisation request. This is typically in emergency situations, authorising the deprivation of liberty until a standard authorisation application can be completed.

6.5 To assist the person through this process, provision is made for the relevant person’s representative (RPR) and an advocate, appointed by a local authority. Their role is to support and represent the person and maintain contact.

Deprivation of liberty outside care homes and hospital settings

6.6 Where a person is deprived of their liberty outside hospitals and care homes (for instance, supported living and private and domestic settings) they are not eligible for the DoLS scheme. An application, where necessary, must be made to the Court of Protection for authorisation to deprive the person of liberty.

6.7 Similarly, people aged 16 or 17, or people whose lack of mental capacity results from a disorder of the brain (as opposed to a disorder of the mind) are not eligible for the DoLS. In such cases an authorisation from the court would be needed.

7. Description of options considered

7.1 Option 0 - Business as usual (status quo) – do not amend the current system. This is the base case costs and benefits are compared to. This would mean the local authority backlog

would remain, and individuals would be left without safeguards. We do not consider option 0 to be a viable option. The DoLS are overly complex, and not well understood by both those subject to them and those applying them. In addition, the current system cannot keep pace with the high demand for DoLS authorisations, meaning there has been subsequent non-compliance with the law and potential breaches of human rights.

7.2 Option 1 – DoLS fully funded. Option 1 (DoLS fully operationalised) means that assessments would all take place within statutory time limits, cases are taken to court when they should be and referrals are made to by managing authorities when they should be. Option 1 represents the true potential cost to the system without reform. We include this as a potential option as a useful comparison and to highlight the high cost of the current system if it were to continue and be fully implemented.

7.3 Option 2 – Adjusted LPS (preferred model). This is an adjusted new system based on the Law Commission proposed to deal with large increase in applications.

8. The proposed new system (option 2) – Adjusted Liberty Protection Safeguards

8.1 The Law Commission designed a new system, the Liberty Protection Safeguards (LPS), as part of their report. The government agreed in principle to the introduction of a new DoLS system. Subsequent to this, the government has worked with a range of stakeholders to refine the Law Commission's model. A list of stakeholders can be found in Annex 1.

8.2 In our proposed model care providers will, in many cases, be responsible for compiling the statement that will inform the person's authorisation, these will in some cases include past assessments that have already been completed as part of a person's care planning. Local authorities will still conduct a pre-authorisation review, providing independent oversight and where there are objections or complex cases, the authorisation will be referred to an Approved Mental Capacity Professional. As recommended by the Law Commission, NHS organisations will be able to authorise their own assessments. This model achieves the government's objectives and will be compliant with Article 5 of the European Convention on Human Rights.

8.3 If there is an objection to the arrangements, or there are complex circumstances, the authorisation will be referred to an Approved Mental Capacity Practitioner. This would act as a form of a mediation stage prior to appeal to the Court of Protection (although the right to do that would remain).

Oversight

8.4 In our preferred model, the responsible body¹⁶ will arrange an independent pre-authorisation review on every assessment. As reported by the Law Commission, most authorisations should be straight forward, we do not expect this to be burdensome on LAs. In more complex cases, the AMCP will be brought in to ensure that the assessments have been done to the highest standard. This means that resources are focused where they are most needed (on the complex cases). In the Chairs Annual report from the National Mental Capacity Forum; "Only about 4-8% of those assessed under DoLS are thought to have improved care as a

¹⁶ Responsible body refers to a Local Authority, Hospital Trust, Clinical Commissioning Group (CCG) or Local Health Board

result of the process. For over 90% the staff could not identify benefits.”¹⁷ By redefining the role of BIAs into AMCPs we are able to make the system much more efficient by focusing skills in the right places.

- 8.5 The government introduced an amendment to the Bill which means assessments cannot be carried out by someone who has a prescribed connection to the care home. This means assessments cannot be completed by care home staff. In many cases there will already be valid assessments in place which have been completed as part of a person’s care planning but in other cases a new assessment will need to be arranged.
- 8.6 If there is not a valid medical or capacity assessment available, we would expect this to be arranged through a person’s GP. We would not consider this to be a new cost as having valid diagnoses is something a person needs as part of their care and we would expect GPs to provide this.
- 8.7 The responsible body will need to organise a necessary and proportionate assessment for the person to ensure independence in decision making.
- 8.8
- 8.9 Furthermore, every person subject to the Liberty Protection Safeguards will have access to representation from either an ‘appropriate person’ or an advocate. The Bill as introduced made the care home manager responsible for identifying whether an advocate would be appointed. The government amended the Bill to instead make the responsible body responsible for doing this. We think this it is likely responsible bodies will be in a better position to make an informed judgement on whether an Independent Mental Capacity Advocate (IMCA), and is likely that more IMCAs will be appointed as a result.
- 8.10 An amendment was passed that makes explicit the person’s right to information about their authorisation. It is the government’s view that this right already existed under the European Convention on Human Rights, so this does not represent a policy change and no revisions have been made to the impact assessment on this basis.

Wider amendments to the Mental Capacity Act

- 8.11 The Law Commission also proposed making some wider amendments to the Mental Capacity Act which we have decided not to legislate for at this point, as we think there are other effective levers to deliver improvement in these areas.
- 8.12 This includes their proposals to remove the statutory defence under Section 5 of the Mental Capacity Act if a care provider is unable to provide a written record and to introduce the right to bring civil proceedings against private care providers for unauthorised deprivation of liberty. This relates to points not included in the Law Commission’s Impact Assessment.

The Mental Health Act Review

- 8.13 The independent Mental Health Act Review has been published and includes recommendations regarding the interaction between the mental health and mental capacity legislation. The government is considering its response to these recommendations and they have not been brought forward by this Bill.

¹⁷ National Mental Capacity Forum Chair’s Annual Report 2017 P35 – available at: <https://www.gov.uk/government/publications/national-mental-capacity-forum-chairs-annual-report-2016>

9. Policy Objectives of Adjusted Liberty Protection Safeguards

The Liberty Protection Safeguards have the following objectives:

Simplification

- 9.1 **The LPS aim to be clear and accessible to all users.** Key changes are: unnecessary assessments will be removed from the process; authorisations will be able to apply in more than one location; authorisations will be able to last for up to three years for those with stable conditions who will not recover; the NHS will be able to have a greater role in the authorisation process.
- 9.2 **The Liberty Protections Safeguards will be embedded in the care planning process.** Assessments used as part of the care planning process can form the basis of the application and the applications will, in some cases be completed by the care provider.

Compliance with human rights

- 9.3 **The LPS provide an authorisation process and review scheme that is Article 5 compliant.** It gives effect to rights under Article 8 of the ECHR and other relevant international human rights law such as the United Nations Convention on the Rights of People with Disabilities.

Improved outcomes

- 9.4 **The Liberty Protection Safeguards aim to ensure that people are only deprived of their liberty if this is necessary and proportionate.** Our bill will also improve outcomes for families and carers, as there will be a duty to consult with them and they will be brought into the process.

Cost effectiveness

- 9.5 **The Liberty Protection Safeguards aim to provide a system able to cope with the significant numbers of people deprived of liberty, in a manner that minimises costs.** The new system will make significant savings for local authorities to reinvest into care and in the long term will reduce the funding pressure across the system. By reducing the bureaucracy associated with the DoLS system we also ensure that health and social care staff are not diverted away unnecessarily from delivering frontline care.

Comprehensiveness

- 9.6 **The Liberty Protection Safeguards extend beyond hospitals and care homes, to include authorisations in a wide range of settings including supported living, shared lives schemes and domestic settings.** Rather than relying on the court system, the new scheme provides a more cost-effective way of ensuring authorisations can occur, meaning individuals can access robust safeguards more easily.

Increased access to safeguards for vulnerable people

9.7 By streamlining the system, we eliminate the backlogs that local authorities currently have, which means vulnerable people will not be left without safeguards.

10. Cost/benefit analyses

10.1 The focus of the following sections is to compare the relative costs and benefits of the different options under consideration. All costs and benefits apply to both England and Wales. Although the cost analysis section evaluates costs in monetary terms, some aspects of the proposed reforms cannot be monetised. These include impact upon care outcomes, equity and fairness and public confidence.

10.2 The analysis follows the same method as followed in the Law Commission's publication in 2017. As with the Law Commission, the approach in this analysis is to use publicly available data to come to a reasonable understanding of the likely impact of the considered reforms. In some cases, this entails providing estimates where reliable data is not available or using assumptions as part of the methodology.

