Title: Mental Capacity (Amendment) Act
IA No:

RPC Reference No:

Lead department or agency:
Department of Health and Social Care

Other departments or agencies:

Impact Assessment (IA)

Date: December 2020

Stage: Final/Bill

Source of intervention: Domestic

Type of measure: Primary Legislation

Contact for enquiries:
LPS.CoP@dhsc.gov.uk

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 2019 prices)	**One-In, Three-Out**	**Business Impact Target Status**
£1,663m	£-2.4m	£0.3m	Not applicable	Non qualifying (<£5m)

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

The existing Deprivation of Liberty Safeguards (DoLS) provide a legal process to review and, where appropriate, authorise arrangements for a person's care or treatment which may amount to a deprivation of liberty, for people aged 18 and over in a care home or hospital. It provides key safeguards to protect the person's human rights. The system is monitored by CQC. All other cases are considered by the Court of Protection. There are two key challenges with the DoLS system. Firstly, it is complex and overly bureaucratic. Secondly, since DoLS was introduced, two court judgements (*Cheshire West* and *Re* D) have broadened the scope of the system, resulting in it being overwhelmed. It is believed that thousands of people, are unlawfully deprived of their liberty, resulting in 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 families / 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 that it is compliant with Article 5 and 8 of the European Convention on Human Rights
5. To provide a comprehensive, proportionate and lawful mechanism by which deprivations of liberty for young people aged 16 and 17 can be authorised.

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 – the system as it runs now. Thousands of people unlawfully deprived of their liberty
Option 1: The existing deprivation of liberty mechanisms fully operationalised to cope with the actual number of DoLS applications received post Cheshire West and the expected number of Court of Protection (CoP) applications post ReD
Option 2: Implementation of new adjusted Liberty Protection Safeguards model (preferred option)

Our preferred option is a variation of the Law Commission's Liberty Protection Safeguards (LPS) proposal. It is our preferred approach for implementation because it is proportionate, cost-effective and resolves the problems identified in the existing DoLS system in a timely way.

Will the policy be reviewed? Yes. **If applicable, set review date:** With consultation of the secondary legislation

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 Minister:  Date: 28/01/2021

Summary: Analysis & Evidence

Policy Option 0

Description: Status Quo (DoLS and CoP authorisations at present)

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2018/19	2022/23	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 and deprivations of liberty in community settings are not being authorised through the CoP, 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 0)

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

Summary: Analysis & Evidence

Policy Option 1

Description: Existing deprivation of liberty mechanisms (DoLS and relevant CoP orders) fully operationalised

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2018/19	2022/23	10	**Low: -£16,900**	**High: -£26,709m**	**Best Estimate: -£21,659**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual* (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£12m	1	£2,017m	**£16,900m**
High	£27m		£3,187m	**£26,709m**
Best Estimate	£20m		£2,585m	**£21,659m**

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

Costs below are based on the number of DoLS applications in 2018/19.
Transitional training costs for NHS, local authorities and providers are estimated to be £20m and ongoing training costs estimated to be £0.9m per year.
Cost to managing and supervisory bodies is estimated to be £384m per year.
Cost of deprivations of liberty through CoP in domestic settings and for 16/17-year olds following Re D ruling is estimated to be £718m per year.
Legal costs are estimated to be £1,182m per year (£321m legal system, £861m self-funded).
Costs to regulatory bodies are estimated to be £10m.
Average annual costs are calculated by taking the net total cost over the 9 years (excluding transition, non-discounted) and dividing by 9.
*Average Annual costs shown in this table are an average of the annual cost of fully operationalised DoLS (not just its extra cost over current DoLS) in 2018/19 prices over a 10-year period, where costs are modelled to increase over time due to demand. They therefore do not represent the expected cost in any specific year.

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	Not quantified	N/A	Not quantified	**Not quantified**
High	Not quantified		Not quantified	**Not quantified**
Best Estimate	Not quantified		Not quantified	**Not quantified**

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

No financial benefits (cost savings), since fully operationalising DoLS will cost more than the status quo option. Note, however, the significant but non-monetised benefits described below in terms of care outcomes, individual rights and compliance with the law.

