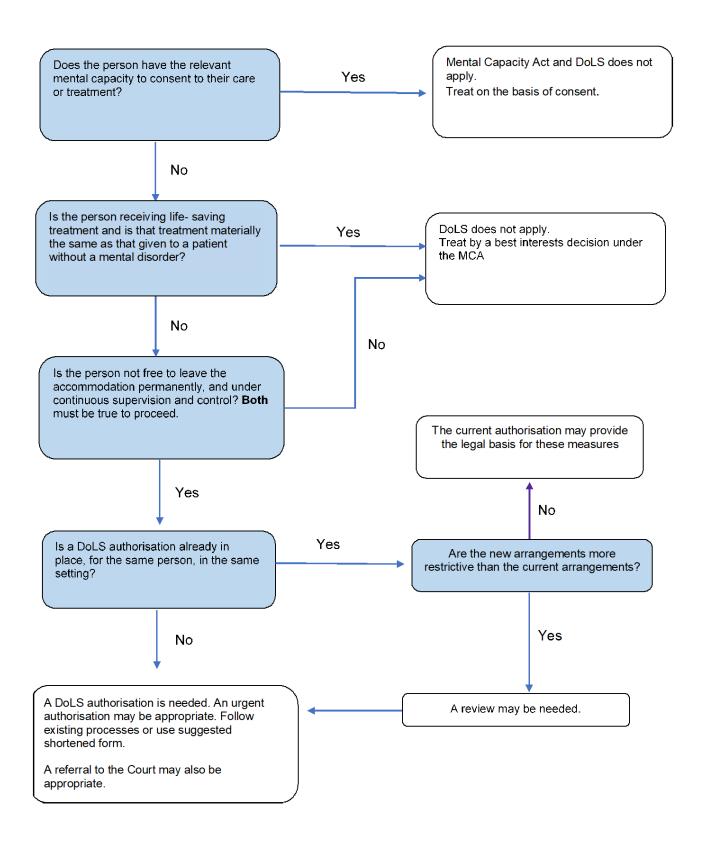Department
of Health &
Social Care

Annex A: decision-making flowchart for decision-makers in hospitals and care homes

This flowchart helps decision-makers in hospitals and care homes make decisions in relation to adults who lack the relevant mental capacity to consent to their care and treatment.

It shows the questions that they need to ask before making decisions.

Does the person have the relevant mental capacity to consent to their care or treatment?

Yes → Mental Capacity Act and DoLS does not apply.
Treat on the basis of consent.

No ↓

Is the person receiving life- saving treatment and is that treatment materially the same as that given to a patient without a mental disorder?

Yes → DoLS does not apply.
Treat by a best interests decision under the MCA

No ↓

Is the person not free to leave the accommodation permanently, and under continuous supervision and control? **Both** must be true to proceed.

No → DoLS does not apply. Treat by a best interests decision under the MCA

Yes ↓

Is a DoLS authorisation already in place, for the same person, in the same setting?

Yes → Are the new arrangements more restrictive than the current arrangements?

No → The current authorisation may provide the legal basis for these measures

Yes ↓ A review may be needed.

No ↓

A DoLS authorisation is needed. An urgent authorisation may be appropriate. Follow existing processes or use suggested shortened form.

A referral to the Court may also be appropriate.

Text alternative to the flowchart

Does the person have the relevant mental capacity to consent to their care or treatment?

Yes: Mental Capacity Act and DoLS does not apply. Treat on the basis of consent.

No: See next question

Is the person receiving life-saving treatment and is that treatment materially the same as that given to a patient without a mental disorder?

Yes: DoLS does not apply. Treat by a best interests decision under the MCA.

No: See next question.

Is the person not free to leave the accommodation permanently, and under continuous supervision and control? Both must be true to proceed.

No: DoLS does not apply. Treat by a best interests decision under the MCA.

Yes: See next question.

Is a DoLS authorisation already in place, for the same person, in the same setting?

Yes: See next question.

No: A DoLS authorisation is needed. An urgent authorisation may be appropriate. Follow existing processes or use suggested shortened form. A referral to the Court may also be appropriate.

Are the new arrangements more restrictive than the current arrangements?

Yes: A review maybe needed. A DoLS authorisation is needed. An urgent authorisation may be appropriate. Follow existing processes or use suggested shortened form. A referral to the court may also be appropriate.

No: The current authorisation my provide the legal basis for these measures.