10.3 **Unless otherwise stated, all costs have been uplifted to 2018/19 prices.** Where possible, the latest published NHS-Digital data is used. Unit costs are rounded to the nearest pound.

11. Option 1- DoLS fully funded

11.1 This section estimates what the DoLS system would cost if it were to operate as intended. Much of the analysis is taken directly from the Law Commission IA. To cost option 1, first we have calculated the cost of the status quo. We then estimate the cost to the system of fully funding it. We then take one from the other to calculate the additional funding required to fully resource the system.

Status quo costing

11.2 We estimate the cost of maintaining the current scheme, to outline the benefit of moving to the preferred model. The same method has been used to evaluate Option 0 as in the Law Commission Impact Assessment but using the latest data.

Costs (monetised)

11.3 The following section will calculate the cost of DoLS at present in England and Wales using the same methodology as the Law Commission. The narrative will only use best estimate figures (BE). Low (LE) and high estimate (HE) figures can be found in the Annex. The costs break down as follows:

- **Costs of authorising DoLS which falls on both supervisory bodies and local authorities;**
- **Costs of authorisations for deprivations of liberty outside of DOLS settings;**
- **Legal costs:** This includes the cost to the courts, legal aid, official solicitor and incapacitated people and their families or carers;
- **Costs to regulatory bodies:** The Care Quality Commission, Care and Social Services Inspectorate Wales and Healthcare Inspectorate Wales currently incur costs in monitoring and reporting on the DoLS, and;
- **Recurrent training costs of BIAs**

Costs of authorising DoLS which falls on both supervisory bodies and local authorities

- 11.4 Calculated as the sum of: **total cost of authorisations, advocacy and RPR costs per application; total cost of internal reviews, and; cost to supervisory body of Court of Protection review.**
- 11.5 **Total cost of authorisations, advocacy and RPR costs per application:** calculated as (i) cost per granted DoLS application (£1,470)¹⁸ multiplied by the number of granted applications (101,988), plus, (ii) the, cost per completed but refused DoLS application (£1,300) multiplied by number of non-granted applications (59,122) giving £226.79m.
- 11.6 **Total cost of internal reviews:** calculated as cost per internal review application (£620), from the Shah study, multiplied by the number of DoLS applications leading to internal review (8,669). The number of DoLS applications leading to internal review is calculated by assuming 8.5% of granted DoLS authorisations lead to an internal review, which the Law Commission derive from the internal review rate reported by the Welsh regulators.¹⁹ Multiplying gives a cost of £5.37m.
- 11.7 **Cost to supervisory body of Court of Protection (CoP) review:** we take the number of applications to CoP for S.21 review (1,170) and multiply by the cost incurred by supervisory bodies per S.21 Court of Protection review (£12,000) to give £14.04m.
- 11.8 Summing the above three costs gives a total cost of **£246.20m.**

Costs of authorisations for deprivations of liberty outside of DOLS settings

- 11.9 The Court of Protection recovers their cost by charging the supervisory body. Costs are incurred by local authorities, NHS bodies, and care providers where authorisations for deprivations of liberty are sought in settings that fall outside the DoLS, for instance, supported living and private and domestic settings. This cost is calculated as **unit cost per CoP authorisation (£16 and re.X)** multiplied by the **number of CoP authorisation cases.**
- 11.10 The unit cost of each CoP authorisation of S.16 case is given as £12,000, whereas the unit cost of each CoP reX is £520.. The number of CoP authorisation cases are given as the number of reX applications (2,314) plus the number of S.16 applications (506). An reX case is where a case goes to the court of protection without objection, meaning an reX case has a shorter process.
- 11.11 Multiplying gives a total cost of **£33.84m.**

Legal costs

- 11.12 Calculated as: **Total legal aid costs plus total self-funded and Official Solicitor costs.** These costs ultimately fall on LAs and self-funded incapacitated peoples due to the high cost recovery of the CoP, detailed in para 10.20.

¹⁸ Unit costs are based on A Shah and others, 'Deprivation of Liberty Safeguards in England: Implementation Costs' (2011) 199 The British Journal of Psychiatry 232. They estimate the cost of professionals (including travelling time and distance) in conducting the six DoLS assessments, cost of secretarial time for processing DoLS, and cost of independent mental capacity advocates (including travelling time and distance) in conducting their assessments and apportioned across all those assessed. We assume these costs are comprehensive estimates of employment costs.

¹⁹ Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales, Deprivation of Liberty Safeguards: Annual Monitoring Report for Health and Social Care 2013-14 (2015) p 11.

- 11.13 **Total legal aid costs** are given as the sum of legal aid hearing costs plus legal aid paper costs for reX applications.
- 11.14 Legal aid hearing costs are given as the legal cost by legal aid per case hearing (£8,400) multiplied by the total number of legal aid hearings (1,297). The total number of legal aid hearings is the sum of total s.16 and s.21 cases requiring legal aid. We assume that 100% of s.21 cases (1,170) require legal aid, and that 25% of S.16 cases require legal aid ($0.25 \times 506 = 127$). These assumptions are taken from the Law Commission IA.
- 11.15 Legal aid paper costs for reX applications are given as the legal aid unit cost for paper reX authorisations (£520²⁰) multiplied by the number of legal aid paper cases (assumed to be 25% of reX cases = 579). This gives a cost of £0.30m.
- 11.16 Multiplying gives total legal aid cost as £11.19m.
- 11.17 **Total self-funded and Official Solicitor costs** are calculated as the sum of self-funded legal aid costs and official solicitor costs. Self-funded legal aid costs are calculated as the number of self-funded litigants (2,115) multiplied by estimated self-funded legal costs by the person or carers per case (£19,200), giving a cost of £40.61m. Total Official Solicitor costs are given as the number of cases involving Official Solicitor (total cases going to CoP multiplied by assumed % of cases going to Official Solicitor). This gives $3,990 \times 25\% = 998$ cases. Multiplying gives an Official Solicitor cost of £11.97m. Summing gives a total self-funded and Official Solicitor cost of £52.58m.
- 11.18 Summing gives a total legal cost of **£63.77m**.
- 11.19 We follow the Law Commission IA by not providing any costs associated with damages claims by those deprived of liberty without authorisation because, at present, there do not appear to be significant numbers of cases brought on this basis. However, if the backlog continues to grow we expect the number of these claims to increase. We also follow the Law Commission IA by not making any allowance for cases proceeding to the High Court rather than the CoP, as we do not have figures regarding the number of such cases. As a result, the figures here should be regarded as an under estimate.
- 11.20 The CoP incurs costs hearing applications to authorise deprivations of liberty in settings falling outside the DoLS, and in hearing reviews of authorisations in settings within the DoLS. We assume, as the Law Commission did, that the fees charged by the Court of Protection broadly achieve cost recovery in cases involving deprivation of liberty.²¹ These costs are charged to the local authority and self-funded incapacitated people, and are costed above.
- 11.21 Of the cases brought to the Court of Protection, 15% are subject to further appeal in the Court of Appeal; note that the Court of Appeal does not fully recoup its costs from court fees²². We have not included costs of further appeals, as we do not have estimates for the costs of these hearings. As a result, our analysis that the courts currently incur no net cost should be seen as conservative.

Costs to regulatory bodies

²⁰ This figure was provided to us by the Legal Aid Agency as an indicative unit cost based on similar claims made over the past three years.

²¹ Ministry of Justice, Impact Assessment: Routes of Appeal in the Court of Protection (2014) para 1.16 <http://www.parliament.uk/documents/impact-assessments/IA14-16.pdf>

²² Ministry of Justice, Impact Assessment: Routes of Appeal in the Court of Protection (2014) para 1.19 <http://www.parliament.uk/documents/impact-assessments/IA14-16.pdf>

11.22 Calculated as the **number of inspections in England and Wales where DoLS assessments did take place** multiplied by the **cost of DoLS component of inspection**.

11.23 **The number of inspections in England and Wales where DoLS assessments did take place** is calculated by using the Law Commission's estimate of 15,810 CQC inspections taking place in 2015/16. Assuming only 50% include a DoLS inspection gives 7,905 DoLS inspections in England. Accounting for inspections in Wales by multiplying by a Wales population factor of 1.0566, gives the total number of inspections in England and Wales as 8,352. Although we expect the number of inspections to increase over time with the demand for social care, we have not costed this. Inspection costs should therefore be considered conservative.