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

England and Wales: greater compliance with international human rights obligations.
Reduced exposure to damages for unauthorised deprivations of liberty.
Significant but unquantifiable improved health, human rights, social and education outcomes as everyone who requires an authorisation receives one.

Key assumptions/sensitivities/risks **Discount rate** 3.5

Sensitivities and assumptions are detailed, where neccesary, within the evidence base.
Risks:

- The Court system cannot cope with the large numbers of Court authorisations required, and delays then 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:	**Benefits:**	**Net:**	
N/A	**N/A**	**N/A**	Non qualifying provision (score <£5m)

Summary: Analysis & Evidence

Policy Option 2

Description: Adjusted Liberty Protection Safeguards (LPS)[1]

FULL ECONOMIC ASSESSMENT

This is an assessment of the design of LPS as set out in the Mental Capacity (Amendment) Act 2019. It is therefore an incomplete and non-final assessment of the impact of LPS overall. The Government will undertake more detailed impact assessment of LPS overall, including policy details to be specified in secondary legislation, after public consultation.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)
2018/19	2022/23	10	**Low: £678m High: £3,031m Best Estimate: £1,663m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	£28m	1	£330m	**£2,788m**
High	£60m		£459m	**£3,903m**
Best Estimate	£41m		£389m	**£3,299m**

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

The annual costs are based on the number of DoLS applications in 2018/19, and the 59,800 annual assessments expected for 16/17-year olds and for community settings.
Cost of arranging authorisations and reviews by care settings assumed to be zero as the proposed functions for care homes build on the role the registered manager performs currently.
Cost of administration across responsible bodies is estimated to be £56m per year.
Cost of reviews (and new 'necessary and proportionate' assessments in care homes) estimated at £46m per year.
Cost of advocacy estimated at £125m per year.
Cost of approval by Approved Mental Capacity Professionals is estimated to be £9m per year.
Costs to the courts and other legal costs are estimated to be £30m per year.
Regulatory cost to CQC and Ofsted is estimated to be £14.1m per year once DoLS has ceased operating.
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 and costs are calculated accordingly.

*Average Annual costs shown in this table are an average of the annual cost of LPS (not just its extra cost over DoLS) in 2018/19 prices over a 10-year period, where costs are modelled to increase over time due to demand. They therefore do not represent the expected cost in any specific year.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	1	£414m	**£3,466m**
High	£0		£828m	**£6,934m**
Best Estimate	£0		£593m	**£4,962m**

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

The above numbers reflect the financial benefits (cost savings) of the new system relative to the existing deprivation of liberty mechanisms (DoLS and relevant CoP orders). We project discounted annual savings forward, adjusting for future demand.

Note also the significant but non-monetised benefits described below in terms of care outcomes, individual rights and compliance with the law.

[1] Our proposed model is adjusted from the Law Commission's proposed Liberty Protection Safeguards model. https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related

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

People who lack capacity: greater empowerment and equality and improved care outcomes.
Families and carers: greater certainty and empowerment.
Care providers: Removes uncertainty of waiting for assessments to be completed.
NHS and local authorities: greater compliance with the law.
United Kingdom: greater compliance with international human rights obligations.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

Sensitivities and assumptions are detailed, where neccesary, within the evidence base. Direct impact on business (Equivalent Annual) is the estimated training 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 been able to monetise these.

Unit costs assumptions

1. We have used information from the Personal Social Services Research Unit (PSSRU) Unit Costs of Health and Social Care[2] published in December 2018 as this provides the most authoritative evidence in relation to unit labour input costs, which feeds into the overall training costs calculations where relevant.

2. We have also used information from the comprehensive work undertaken by the Law Commission on reforming the DoLS system over a three-year period (2014 – 2017)[3] as this 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. That costs of the proposed preferred option could materially exceed our estimates which will reduce the quantified benefits. Note however the significant non-monetised benefits.

2. That data from different sources has 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.

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	
£0.3m	N/A	£-0.3m	Non qualifying provision (score <£5m)

[2] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/
[3] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related (pages 29 – 35)

Evidence Base

1. Summary of changes in this version of the Impact Assessment

1.1 This is the final stage UK Government Impact Assessment relating to the Liberty Protection Safeguards as introduced in the primary legislation, the Mental Capacity (Amendment) Act 2019. The Government's overall assessment of the impact for the entire policy will change as more detail is decided and secondary legislation is published, however, this is not assessed in this impact assessment.

1.2 The IA is partly drawn on work by the Law Commission[1]. Previous versions of the IA are available on the UK Parliament website.[2]

1.3 The following changes have been made in this version of the Impact Assessment compared to the previous version:

Change	Reason for change
The time period of the IA has been changed to 2022/23 to 2031/32 inclusive, which is three years later than the previous IA's period of 2019/20 to 2028/29. Implementation is modelled to begin at the beginning of 2022/23, i.e. in April 2022.	This reflects the current planned implementation date.
The volume of applications under Deprivation of Liberty Safeguards (DoLS) at present and the proposed Liberty Protection Safeguards (LPS) have been updated using NHS Digital 2018/19 statistics.[3] Previous versions of the IA included some element of clearing the DoLS backlog in the LPS volumes, which are no longer included in this version of the IA. Volumes for Wales and for the additional assessments under LPS (16/17-year olds and community settings) have been uplifted following the Re D judgement.	More recent data has been released since the previous version of the IA was published. The IA has also been brought into line with the policy at the time of the primary legislation.
The Existing deprivation of liberty mechanisms (DoLS and relevant CoP orders) fully operationalised costs now reflect the 2018/19 split of granted applications (54%) and non-granted applications (46%). In the previous version of the IA this split was 73% granted / 27% non-granted.	More recent data has been released since the previous version of the IA was published.
The LPS assessment volumes now account for an NHS Digital finding that at most 78% of DoLS assessments are first assessments. NHS Digital expect that the true, unobservable figure is below 78%. The remainder are repeat assessments for people who have already been assessed before.	Further consultation with NHSD has given us a better understanding of repeat assessments.

[1] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/
[2] https://services.parliament.uk/Bills/2017-19/mentalcapacityamendment/documents.html
[3] https://digital.nhs.uk/data-and-information/publications/statistical/mental-capacity-act-2005-deprivation-of-liberty-safeguards-assessments/england-2018-19

Some of these repeat assessments will no longer need to take place under LPS, though some still will due to changes in individual needs. We argue that applying the adjustment at 78% is a reasonable compromise.	
The cost of doctor and social worker training for LPS is now split into 'full training' and 'awareness raising'. 100% of adult social workers are assumed to require the full training. 20% of doctors, children's social workers and other social workers are estimated to require the full training, with the remainder receiving awareness raising. The previous IA assumed that 20% of all doctors and social workers would receive 'full training', with the remainder receiving no training.	Consultation with stakeholders has given us a better understanding of training requirements.
The number of working hours per year for full time advocates has been reduced from 1,800 to 1,350, as the former did not adequately reflect holiday entitlements. The number of working hours per year for full time AMCPs has also been reduced to 1,350.	Previous estimates did not adequately reflect holiday entitlements.
The unit cost of training an advocate has been increased from £1,581 to £1,850.	Updated evidence has been provided by Voiceability (a provider of advocacy services).
The estimated cost of advocacy services under LPS has been significantly increased. The previous IA assumed that 30% of authorisations would require advocacy services at a unit cost of £304 (following Shah et al. (2011)), which is equivalent to around 10 hours of support per person. Following government commitments on advocacy provision made during the passage of the Bill, and evidence from advocacy service providers, this version of the IA applies a significant overall increase in advocacy support through support for appropriate persons, a higher number of hours per person and a slightly higher implicit cost per hour. The assumptions are as follows, both for ongoing costs and for estimating the number of advocates that need to be trained: • 95% of authorisations are assumed to require support either from an advocate or Appropriate Person. 25% of this demand is assumed to be met directly by an advocate, with the remaining 75% supported by an Appropriate Person. In an estimated 20% (low estimate) / 40% (central estimate) / 66% (high estimate) of cases, the Appropriate Person is to be supported by an advocate. • Each directly supported case is estimated to require 38 hours of advocate time, with	Further evidence has allowed us to produce more accurate estimates.