11.24 **The cost of DoLS component of inspection** is calculated by multiplying the cost of a CQC inspection as stated in the Law Commission IA and uplifting to 2018/19 prices (£3,319)²³. by the estimated % of the duration of each inspection that is devoted to DoLS assessment (15%). This gives a cost of £498.

11.25 Multiplying gives a total cost to regulatory bodies of (8,352 * £498 =) **£4.16m**.

Training costs

11.26 The only training costs which we have costed for DoLS at present are the recurrent annual training costs. There are upfront training costs for local authorities for new BIAs, advocates and RPRs. However, we have no estimates for how many new BIAs, advocates and RPRs are trained each year. Therefore, we have not included this cost in our figures for this model. In DoLS fully funded and the preferred model we include these costs as upfront transitional costs.

11.27 The only recurrent annual training cost is the annual BIA refresher training course, which is calculated by multiplying the number of BIAs (2,720) by the refresher training cost per user (£158) to give £0.43m. The number of BIAs is estimate using the same methodology as the Law Commission.

Summary of monetised costs

11.28 Total per annum costs of the status quo are estimated to be **£348.40m**. We have included a spreadsheet as an Annex to show clearly how the costs in Table 1 are calculated. The Annex and the below table also includes low (LE) and high estimates (HE).

Table 2: Summary of costs of status quo (DoLS at present) per annum

Total Costs	Low estimate	Best estimate	High estimate
Cost to managing and supervisory bodies	£167.44 m	£246.20 m	£351.86 m
Costs of DoL outside of DOLS settings	£31.58 m	£33.84 m	£36.66 m
Legal costs	£44.50 m	£63.77 m	£83.51 m
Costs to regulatory bodies	£2.77 m	£4.16 m	£6.93 m
Recurring training costs	£0.21 m	£0.43 m	£0.64 m
Total costs (per annum)	£246.51 m	£348.40 m	£479.61 m

²³ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> page16

Costing DoLS fully operationalised

Costs

11.29 The modelling for option 1 is identical to that of the status quo other than the following input changes:

- 112,038 additional DoLS assessments will need to be completed per year. This reflects the total number of active applications in 2016-17 (273,151) minus the number of completed assessments (161,113). We assume that all applications are processed, including those currently in the backlog. This means that there will be an increase in applications processed (leading to more reviews), Court of Protection cases, BIAs and advocates.
- We follow the Law Commission by assuming that all of the 53,000²⁴ community DoLS and 16-17 year olds are authorisations of deprivations of liberty at the Court of Protection. This is calculated based on an Association of Directors of Adult Social Services (ADASS) study, which estimated the number of people in domestic settings potentially deprived of their liberty.
- We follow the Law Commission by assuming 69,085 doctors and social workers will require training if DoLS were fully operationalised. We also assume a two hour training course for health and social care professionals costs £23²⁵ per person (after the price uplift).
- We follow the Law Commission by assuming 15% greater regulatory costs will be incurred under a fully operationalised DoLS as compared to the present estimated costs, with +/- 5 percent for upper/lower estimates.
- Training costs can be split into both transitional and ongoing. Transitional costs such as training health and social care professionals are upfront, and only incurred in year 1 and not shown in the per annum costs. They are however represented in the NPV calculations. Ongoing costs are only comprised of the BIA refresher course.

11.30 We use the same methodology as the status quo to calculate the additional number of BIAs, advocates and RPRs needed under a fully operationalised system. We estimate that 2,988 additional BIAs will be required to meet the additional number of applications under fully operationalised DoLS. We use the same training costs as the status quo.

11.31 We also use the same methodology to estimate legal costs as the status quo. We follow the Law Commission IA in assuming that 1% of all granted applications will lead to an application for review at the Court of Protection. Approximately 73% of completed applications are currently granted. Therefore, if all applications were completed, we expect that 166,025 would be completed. 1% is 1,660 s.21A cases.

Summary of monetised costs

11.32 Total per annum costs of option 1, excluding transitional costs, are estimated to be around **£2,047m**. Monetised costs are presented in the table below. Detailed calculations along with LE and HE input estimates are contained within the Annex.

Table 3: Summary of costs under DoLS fully operationalised

²⁴ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (page 24)

²⁵ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> page 22

	Low estimate	Best estimate	High estimate
Total transitional costs			
Upfront training costs	£12.16m	£19.59m	£27.02m
Total ongoing costs			
Ongoing training costs	£0.45m	£0.90m	£1.35m
Cost to managing and supervisory bodies	£240.22m	£352.56m	£501.64m
Costs of DoL outside of DOLS settings	£593.60m	£636.00m	£689.00m
Legal costs	£731.13m	£1,052.43m	£1,378.89m
Costs to regulatory bodies	£3.05m	£4.78m	£8.32m
Total ongoing costs (per annum)	£1,568.45m	£2,046.67m	£2,579.2m
Total costs	£1,580.61 m	£2,066.26 m	£2,606.22 m

Benefits

11.33 Reducing the backlog means respecting rights of those subject to DoLS and improved outcomes for these people. There will also be a reduction in the risk of damages awards for unlawful deprivations of liberty.

11.34 Furthermore, care homes are subject to uncertainty by local authorities while waiting for assessments to be completed. Providers are currently unclear on their legal position and may be punished in the form of a lower rating from CQC for not having authorisations in place. This is a large non-monetised cost to care providers, that will be removed by fully funding DoLS.

12. Option 2: Adjusted Liberty Protection Safeguards – our preferred model

Summary of option

12.1 As with previous costings, most of the methodology and figures are taken from the Law Commission IA.

Key assumptions on factors that have impact on cost estimates.

12.2 In option 2, we assume 304,132 applications will be received and completed per year. This includes extra applications received by including 16-17 year olds, community DoLS (53,000)²⁶, and people who require authorisation in settings outside DoLS settings. We then remove duplicate applications by assuming that everyone who had more than one application (22,019 applications) in England in 2016/17 will only have one. This data comes from NHS Digital²⁷.

12.3 To capture the overall cost of any training, we have used the formula:

$$\text{Training cost} = \text{Price of training course} + (\text{Unit cost of employment per hour} * \text{Training hours})$$

²⁶ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (page 24)

²⁷ Source: Deprivation of Liberty Safeguards data collection, NHS Digital 2016-17 Annex B Table 3 reports that 19,725 people had 2 applications, 4,325 people had 3 applications and 1,515 had 4+ applications. Assuming that the 1515 people who had 4+ applications had 4, we can work out that there were 20,700 duplicate assessments. We then assumed that Wales has the same amount of duplicate assessments as a percentage of applications received as England (9.68%, giving an estimate of 1319 duplicate applications in Wales).

This allows us to capture the fact that beyond the price of a course, employers would usually incur a cost in backfilling roles with additional labour input in order to continue to provide uninterrupted service.

- 12.4 We assume £167 per doctor to be familiarised with the new LPS system. This includes the cost of the existing DoLS²⁸ awareness training courses (£23) which runs for two hours (most of these doctors will be familiar with the current DoLS system). The unit cost of a doctor's time is the weighted average of the unit costs²⁹ of employing hospital doctors and GPs of different grades per hour. Unit cost of doctors come from the latest Unit Costs of Health and Social Care³⁰. The cost per hour for doctors in 2017/18 range from £28 for a foundation doctor in their first year (FY1) to £109 for a Consultant psychiatrist. Using the proportions in the workforce in 2018³¹, we have estimated a weighted unit cost for a doctor at £72 per hour³².
- 12.5 We assume £111 per social worker to be familiarised with the new LPS system. This includes the cost of the existing DoLS³³ awareness training courses (£23) which runs for two hours (most of these social workers will be familiar with the current DoLS system). The unit cost of a social worker's time is estimated to be £44³⁴ per hour.
- 12.6 We assume 20% of registered doctors and social workers will require training due to expected increases in new 'necessary and proportionate' assessments required. This is an estimated 63,082 doctors and social workers as the best evidence suggests there are around 315,408³⁵ doctors and social workers registered in England and Wales.
- 12.7 We assume £3,693 to train each new Approved Mental Capacity Professional (AMCP). This includes the Law Commission IA estimate for the price of the AMCP course uplifted to 2018/19 prices at £1,581³⁶. The course runs for 48 hours. The unit cost of an Approved Mental Capacity Professional's time (who can be a social worker, nurse, occupational therapist or psychologists by law) is estimated to be £44³⁷ per hour - we have used the social worker hourly cost as a proxy for estimation purposes as it falls in the middle.
- 12.8 We assume 91 new Approved Mental Capacity Professionals will require upfront training. This represents 10% of total Approved Mental Capacity Professionals. It is presumed, in line with the Law Commission IA that 90% of all Approved Mental Capacity Professionals will be recruited from existing Best Interests Assessors (BIAs). We have assumed that the content of Approved Mental Capacity Professional courses will have significant overlaps with current Best Interests Assessor training. Therefore, existing Best Interests Assessors will not require the standard training and instead will attend a "conversion course".
- 12.9 We assume £615 to be the cost of Best Interests Assessor to Approved Mental Capacity Professional conversion training. This includes the Law Commission's estimate of a conversion course³⁸ uplifted to 2018/19 prices (£263). The course runs for 8 hours. The unit cost of a Best Interests assessor time (who can be a social worker, nurse, occupational therapist or psychologists by law) is estimated to be £44³⁹ per hour - we have used the social worker hourly cost as a proxy for estimation purposes as it falls in the middle.