each supported appropriate person requiring 17 hours of advocate time. • Advocacy support is estimated to cost £35 per hour.	
The time cost of familiarising each care home manager with the policy has been increased from 0.25 days (low estimate) / 0.5 days (best estimate) / 1 day (high estimate) to 0.5 days (low estimate) / 1 day (best estimate) / 1.5 days (high estimate). The number of adult care homes in England has been updated using CQC data for June 2019. The calculations now include adult care homes in Wales. Children's care homes and residential special schools in both England and Wales are not included, since this training is for the statutory care home manager role introduced in the Act. More recent residential and nursing home manager salary data has been used from Care England (a trade association).	Consultation with stakeholders has allowed us to provide a more accurate estimate.
The unit cost of local authority administration per application has been increased from £155 (which was a 50% reduction in the £310 cost of administration under DoLS) to £217 (which is a 30% reduction in the £310 cost of administration under DoLS). Local authorities argued that a 50% reduction was an unrealistic expectation for efficiency.	Consultation with stakeholders has allowed us to provide a more accurate estimate.
The percentage of authorisations needing new necessary and proportionate assessments has been increased from 40% (fixed estimate) to 40% (low estimate) / 60 % (best estimate) / 80% (high estimate).	Consultation with stakeholders has allowed us to provide a more accurate estimate.
The LPS costs now include the cost of medical assessments for 20% of authorisations and capacity assessments for 40% of authorisations, with unit costs of £116 and £162 respectively. The previous IA had no cost for medical or capacity assessments. These estimates allow for more 16/17-year olds requiring assessments compared to adults.	Consultation with stakeholders has allowed us to provide a more accurate estimate.
The previous IA described a repeat appeal rate of 5% in the text, but mistakenly implemented a 0.5% repeat appeal rate in the calculations. This error has been corrected.	We have corrected a calculation error.
Costs for the recruitment of lead Approved Mental Capacity Professionals (AMCPs) and their salary premium have been removed, as this role is not included in primary legislation.	This IA considers the effect of the Act.
The estimated cost of regulation of LPS now reflects initial cost estimates by the respective organisations of £13.5m per annum for CQC and	Consultation with stakeholders has allowed us to provide a more accurate estimate.

£600,000 per annum for Ofsted, once DoLS is no longer in operation.	
The age 18+ expenditure-based demand projections (used to calculate the cost of the policy over a 10-year period) are now based on a published report.[4] The impact of this change is minor but enables the demand projections to be more clearly cited. The demand projections have been adjusted to use a 2018 base, rather than a 2016 base, to reflect the use of updated 2018/19 application volume statistics from NHS Digital.	This report was published in June 2018, after the publication of the most recent version of is IA.
The structure of the tables in the annex now more clearly reflects the summary tables at the end of each section, and the text of the Impact Assessment.	The changed structure ensures internal consistency.

2. Introduction

2.1 This is a final stage impact assessment for the Mental Capacity (Amendment) Act. It evaluates options for reforming the Deprivation of Liberty Safeguards (DoLS) system as set out in primary legislation. This impact assessment does not assess the secondary legislation or other policy decisions taken since the primary legislation.

2.2 The preferred option is an adjusted version of the Liberty Protection Safeguards (LPS) proposed by the Law Commission in their 2017 report and associated impact assessment[5].

2.3 We use the Law Commission Impact Assessment (IA) as our basis as we have largely brought forward their proposed model. However, we have amended their IA to reflect differences between the Law Commission's model and the adjusted Liberty Protection Safeguards model set out in the Mental Capacity (Amendment) Act 2019 (the Act), and feedback received from delivery partners and stakeholders.

2.4 This IA provides a view on the ongoing cost of the Liberty Protection Safeguards scheme as outlined in the Mental Capacity (Amendment) Act. It also calculates transitional costs associated with training. The Government's assessment of overall impact and costs will change as a result of ongoing policy design and implementation work. Further detail will be proposed and decided following public consultation on the Regulations and Code.

2.5 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 (2018/19) and inflated to 2018/19 prices.

3. Background

3.1 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

[4] https://www.pssru.ac.uk/publications/pub-5421/.
[5] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related

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.

3.2 The DoLS were a response to the European Court of Human Rights case of *HL v United Kingdom*.[6] 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 right to liberty and security of person). The DoLS were introduced to remedy the breaches of Article 5 outlined in the *HL v United Kingdom* judgment.