²⁸ <https://www.highspeedtraining.co.uk/safeguarding-people/dols-training.aspx>

²⁹ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

³⁰ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

³¹ <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics/september-2018>

³² Further details available from the Department of Health and Social Care

³³ <https://www.highspeedtraining.co.uk/safeguarding-people/dols-training.aspx>

³⁴ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

³⁵ Links: [General Medical Council Data Explorer](#) ; [Health and Care Professionals Council](#) ; [Social Care Wales](#)

³⁶ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related>

³⁷ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

³⁸ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

³⁹ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

- 12.10 We assume 821 BIAs will require a conversion training to AMCPs.
- 12.11 We assume £1,581 to train each new advocate⁴⁰. This represents 2018/19 prices of the Law Commission's estimate. It is assumed that the training cost under the new scheme will be equivalent to the cost of training a person as a DoLS advocate. This training comprises of about 150 – 320 hours of training to achieve a level 3 qualification. We have assumed this training is done in the individual's own time and employers will not incur additional costs.
- 12.12 We assume 5,148 new advocates will require training, with a high estimate of 7,722 and a low estimate of 2,574. This figure is obtained from the numbers of advocates required both to support the person when there is no appropriate person⁴¹ and to support the appropriate person.
- 12.13 £145.28⁴² is assumed to be the cost of a necessary and proportionate assessment as well as the cost of a review to assess if an existing authorisation is necessary and proportionate. This figure is an uplift on the estimate in the Law Commission IA to 2018/19 prices.
- 12.14 £303.52⁴³ is the estimated cost of advocacy per authorisation as estimated in the Law Commission IA in 2018/19 prices.

Costs (monetised)

- 12.15 The following section will calculate the cost of option 2. Narrative will only use best estimate figures (BE). Low (LE) and high estimate (HE) figures can be found in the Annex. The costs break down as follows:

Transitional

- **Training costs**
- **Recruitment costs**
- **Familiarisation costs**

Ongoing

- **Cost of authorisations (net)**
- **Cost of administration (desktop reviews)**
- **Cost of reviews**
- **Cost of new 'necessary and proportionate' assessments in care homes**
- **Total cost of advocacy**
- **Cost of approval by Approved Mental Capacity Professionals (AMCP)**
- **Legal costs – Court of Protection**
- **Regulation**

Training costs

- 12.16 Calculated as the sum of: **total cost of doctor and social worker training; cost of conversion; cost of AMCP upfront training courses, and total advocate training cost.**

The total cost of doctor and social worker familiarisation training is comprised of the estimated unit cost of doctor and social worker training multiplied by the number of doctors and social workers needing training as laid out in the assumptions above (63,082). The number of doctors and social workers needing training is calculated as 20% of the number of doctors and social workers (315,408). The sum-product gives a cost of £9.45m as shown in the table 4 below

⁴⁰ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

⁴¹ A family member or other private individual able and willing to support and represent an adult (instead of an advocate) for certain decisions under the Care Act 2014 and the Social Services and Wellbeing (Wales) Act 2014.

⁴² <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

⁴³ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

Table 4: Estimated training cost for doctors and social workers

Registered Professionals	Number	% to be trained	Number to be trained	Overall cost of training per professional	Total cost for each profession
Doctors	216,835	20%	43,367	£167.46	£7,262,086
Social Workers	98,573	20%	19,715	£111.19	£2,192,066
Totals	315,408		63,082		£9,454,153

12.17 **The cost of conversion** is the cost of converting BIAs to AMCPs. It is calculated by multiplying the number of AMCPs converted from BIAs (90%, giving 821), by the unit cost of a BIA to AMCP conversion course (£615). The 90% assumption is taken from the Law Commission IA. This gives a cost of £0.5m.

12.18 **The cost of AMCP upfront training courses** is calculated by multiplying the number of AMCPs who need training (91) by the unit cost of the AMCP upfront training course (£3,693), giving a cost of £0.34m. The number of AMCPs who need training is the 10% of the number of AMCPs needed. This assumption is taken from the Law Commission.

12.19 **The total advocate training cost** is calculated by multiplying the number of advocates needed (5,148) by the advocate training cost (£1,581), giving £8.14m.

12.20 Summing gives a **total training cost of £18.43m**.

Recruitment costs

12.21 Recruitment costs are calculated by multiplying the recruitment cost of a lead AMCP (£1,370), the percentage of LAs that are expected to need to recruit a lead AMCP (10%) and the number of LAs in England and Wales (174). This gives a **total recruitment cost of £0.02m⁴⁴**.

Familiarisation costs

12.22 Government has provided a commitment to support the care sector with training ahead of the new system coming into force, this should limit the cost of training to the care sector. However, understand there could be additional familiarisation costs which we have accounted for here.

12.23 Familiarisation costs are calculated by multiplying **total care homes (May 2018)**, **care home manager salary per working day** and **working days taken for familiarisation**.

12.24 **Total care homes** is the number of CQC registered residential and nursing homes⁴⁵ in May 2018 (16,020)

⁴⁴ We do not make any staff turnover assumptions, so this may be an underestimate.

⁴⁵ Latest CQC directory of registered care providers can be found at: <https://www.cqc.org.uk/file/148450>

12.25 **Care home manager salary per working day** is the weighted average care home manager salary for residential and nursing homes (£29,002)⁴⁶, divided by the number of working days in a year (230). This gives £126.10.

12.26 **Working days taken for familiarisation** is an assumption for how long it will take care home managers to take on board the new policy (BE = 0.5 days).

12.27 Multiplying gives a best estimate of **£1.01m**.

Cost of authorisations (net)

12.28 We assume no net change in costs of authorisations and administration for care homes. The role for care home managers largely builds on the role they currently play. Care home managers will, in many cases be responsible for providing a statement to the responsible body. A new application form will be introduced for this purpose but this will replace the existing form used for DoLS applications. The reduced backlog will also mean that care home managers will spend less time chasing authorisations that are waiting to be approved, which they are required to do currently.

Cost of administration

12.29 Calculated as the **number of applications per year under preferred model (304,132)** multiplied by **cost of administration (£155)**. The cost of administration is the cost to LAs of undertaking pre-authorisation reviews. To cost this we have taken the cost of administration under DoLS at present from the Law Commission IA (£310), and halved it to £155. This is to account for the fact that it will be less duplicative than under DoLS at present.

12.30 Multiplying gives a total cost of **£47.14m**.

Cost of reviews and new 'necessary and proportionate' assessments in care homes

12.31 Cost of reviews is calculated as the **cost of reviews** multiplied by the **number of reviews per annum**. Reviews will usually focus on whether an existing authorisation continues to be necessary and proportionate. The Law Commission's IA estimates a 'necessary and proportionate' assessment to cost £135⁴⁷. We uplift this to reflect 2018/19 prices at £142.28). As in the Law Commission IA, assuming 6% of applications in the new system go for review, this gives 18,248 reviews.

12.32 It is expected that new 'necessary and proportionate' assessments will also be needed for some service users in care homes. This relates to self-funders in care homes who might not have valid assessments completed by social workers in place. Currently, around 80% of DoLS are in a care homes and half of those are funded by local authorities with Care Act care plans, in these cases a 'necessary and proportionate' assessment can be completed in parallel to the Care Act assessment and does not necessarily require an additional visit from an assessor. The remaining 40% are self-funders. We do not have adequate evidence on the proportion with existing assessments at this time. We have, therefore, proceeded with caution and assumed this group will all require separate 'necessary and proportionate' assessments. This is around 139,901 'necessary and proportionate' assessments at a cost of £142.28 each.

⁴⁶ Skills for Care, 2016, estimate that the average nursing home manager earns £33,700 and the average care home manager earns £27,200. <https://www.nmds-sc-online.org.uk/Get.aspx?id=/Research/Briefings/Briefing%2026%20-%20Registered%20managers%20in%20adult%20social%20care.pdf>

⁴⁷ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

12.33 Multiplying and summing gives a total annual cost of **£19.91m**

Total cost of advocacy

12.34 Calculated by multiplying the **cost of advocacy** per authorisation (**£288 uplifted to £303.52**) by the **number of applications** where this is required. We have estimated 30% of LPS authorisations will involve an advocate. This represents the current 25% as highlighted by the Law Commission and another 5 percentage points rise expected from increased awareness of the role of advocates due to the passage of the Mental Capacity (Amendment) Bill. We estimate 91,239 LPS authorisations will involve advocates.

12.35 Multiplying gives a total cost of **£27.69m**.

Cost of approval by AMCP

12.36 Comprised of the sum of: **salary bonus costs of AMCPs across LAs; AMCP cost for all cases requiring their approval; cost of repeat assessments, and; cost of refresher courses.**

12.37 **Salary bonus costs of lead AMCPs across LAs** is calculated by multiplying the salary premium of lead AMCPs (£3,583) by the number of LAs in England and Wales (174). The salary premium (i.e. bonus) is taken from the Law Commission IA. Multiplying gives an annual cost of £0.62m.

12.38 **AMCP cost for all cases requiring their approval** is calculated by multiplying the number of cases requiring an AMCP (76,033) by the AMCP cost per approval (£125), taken from the Law Commission. This gives a cost of £9.54m.

12.39 **Cost of repeat assessments** is calculated by multiplying the number of assessments in the new model, the cost per repeat assessment (£51) and an assumption on the repeat assessment rate (5%). This gives a cost of £0.19m.

12.40 **Cost of refresher** training is assumed to be £615. This includes the Law Commission's estimate of a conversion course⁴⁸ uplifted to 2018/19 prices (£263). The course runs for 8 hours. The unit cost of an AMCP time is assumed to be similar to that of existing Best Interests Assessors (who can be a social worker, nurse, occupational therapist or psychologists by law) and is estimated to be £44⁴⁹ per hour - we have used the social worker hourly cost as a proxy for estimation purposes as it falls in the middle. Multiplying the number of AMCPs (912) by the cost of a refresher training (£615), gives a cost per annum of £0.56m.

12.41 Summing these gives a total cost per annum of **£10.91m**.

Legal costs – Court of Protection

⁴⁸ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> (pages 29 – 35)

⁴⁹ <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/>

12.42 Legal costs are comprised of **total legal aid costs; total costs to supervisory body of for CoP reviews**, and; **total Official Solicitor costs**.

12.43 **Total legal aid cost** is calculated as the number of Court of Protection reviews multiplied by the cost of non-means tested legal aid (£8,400), provided by MOJ.

12.44 The cost of legal aid under DoLS at present is £11.19m. Under a fully operationalised DoLS system we estimate it to be £125m. The difference is caused by the large number of community DoLS and 16-17 year olds who should be getting authorisations at the Court of Protection. By moving to the preferred model, we stop this cost being realised, as these individuals would be brought into the system.

12.45 Under the preferred model more applications are processed per annum, therefore we expect there to be more reviews at the Court of Protection. However, in the Adjusted LPS model we have added a new role for the AMCP. Part of this role will involve trying to mediate in the case of objections before cases are taken to the Court of Protection. The Law Commission estimate that 1% of DoLS applications will end in an appeal to the Court of Protection. We assume, by introducing this new role that the number of appeals to the Court of Protection will reduce to 0.5% of applications. Therefore, legal aid cost is calculated by multiplying the number of appeals per annum (1,521, 0.5% of applications) by the legal aid cost (£8,400). This gives a cost per annum of £12.77m. Below are some sensitivities around this assumption:

Table 5 : Estimates of Legal aid costs

Court of Protection appeal rate	Legal aid cost under preferred model (best estimate)
1%	£25.55m
0.75%	£19.16m
0.5%	£12.77m
0.25%	£6.39m

12.46 This shows option 2 will cost approximately £1.5m per year in additional legal aid costs (£12.77m – the £11.19m legal aid cost of DoLS at present). It is also important to emphasise that by bringing 16-17 year olds and community DoLS into the system, the preferred model stops the large cost pressure on legal aid of fully operationalised DoLS being realised.

12.47 **Costs to supervisory body of for CoP reviews** is calculated by taking the cost of a CoP review (£12,000) and multiplying by the number of appeals per annum (1,521). This gives a cost of £18.25m.

12.48 Unlike under the DoLS (at present or fully operationalised), there will be no cost to the supervisory body to take deprivation of liberty cases outside DoLS settings to the Court of Protection, as our scheme is not setting-specific. Under DoLS at present this cost is estimated at £33.8m per annum. Doing this also removes the cost of self-funded legal aid for authorisations to incapacitated persons / carers / families. In our calculations of DoLS at present we estimate this cost as 25% of ReX cases (579) multiplied by the legal aid paper case unit cost of £520, plus all S.16 authorisations (127) multiplied by the legal aid cost of £8,400. This gives a total cost of £1.36m per annum. As stated above these costs are not incurred in the new system.

12.49 **Total Official Solicitor costs** is calculated by multiplying the number of appeals per annum (1,521), the Official Solicitor cost per case (£12,000) from the Law Commission, and an assumption that 25% of cases involve an Official Solicitor. Multiplying gives a cost of £4.56m.

12.50 Summing total legal aid cost, cost to supervisory bodies for CoP reviews and Official Solicitor costs gives a total legal cost per annum of **£35.58m**.

12.51 Calculated as the **cost of inspection (after increasing due to LPS)** multiplied by the **number of inspections with an LPS assessment**.

12.52 **Cost of inspection (after increasing due to LPS)** is the cost of an inspection increased by 10%, as set out in the Law Commission IA. This is adjusted to 2018/19 prices and the 10% increases applied which gives us the revised cost estimate (£547⁵⁰). The increase in inspection cost is due to new requirements to monitor deprivation of liberty applications under the preferred model. This includes monitoring 16-17 year olds and settings previously outside DoLS settings.

12.53 **Number of inspections with an LPS assessment** is calculated by taking the number of CQC inspections in England in May 2018 (15,809), inflating to include Wales (increase to 16,704), and reduced by 20% to account for inspections not including LPS assessments, as in the Law Commission IA. This gives 13,363.

12.54 Multiplying gives a total regulatory cost per annum of **£7.31m**.

Summary of monetised costs

12.55 Total per annum costs of option 0 are estimated to be **£348.40m**. We have included a spreadsheet as an Annex to show clearly how the costs in the below table are calculated. The below table also includes low (LE) and high estimates (HE).

12.56 Providers will need to make staff aware of their new responsibilities and complete a new form for local authorities to review, though this will be offset by providers no longer having to complete the existing request form⁵¹. The new form is expected to be of similar length and complexity. We therefore argue that besides some cost of familiarising with the new system, there will be no net cost to providers of the new system.

Table 6 – Summary of costs for option 2, Adjusted LPS

Total costs	Low estimate	Best estimate	High estimate
<i>Transitional</i>			
Training costs	£11.33 m	£18.43 m	£26.05 m
Recruitment costs	£0.01 m	£0.02 m	£0.05 m
Time cost of familiarisation for care providers	£0.51 m	£1.01 m	£2.02 m

⁵⁰ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related> page 35

⁵¹ Current form that providers must complete to request a DoLS assessment from the local authority: <https://www.adass.org.uk/mental-health-drugs-and-alcohol/public-content/new-dols-forms>, DoLS Form 1.