3.3 In March 2014, 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.[7] Days later, the Supreme Court judgements, *P v Cheshire* West *and Chester Council* and *P v Surrey County Council*[8] (known as "Cheshire West") gave a significantly wider definition of a deprivation of liberty than that which had been previously understood. Prior to Cheshire West, the conditions to be met for a deprivation of liberty were more nuanced. For example, in some cases consideration could be given to the views of the cared for person and their family. In Cheshire West, the Court held that a person who lacks capacity to consent to their confinement is considered to be deprived of their liberty when they are under continuous supervision and control and are not free to leave. This is 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).

3.4 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 applications in England was 13,715. The most recent data from NHS Digital shows that the number of DoLS applications in England has increased to 240,455 in 2018-19.[9] Furthermore, these figures do not capture 16/17-year olds or people who are deprived of liberty in settings not covered by the DoLS, including but not limited to supported living, shared lives and private and domestic settings – where the only available mechanism to provide Article 5 safeguards for those who lack the relevant mental capacity is via authorisation by the Court of Protection.[10] We estimate that there are around 59,600 cases involving deprivations of liberty in these settings.[11] This is revised upwards from the Law Commission estimate of 53,000[12] following the latest Re D judgement that parents cannot consent to their child being deprived of their liberty.

3.5 In September 2019 in *D (A Child) UKSC 42* the Supreme Court ruled that where a 16/17-year old lacks capacity to consent themselves to arrangements which constitute a deprivation of liberty, parental consent will not stop that being a deprivation of liberty. This was the latest in a string of judgements on this individual which began with *Re D (A Child) (Deprivation of*

[6] (2005) 40 EHRR 32 (App No 45508/99).
[7] 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.
[8] [2014] UKSC 19, [2014] AC 896.
[9] Mental Capacity Act (2005) Deprivation of Liberty Safeguards (England), NHS-Digital (2019) https://digital.nhs.uk/data-and-information/publications/statistical/mental-capacity-act-2005-deprivation-of-liberty-safeguards-assessments/england-2018-19
[10] 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).
[11] 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.
[12] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related (page 24)

Liberty) [2015] EWHC 922 (Fam). The Department for Education estimates that an additional 6,600 16/17-year olds will be required to apply to the Court of Protection following this ruling, which is added to the Law Commission estimate to give 59,600. Under the current system it is believed that thousands of young people are unlawfully deprived of their liberty in England and Wales.

3.6 In response to the House of Lords report, in 2014 the Government tasked the Law Commission with completing a report into Mental Capacity and DoLS. The Law Commission published their report in March 2017 and recommended replacing the current DoLS system as a matter of urgency with the Liberty Protection Safeguards.[13] The Government responded to the Law Commission in March 2018 and stated that they would legislate for this after considering the details of the proposals and ensuring a new system would fit with the conditions of the health and social care sector.[14]

3.7 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 may also be subject to DoLS. Public bodies, such as the NHS and local authorities are impacted, as well as the health and social care workforce.

4. Problem under consideration

4.1 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
Limited in scope and not cost effective	Increased stress for people not accessing vital safeguards and their families
Overly complex system	Unnecessary burden for people and their families
Ill-suited and outdated terminology	DoLS seen as stigmatising, meaning authorisations aren't always sought
Scale of the problem	Applications not completed and people are left without protections
Individuals left without protections	People may receive inappropriately restrictive care and treatment

Limited in scope and not cost effective

4.2 The DoLS only apply to people over the age of 18 in care homes and hospitals. This means the authorisation of deprivations of liberty outside these settings, such as in supported living and private and domestic settings, must be dealt with by the Court of Protection. This is also the only route for authorisations for 16/17-year olds who are not covered by DoLS, although they are covered by other provisions within the MCA. This is a more expensive process for local authorities and NHS bodies (compared to authorisations under the DoLS) and can result in delay and increased stress for the person concerned, and their family or unpaid carers. The Law Commission concluded that cases are frequently not taken to Court when they should

[13] Law Commission: Report into Mental Capacity and Deprivation of Liberty Safeguards (2017)
[14] http://qna.files.parliament.uk/ws-attachments/861932/original/180314%20Response%20to%20Law%20Commission%20on%20DoLS%20-%20final.pdf

be, meaning people are not accessing vital safeguards and are deprived of their liberty unlawfully.