Total transitional costs	£11.85 m	£19.47 m	£28.11 m
<i>Ongoing</i>			
Cost of Authorisations (net)	£0.00 m	£0.00 m	£0.00 m
Cost of admin (desktop reviews)	£47.14 m	£47.14 m	£47.14 m
Cost of reviews and new 'necessary and proportionate' assessments	£19.91 m	£19.91 m	£19.91 m
Total cost of advocacy	£27.69 m	£27.69 m	£27.69 m
Approval by an AMCP	£4.37 m	£10.91 m	£17.79 m
Legal Costs	£30.26 m	£35.58 m	£41.59 m
Regulation	£4.88 m	£7.31 m	£12.19 m
Total ongoing costs (per annum)	£134.25 m	£148.54 m	£166.31 m
Total cost	£146.10 m	£168.01 m	£194.42 m

Costs (non-monetised)

12.57 We do not identify any non-monetised costs.

Benefits (monetised)

12.58 Noted in section 13.

Benefits (non-monetised)

12.59 With the Adjusted LPS model the main unquantified benefit is the quality of life gains for users achieving the optimal outcome from this process.

12.60 As previously mentioned, engagement with care providers showed a general view that the current assessment process duplicates a lot of work. Providers also highlighted that the backlog also causes stress for home managers as they are unsure of their legal position. This will be removed by moving to Option 2.

13. Quantified benefits

13.1 To estimate monetised benefits, we have costed the savings due to no longer having to operate the current DoLS system. .

Table 7, Monetised Benefit from no longer running current DoLS system

	Low estimate	Best estimate	High estimate
Average annual savings from no longer running current DoLS system	£339.28 m	£479.50 m	£660.09 m

13.2 Most of these savings fall to local authorities. We calculate that the cost to local authorities of DoLS at present is £246.2m per year. This is the ‘Cost to managing and supervisory bodies’ as shown in table 2. This will be an underestimate as we are ignoring costs of authorisations for deprivations of liberty in settings that fall outside the DoLS, some of which are incurred by local authorities. There is a one-off transition cost to local authorities estimated at around £18.45m which is the cost of recruitment and training in table 6. Ongoing costs of the preferred model to local authorities is estimated around £123.9m per year. This is the sum of cost of admin, advocacy, approval by AMCPs, ‘new necessary and

proportionate' assessments and reviews (in Table 6) and the proportion of the legal costs for costs to supervisory bodies of CoP reviews (in paragraph 12.46). Both calculations ignore any potential official solicitor costs for local authorities. Taking the cost to local authorities of DoLS at present from the cost to local authorities of the preferred model gives a £122.3m saving to local authorities per year.

13.3 The remaining savings fall to incapacitated people and families / carers and other supervisory bodies (e.g. the NHS and care providers). This is because supervisory bodies are no longer required to pay for authorisations outside the DoLS system and incapacitated people are no longer required to self-fund legal costs.

13.4 In this IA we have not costed any quality of life gain benefits (usually represented through Quality Adjusted Life Years, QALYs).

14. Net Present Values

14.1 This section estimates the cost of DoLS fully operationalised and Adjusted LPS models over a 10- year period. This is broken down into a transitional period in 2019/20 and ongoing cost period from 2020/21 to 2028/29.

14.2 We use a 3.5% discount rate, and account for changing population characteristics using a demand index taken from adult social care user population projections up to 2028/29⁵². We use these two indices to inflate costings over the 10-year period.

Table 8: Present Values of Costs, Benefits and Net Benefits

Present Value Costs	Low estimate	Best estimate	High estimate
Preferred Model	£1,405 m	£1,561 m	£1,754 m
DoLS fully operationalised	£13,733 m	£17,646 m	£21,819 m
Present Value Benefits	Low estimate	Best estimate	High estimate
Preferred Model	£2,559 m	£3,616 m	£4,978 m
DoLS fully operationalised	£0 m	£0 m	£0 m
NPV Net Benefits	Low estimate	Best estimate	High estimate
Preferred Model	£1,153 m	£2,055 m	£3,224 m
DoLS fully operationalised	-£13,733 m	-£17,646 m	-£21,819 m

⁵² Internal DHSC analysis.

14.3 In this IA we have not monetised any benefits, in terms of quality of life gains. However, we have costed the cost savings of the new system relative to DoLS at present. We then project these annual savings forward, adjusting using a demand index and discount them to give a PV benefit. We are then able to calculate an NPV for the preferred model by taking the present value cost from the present value benefit. We have not monetised any benefits for DoLS fully operationalised, so present the NPV figure above as the negative costs.

15. Summary

15.1 In summary, keeping the DoLS system as it is at present is not a viable option as people may continue to be illegally deprived of their liberty. The preferred option is to move to the Adjusted LPS model. Doing this is estimated to see the largest cost saving, make the system much more efficient and stop people from potentially being illegally deprived of their liberty. It is important to note that the NPV figure for the preferred model may be an underestimate due to important non-monetised benefits.

16. Further considerations

Statutory equality duty

16.1 We think that our proposals will not have any adverse equality impact on any social group as defined by their race, age, religion or belief, sexual orientation, disability, or gender.

16.2 We anticipate that the new system will have beneficial impacts for older and disabled people. These benefits will include greater advocacy rights for these groups, better protection of their human rights, and greater empowerment for these groups relating to issues of treatment and care. Our provisional proposals will also move England and Wales closer towards compliance with the United Nations Convention on the Rights of Persons with Disabilities.

Competition

16.3 We do not anticipate that there will be any particular effect, whether positive or negative, on competition.

Small firms

16.4 Although there are substantial numbers of small firms in the care home industry, with CQC data for May 2018⁵³ showing that 26% of all care home beds in England are operated by providers that run fewer than 50 beds (likely 1 or 2 homes) in total, we do not anticipate that there will be any specific effect, whether positive or negative, on small firms. Whether you are a large care home or a small care home, if you are looking after people, you are expected to conduct good care planning.

Environmental impact and wider environmental issues

⁵³ Care Quality Commission (May 2018), Care Directory With Filters, <http://www.cqc.org.uk/about-us/transparency/using-cqc-data>

16.5 We do not anticipate that there will be any particular effect, whether positive or negative, on the environment.

EU Exit Impacts

16.6 We do not expect there to be any EU exit impacts.

Health and well-being

16.7 We expect our provisional proposals to have a significant positive effect on health and well-being. Our proposals are directed towards improving care and treatment outcomes for vulnerable groups of people. At present, many people who ought to be assessed under the present framework are simply not receiving these assessments. Our rationalised system should make it possible for these groups to receive the attention they deserve.

Human rights

16.8 We expect our preferred model to have a significant positive effect on human rights. Our provisional proposals are directed towards guaranteeing compliance with Article 5 of the European Convention on Human Rights. This is not presently the case. Our model is also directed towards ensuring compliance with other rights, such as Article 8 (family, correspondence, privacy and home) which are not adequately protected under the present system.

Justice system

16.9 The impact on the justice system has been considered throughout this impact assessment.

Rural proofing

16.10 We do not foresee any differential impact on rural areas.

Sustainable development

16.11 We do not foresee any implications for sustainable development.

Annex 1

17. Key Stakeholders

- Individuals who lack capacity
- The families and carers of those who lack capacity
- Health and Social Care Professionals
- The Welsh Government

- Local Authorities
- NHS Trusts and Clinical Commissioning Groups (CCGs) in England
- Health Boards in Wales
- Private Care Providers
- Advocacy Organisations
- The Care and Quality Commission (CQC) in England
- Healthcare Inspectorate Wales (HIW)
- Care Inspectorate Wales (CIW)

Annex 2

Unit cost summary

Unit cost summary table (for Options 0 and 1 only)

	Low estimate	Best estimate	High estimate
Cost per granted DoLS application	£995	£1,470	£2,080
Cost per completed but refused DoLS application	£850	£1,300	£1,950
Cost per internal review application	£300	£620	£1,050
Cost incurred by supervisory bodies per S.21 Court of Protection review	£11,200	£12,000	£13,100
Self-funded legal costs by the person or carers per case	£13,100	£19,200	£25,200
Unit costs per Court of Protection review (non S.21)	£11,200	£12,000	£13,000
Legal costs for official solicitor	£11,200	£12,000	£13,000
Legal aid unit costs for paper reX authorisations	£360	£520	£680
Cost per CQC inspection		£3,319	
Training cost for new Best Interest Assessor		£1,581	
Annual refresher training for Best Interest Assessor		£158	
Training cost for new advocate and paid relevant persons representative		£1,581	