Overly complex system

4.3 The legislation which set up the DoLS has been described as "tortuous and complex".[15] 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 of an application can last up to one year in a single location. A new and 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 place an unnecessary burden on individuals and their families, as well as the DoLS system and budget. 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".[16]

Ill-suited and outdated terminology

4.4 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

4.5 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.

4.6 Since the Cheshire West judgment there has been a significant increase in DoLS applications. In 2018/19 there were 240,455 applications in England, which is over ten times the number of applications the DoLS system was expected to need to process in the worst-case scenario. Approximately two million people are thought to lack the capacity to make certain decisions for themselves, so the number of people subject to DoLS could grow even further.[17]

4.7 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 workforce capacity means there is a building but ever-changing 'backlog' of pending applications not completed within the year they are received by local authorities.

Individuals left without safeguards

[17] 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

4.8 In 2018/19 the number of cases that were not completed as at year end was 131,350. Of these just under 40% (51,535) had a duration of over one year.[18]The volume of cases pending approval by local authorities means that individuals are often left without safeguards for an extended period of time. This means that individuals may be receiving inappropriate care and that local authorities are not meeting their statutory duties.

5. Rationale for Intervention

5.1 The current legal framework fails to protect the rights of people and establishes a compelling case for reform. It is clear from the above that more than 131,000 people are being left without the protections they need and over 51,000 have been waiting more than one year for an authorisation. These figures only include individuals who have applications for DoLS and there could be many more in non-DoLS settings. This creates a situation where people are being deprived of their liberty without any oversight and can mean that overly restrictive practices are used which may interfere with their Article 5 human rights.

5.2 Furthermore, inefficiencies in the administration of the DoLS authorisation process create wastage. It is important to ensure that the system is operating as efficiently as possible, particularly given wider pressures on the health and care sector caused by an ageing population and other factors.

6. Policy Objectives

5.1 The policy objectives are as follows:

- 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 families / 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 that it is compliant with Article 5 and 8 of the European Convention on Human Rights.

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

7. Current DoLS Procedure

7.1 The DoLS system is used to assess and authorise deprivations of liberty for over 18s which occur in care homes and hospital settings. Deprivations of liberty also occur outside DoLS settings, for example in supported living and private domestic settings. We describe both scenarios below.

<u>Deprivation of liberty in care homes and hospital settings</u>

7.2 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) when they propose to deprive a person of their liberty

[18] Mental Capacity Act (2005) Deprivation of Liberty Safeguards, (England) 2018/19, Official Statistics

(referred to as a 'DoLS application'). The supervisory body, on receiving a DoLS application, must arrange a series of six assessments (age, no refusals, mental capacity, mental health, eligibility, and best interests). At a minimum, these can be completed by two people; a Best Interests Assessor (BIA) and mental health assessor, who must be a doctor. If all the assessments are "positive" the supervisory body must authorise the deprivation of liberty (referred to as a 'standard authorisation').

7.3 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').

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

7.5 To assist the person through the assessment process, an Independent Mental Capacity Advocate (IMCA) is appointed by the supervisory body. In most cases, this appointment ceases following authorisation and the supervisory body then appoints a relevant person's representative (RPR). The RPR's role is to maintain contact with the relevant person and support and represent the person. On request by the relevant person or the RPR, and in certain other circumstances, the supervisory body must appoint an IMCA after the authorisation. The role of the IMCA includes representing and supporting the relevant person and explaining the DoLS authorisation to the relevant person and RPR.

Deprivation of liberty outside care homes and hospital settings

7.6 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 their liberty.

7.7 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, although the rest of the MCA applies to 16- and 17-year olds. In such cases an authorisation from the Court would be needed. Following the ReD ruling that parental consent is not sufficient to deprive a 16/17-year-old of their liberty, it is estimated that 6,600 16/17-year olds need an authorisation each year.

8. Description of options considered

This impact assessment considers three options:

8.1 Option 0 - Business as usual (status quo) – do not amend the current system. This is the base case that the costs and benefits of other options are compared to. Under this option, the local authority 'backlog' of pending applications would remain and continue to increase, and individuals would be left without safeguards. We do not consider Option 0 to be a viable option. The DoLS are overly complex and are not well understood by both those subject to them and those applying them.

8.2 Option 1 – The existing deprivation of liberty mechanisms (DoLS and CoP authorisations) fully operationalised to cope with actual number of applications following Cheshire West and Re D judgements. Under this option, assessments would all take place within statutory time limits, cases would be taken to Court when they should be, and referrals would be made 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 adhered to. Option 1 would improve human rights outcomes, as fully funding DoLS would enable local authorities to process all cases within statutory time limits.

8.3 Option 2 – Implementation of new adjusted Liberty Protection Safeguards model (preferred option). This is a new system based on the Law Commission's proposal and set out in the MC(A)A and is designed to deal with the large increase in applications. It would offer the improved outcomes of Option 1 at a reduced cost, with potential further human rights benefits.

9. The proposed new system (Option 2) – Adjusted Liberty Protection Safeguards

9.1 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 system and subsequently brought forward an adjusted version of the Law Commission's model after working with a range of stakeholders to consider the detail. A list of some of the stakeholders we have engaged with can be found in Annex 1. This model achieves the Government's objectives and will be compliant with Article 5 of the European Convention on Human Rights, namely that everyone has the right to liberty and security of person.

9.2 The LPS system significantly widens the scope of protection by extending safeguards to other settings, such as shared lives schemes and children's care settings, as well as to 16/17-year olds in line with the wider MCA.

9.3 When it is identified that a person might need an LPS authorisation, a Responsible Body[19] or, where appropriate, a care home manager, will arrange the assessments needed, or use existing valid assessments where available, and complete the relevant consultation.

9.4 A key change in the new model is that NHS organisations in England will also be responsible bodies in addition to local authorities. This means NHS organisations will no longer need to apply to a local authority to have arrangements authorised. This is in line with how the system works in Wales currently.

9.5 Care home managers may also have a different role in the new system as they might, in some cases, complete a number of functions, including preparing the statement provided to the Responsible Body, and completing a consultation and ongoing review. They might have to submit the evidence to a local authority, CCG or Local Health Board (depending on the Responsible Body) to have the arrangements authorised.

9.6 The 2019 Act states that assessments cannot be carried out by someone who has a prescribed connection to a care home. Regulations could define this as meaning that assessments cannot be completed by, for example, care home staff. In some cases, there will already be valid assessments in place which have been completed by someone without a prescribed connection to a care home as part of a person's care planning. In other cases, a

[19] Responsible body refers to a local authority, Hospital Trust, Clinical Commissioning Group (CCG) or Local Health Board

new assessment will need to be arranged and the care home manager might work with the Responsible Body to do this.

9.7 The Responsible Body, or care home manager where appropriate, must organise a necessary and proportionate assessment for the person to ensure that depriving the person of their liberty is needed to keep them safe from harm, and is a reasonable response to the probability of them suffering harm, taking into consideration other less restrictive options. This must be a new assessment, although, where possible, this should be done alongside existing care planning to reduce duplication.

9.8 There is a presumption that every person subject to the Liberty Protection Safeguards will have ongoing representation and support from either an 'Appropriate Person' or an Independent Mental Capacity Advocate (IMCA), unless this is not in their best interests. It is the duty of the Responsible Body to ensure that there is an Appropriate Person or IMCA provided as soon as an application is made.

9.9 Following assessments and consultation, a pre-authorisation review is completed by the Responsible Body. In cases where a person resides in an independent hospital, has raised an objection to the arrangements, or has particularly complex circumstances, the pre-authorisation review will be completed by an Approved Mental Capacity Professional (AMCP). This will mean that objections to the proposed arrangements can be considered by someone not involved directly in the person's care and treatment.

9.10 In the preferred model, the Responsible Body will arrange an independent pre-authorisation review for every referral. As reported by the Law Commission, most authorisations should be straightforward, so we do not expect this to be burdensome on local authorities, NHS Trusts or CCGs. In a small number of other cases (for example, if there is an objection), the AMCP will be brought in to ensure that the assessments have been done to the highest standard. This means that resources are used efficiently, and skills are focused where they are most needed. In many cases under the current system, the arrangements proposed for the person are reasonable and no changes are needed, but the BIA is required to approve every application. 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.