Option 0 – Status quo

DoLS at present (Option 0) - calculations

Low estimate **Best estimate** **High estimate**

Applications to Court of Protection for S.21 review			1,170
reX applications to Court of Protection (paper cases)			2,314
S.16 applications to Court of Protection			506
Total applications to Court of Protection			3,990
Number of granted DoLS applications			101,988
% of granted DoLS applications leading to internal review			8.5%
Number of DoLS applications leading to internal review			8,669
Total cost of internal reviews	£2,600,700	£5,374,780	£9,102,450
Number of granted applications			101,991
Number of non-granted applications			59,122
Total authorisation, advocacy and RPR costs	£151,734,745	£226,785,370	£327,429,180
Cost to supervisory body of Court of Protection review	£13,104,000	£14,040,000	£15,327,000
Total cost to managing and supervisory bodies	£167,439,445	£246,200,150	£351,858,630

Total costs outside of DOLS settings	£31,584,000	£33,840,000	£36,660,000
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Legal costs by legal aid per case hearing	£5,900	£8,400	£11,000
% of S.21 cases requiring legal aid		100%	
% of other Court of Protection cases needing legal aid		25%	
Number of S.21 cases requiring legal aid		1,170	
Number of S.16 cases requiring legal aid		127	
Total number of legal aid hearings		1,297	
Legal aid hearing costs	£7,649,350	£10,890,600	£14,261,500
Number of Legal Aid Cases paper (25% of re.X Cases)		579	
Legal aid paper costs for re.X applications	£208,260	£300,820	£393,380
Total legal aid costs	£7,857,610	£11,191,420	£14,654,880
Number of self-funded litigants		2,115	
% of cases involving Official Solicitor	20%	25%	30%
Number of cases involving Official Solicitor	798	998	1197
Total self-funded legal aid costs	£27,706,500	£40,608,000	£53,298,000
Total official Solicitor costs	£8,937,600	£11,970,000	£15,561,000
Total self-funded and Official Solicitor costs	£36,644,100	£52,578,000	£68,859,000
Total legal costs	£44,501,710	£63,769,420	£83,513,880

No cost for damages claims from those deprived of liberty without authorisation - but no change proposed.
No costs for court of appeal hearings - but no change proposed.

Number of CQC inspections in 2015/16			15,810
% of inspections where DOLS assessments take place			50%
Number of inspections in England where DOLS assessments did take place			7,905
Wales population factor			1.0566
Number of inspections in England and Wales where DOLS assessments did take place			8,352
% of inspection devoted to DOLS assessment	10%	15%	25%
Hence cost of DOLS component of inspection	£332	£498	£830

Total inspection costs	£2,772,169	£4,158,254	£6,930,423
Number of Best Interest Assessors needed	1,360	2,720	4,080
Annual Best Interest Assessor refresher training cost		£158	
Recurrent annual training cost	£214,880	£429,760	£644,640

Total Costs	Low estimate	Best estimate	High estimate
Cost to managing and supervisory bodies	£167.44 m	£246.20 m	£351.86 m
Costs of DoL outside of DOLS settings	£31.58 m	£33.84 m	£36.66 m
Legal costs	£44.50 m	£63.77 m	£83.51 m
Costs to regulatory bodies	£2.77 m	£4.16 m	£6.93 m
Recurring training costs	£0.21 m	£0.43 m	£0.64 m
Total costs (per annum)	£246.51 m	£348.40 m	£479.61 m

Note: we have not included any upfront training costs in our final total cost table

Option 1 – DoLS fully operationalised

Unit costs

	Low Estimate	Best Estimate	High estimate
Cost per granted DoLS application	£995	£1,470	£2,080
Cost per completed but refused DoLS application	£850	£1,300	£1,950
Cost per internal review application	£300	£620	£1,050

Cost incurred by supervisory bodies per S.21 Court of Protection review	£11,200	£12,000	£13,100
Self-funded legal costs by the person or carers per case	£13,100	£19,200	£25,200
Unit costs per Court of Protection review (non S.21)	£11,200	£12,000	£13,000
Legal costs for official solicitor	£11,200	£12,000	£13,000
Legal aid unit costs for paper reX authorisations		£520	
Cost per CQC inspection		£3,319	
Training cost for new Best Interest Assessor		£1,581	
Annual refresher training for Best Interest Assessor		£158	
Training cost for new advocate and paid relevant persons representative		£1,581	

Calculations

DoLS fully operationalised (Option 1) - calculations

	Low estimate	Best estimate	High estimate
Court of Protection Appeal rate		1%	
Applications to Court of Protection for S.21 review		1,660	
reX applications to Court of Protection (paper cases)		0	
S.16 applications to Court of Protection		53,000	
Total applications to Court of Protection		54,660	
Number of DOLS applications		227,432	
% of DoLS applications leading to internal review		8.50%	
Number of DoLS applications leading to internal review		14,112	
Total cost of internal reviews	£4,233,647	£8,749,536	£14,817,763
Percentage of applications granted		73%	
Percentage of applications not granted		27%	
Number of granted applications		166,025	
Number of non-granted applications		61,407	
Authorisations advocacy and RPR costs per application	£217,390,877	£323,885,911	£465,075,697
Cost to supervisory body of Court of Protection review	£18,594,840	£19,923,043	£21,749,322
Total cost to managing and supervisory bodies	£240,219,364	£352,558,491	£501,642,782
Total costs outside of DOLS settings	£593,600,000	£636,000,000	£689,000,000
Legal costs by legal aid per case hearing	£5,900	£8,400	£11,000
% of S.21 cases requiring legal aid		100%	
% of other Court of Protection cases needing legal aid		25%	
Number of S.21 cases requiring legal aid		1,660	

Number of S.16 cases requiring legal aid		13,250	
Total number of legal aid hearings		14,910	
Legal aid hearing costs	£87,970,496	£125,246,130	£164,012,790
Legal aid paper costs for reX applications		£0	
Total legal aid costs	£87,970,496	£125,246,130	£164,012,790
Number of self-funded litigants		39,750	
% of cases involving Official Solicitor	20%	25%	30%
Number of cases involving Official Solicitor	10932	13665	16398
Total self-funded legal aid costs	£520,725,000	£763,200,000	£1,001,700,000
Total official Solicitor costs	£122,438,968	£163,980,761	£213,174,989
Total self-funded and Official Solicitor costs	£643,163,968	£927,180,761	£1,214,874,989
Total legal costs	£731,134,464	£1,052,426,891	£1,378,887,779

No cost for damages claims from those deprived of liberty without authorisation - but no change proposed.
No costs for court of appeal hearings - but no change proposed.

Number of CQC inspections in 2015/16		15,810	
% of inspections where DOLS assessments take place		50%	
Number of inspections in England where DOLS assessments did take place		7,905	
Wales population factor		1.0566	
Number of inspections in England and Wales where DOLS assessments did take place		8,352	
% of inspection devoted to DOLS assessment	10%	15%	25%
Hence cost of DOLS component of inspection	£331.90	£497.85	£829.75
Uplift	10%	15%	20%
Total inspection costs	£3,049,386	£4,781,992	£8,316,508

Number of additional Best Interest Assessors needed	1,494	2,988	4,482
Number of additional advocates needed	856	1,712	2,568
Upfront Best Interest Assessor training cost	£2,361,790	£4,723,580	£7,085,370
Total number of Best Interest Assessors	2,854	5,707	8,561
Annual Best Interest Assessor refresher training cost	£450,932	£901,706	£1,352,638
Upfront advocate training cost	£1,353,208	£2,706,415	£4,059,623
Total upfront training cost	£3,714,998	£7,429,995	£11,144,993
Recurrent annual training cost	£450,932	£901,706	£1,352,638

Numbers of doctors and social workers		315,408	
Numbers of doctors		216,835	
Numbers of social workers		98,573	
% of doctors and social workers needing training	15%	20%	25%
Number of doctors needing training	32,525	43,367	54,209
Number of social workers needing training	14,786	19,715	24,643

Price of awareness cost		£23	
Unit cost of doctor training		£167	
Unit cost of social worker training		£111	
Total cost of doctor training	£5,446,565	£7,262,086	£9,077,608
Total cost of social worker training	£1,644,050	£2,192,066	£2,740,083
Number of additional representatives needing training	856	1712	2568
Cost of training health and social care professionals	£7,090,615	£9,454,153	£11,817,691
Cost of training representatives	£1,353,208	£2,706,415	£4,059,623
Total training costs	£12.61 m	£20.49 m	£28.37 m
Total transitional costs	Low estimate	Best estimate	High estimate
Upfront training costs	£12.16m	£19.59m	£27.02m
Total ongoing costs			
Ongoing training costs	£.45m	£.9m	£1.35m
Cost to managing and supervisory bodies	£240.22m	£352.56m	£501.64m
Costs of DoL outside of DOLS settings	£593.6m	£636.m	£689.m
Legal costs	£731.13m	£1052.43m	£1378.89m
Costs to regulatory bodies	£3.05m	£4.78m	£8.32m
Total ongoing costs (per annum)	£1568.45m	£2046.67m	£2579.2m
Total costs	£1580.61 m	£2066.26 m	£2606.22 m

Option 2 – Adjusted LPS

Unit costs

	Best Estimate
Unit cost of medical practitioner familiarisation	£167
Unit cost of social worker familiarisation	£111
Best Interest Assessor (BIA) to Approved Mental Capacity Professional (AMCP) conversion course	£615
New AMCP upfront training course	£3,693
Advocate training course	£1,581
Recruitment cost of lead AMCP	£1,370
Cost of AMCP refresher training	£615
Administration cost	£155
Cost of advocacy per authorisation	£304
Cost of 'necessary and proportionate' assessment/review	£142
Cost of advocacy	£304

Unit costs mixed in with parameters

Adjusted LPS (Option 2) - calculations

	Low estimate	Best estimate	High estimate
Number of DoLS applications received 16/17		227,432	
Number of DoLS applications completed 16/17		161,113	
Number of applications not completed 16/17		112,038	
Number of active applications last year		273,151	
Number of 16-17 year olds and community DoLS assessments that fall under the new scheme		53,000	
Number of additional assessments		98,719	
Number of duplicate Assessments not needed		22,019	
Number of applications per year under preferred model		304,132	
AMCP hours per assessment		5.4	
AMCP working hours per year		1,800	
Hence assessments per full time AMCP per annum		333	
% of cases requiring an AMCP	10%	25%	40%
Hence number of cases requiring an AMCP	30,413	76,033	121,653
Hence number of full time AMCPs needed	91	228	365
Multiplier to adjust for fact that AMCPs are part time	2	4	6
Number of AMCPs	182	912	2,190
Number of AMCPs converted from BIAs (90%)	164	821	1,971
Advocate hours per assessment		28	
Advocate full time working hours per year		1,800	
Hence cases per full time advocate per annum		65	
% of cases requesting an advocate or appropriate person		0.1	
of those, % of cases requiring an advocate		0.25	
of those, remaining % use an appropriate person		0.75	
% of those using an appropriate person who have an advocate to support them		0.66	
Hence number of cases requiring an advocate		7,603	
Number of full time advocates		116	

Multiplier to adjust for fact that advocates are part time	2	4	6
Number of advocates	232	465	697
Appropriate person hours per assessment		14	
Appropriate person working hours per year		1,800	
Hence cases per appropriate person per annum		129	
Hence number of cases requiring an appropriate person		150,545	
Number of full time appropriate persons		1,171	
Multiplier to adjust for fact that appropriate people are part time	2	4	6
Number of appropriate persons	2,342	4,684	7,025
Number of advocates for appropriate people		1,171	
Multiplier to adjust for fact that appropriate persons are part time	2	4	6
Number of advocates to support appropriate persons	2,342	4,684	7,025
Total number of advocates needed	2,574	5,148	7,722
Residential home manager salary		£27,200	
Nursing home manager salary		£33,700	
Number of residential homes May 2018		11,578	
Number of nursing homes May 2018		4,442	
Total care homes May 2018		16,020	
% of residential homes May 2018		72.27%	
% of nursing homes May 2018		28%	
Weighted average care home manager salary		£29,002	
Working days per year		230	
Hence care home manager salary per working day		126	
Working days taken for familiarisation	0.25	0.50	1.00
Time cost of familiarisation for care providers	£505,018	£1,010,037	£2,020,074
Recruitment cost of lead AMCP		1,370	
% of LAs to recruit lead AMCP	5%	10%	20%
Number of LAs in England and Wales		174	
Total recruitment cost	£11,919	£23,838	£47,676

Salary premium of lead AMCP	£2,108	£3,583	£5,059
Cost for all 174 LAs	£366,792	£623,442	£880,266
AMCP cost per approval		£125	
AMCP cost for all cases requiring their approval	£3,814,115	£9,535,288	£15,256,461
Cost per repeat assessment		£51	
Repeat assessment rate		0.5%	
Cost of repeat assessments	£77,727	£194,318	£310,909
Cost of one training		£615	
Cost of refresher training	£112,225	£561,123	£1,346,695
Total annual AMCP costs	£4,370,859	£10,914,171	£17,794,331

Numbers of doctors and social workers		315,408	
Numbers of doctors		216,835	
Numbers of social workers		98,573	
% of doctors and social workers needing training	15%	20%	25%
Number of doctors needing training	32,525	43,367	54,209
Number of social workers needing training	14,786	19,715	24,643
Price of awareness cost		£23	
Unit cost of doctor training		£167	
Unit cost of social worker training		£111	
Total cost of doctor training	£5,446,565	£7,262,086	£9,077,608
Total cost of social worker training	£1,644,050	£2,192,066	£2,740,083
Total cost of doctor and social worker training	£7,090,615	£9,454,153	£11,817,691
AMCP Upfront training cost		£3,693	
Percentage of AMCPs requiring upfront training		10%	
Cost of AMCP upfront training course	£67,389	£336,947	£808,674
Cost of BIA to AMCP conversion training		£615	
Cost of conversion	£101,002	£505,011	£1,212,026
Advocate training cost		£1,581	
Total advocate training cost	£4,069,324	£8,138,648	£12,207,972
Total training cost	£11,328,330	£18,434,759	£26,046,362

Cost of Administration under DoLS at present		£310	
Cost of Administration under preferred Model (assuming 50% reduction)		£155	
Total cost of administration		£47,140,409	

% of authorisations leading to a review		6%	
% of authorisations needing new necessary and proportionate assessments	40%	40%	40%
Hence number of reviews and necessary and proportionate assessments	139,901	139,901	139,901
Cost of a review/ necessary and proportionate assessment	£142	£142	£142

Total cost of reviews and necessary and proportionate assessments per annum	£19,905,053	£19,905,053	£19,905,053
% of authorisations requiring advocacy		30%	
Cost of advocacy per authorisation		£304	
Total annual cost of advocacy		£27,693,014	
Assessment appeal rate		0.5%	
Number of appeals per annum		1,521	
Legal aid cost	£5,900	£8,400	£11,000
% of cases involving Official Solicitor		25%	
Official Solicitor cost per case	£11,200	£12,000	£13,000
Total Legal Aid costs	£8,971,884	£12,773,530	£16,727,242
Cost to supervisory body per Court of Protection review	£11,200	£12,000	£13,100
Cost to supervisory body for Court of Protection reviews	£17,031,374	£18,247,900	£19,920,625
Total Official Solicitor costs	£4,257,843	£4,561,975	£4,942,140
Total Legal Costs	£30,261,101	£35,583,406	£41,590,006

Number of CQC inspections		15,809	
Inflate for Wales		16,704	
Reduction as inspection includes no LPS assessment		20%	
Number of inspections with LPS assessment		13,363	
Cost of inspection	£332	£497	£829
Increase in the cost of inspection		10%	
Cost of inspection after this increase	£365	£547	£912
Total cost of inspections	£4,880,241	£7,305,661	£12,185,902

Total costs	Low estimate	Best estimate	High estimate
<i>Transitional</i>			
Training costs	£11.33 m	£18.43 m	£26.05 m
Recruitment costs	£0.01 m	£0.02 m	£0.05 m
Time cost of familiarisation for care providers	£0.51 m	£1.01 m	£2.02 m
Total transitional costs	£11.85 m	£19.47 m	£28.11 m
<i>Ongoing</i>			
Cost of Authorisations (net)	£0.00 m	£0.00 m	£0.00 m
Cost of admin (desktop reviews)	£47.14 m	£47.14 m	£47.14 m
Cost of reviews and new 'necessary and proportionate' assessments	£19.91 m	£19.91 m	£19.91 m
Total cost of advocacy	£27.69 m	£27.69 m	£27.69 m
Approval by an AMCP	£4.37 m	£10.91 m	£17.79 m
Legal Costs	£30.26 m	£35.58 m	£41.59 m
Regulation	£4.88 m	£7.31 m	£12.19 m
Total ongoing costs (per annum)	£134.25 m	£148.54 m	£166.31 m
Total cost	£146.10 m	£168.01 m	£194.42 m