9.11 Every person subject to the Liberty Protection Safeguards has a right to information about their authorisation. This right reflects current rights to information under the European Convention on Human Rights, so this does not represent a policy change.

<u>Wider amendments to the Mental Capacity Act</u>

9.12 The Law Commission also proposed making some wider amendments to the Mental Capacity Act which the Government has decided not to legislate for at this point, as it believes that there are other effective levers to deliver improvement in these areas.

9.13 This includes their proposal to remove the statutory defence under section 5 of the Mental Capacity Act in certain cases if a decision-maker is making a best interest decision and fails to confirm in a written record that they have followed the relevant framework, as set out in sections 1 to 4 of the Act. The Law Commission also proposed to confirm in statute the right to bring civil proceedings against private care homes and independent hospitals for unauthorised deprivation of liberty. These points were not included in the Law Commission's Impact Assessment.

The Mental Health Act Review

9.14 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 a full public consultation will take place in 2021.

10. Policy Objectives of Adjusted Liberty Protection Safeguards

The Liberty Protection Safeguards have the following objectives:

Simplification

10.1 **The Liberty Protection Safeguards 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 in certain circumstances; authorisations will be extended to 16/17-year olds and to individuals in settings which are not covered by DoLS; authorisations will be able to last for up to three years (after the first authorisation of up to 12 months and a renewal for up to 12 months) for those with stable conditions who will not recover; and the NHS will be able to have a greater role in the authorisation process. This streamlined system is designed to reduce delays and allow people to access protections more quickly.

10.2 **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, in some cases, the care home manager will work with the responsible body to arrange the assessments if a new assessment is needed. This could be applicable to everyone subject to an LPS authorisation.

Compliance with human rights law

10.3 **The Liberty Protection Safeguards will provide an authorisation process and review scheme that is Article 5 compliant.** It also gives effect to rights under Article 8 of the ECHR, a right to respect for a person's private and family life, and other relevant international human rights law, such as the United Nations Convention on the Rights of People with Disabilities. This will be complimented by a comprehensive monitoring system, which will ensure that no one is unfairly treated while deprived of their liberty, in line with the requirements of the Optional Protocol to the Convention of against Torture.

Improved outcomes

10.4 **The Liberty Protection Safeguards aim to ensure that people are only deprived of their liberty if this is necessary and proportionate.** The Act 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. A greater focus is also given to the person's wishes and feelings about their care or treatment.

Comprehensiveness

10.5 **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, education settings, children's residential homes and domestic settings.**

Rather than relying on the court system, the new scheme provides a more cost-effective way of ensuring authorisations can occur and allows individuals to access robust safeguards in an easier and less cumbersome way. An authorisation will also apply to all settings a person is planned to receive care or treatment in, reducing the burden of processing multiple authorisations on the provider, Responsible Body, and crucially the person.

Increased access to safeguards for vulnerable people

10.6 A more streamlined and less complex system will enable authorisations to be **processed more efficiently, which means vulnerable people will be able to access safeguards more quickly and human rights outcomes will be improved.**

11. Differences between DoLS and LPS

Current DoLS System	**Proposed LPS System**
Local authorities act as Supervisory Bodies in England. Local authorities and Local Health Board act as Supervisory Bodies in Wales.	Local authorities, CCGs and NHS hospitals act as responsible bodies, in England, reducing delays and allowing individuals to access protections more quickly. No change in Wales.
Supervisory body organises six assessments which must all be new.	Responsible body organises three assessments. Recent assessments can be reused if applicable and may be arranged by the care home manager, including assessments completed in the care planning process. This streamlines the system and reduces cost.
A different DoLS authorisation with new assessments is required for different locations.	LPS authorisations are not setting specific. This means one LPS authorisation can cover a range of settings so can be used, for instance, to cover residential care and day centre visits.
BIA required to approve every authorisation.	AMCP only required to approve authorisation in specific cases where the relevant skills are most needed. By focussing skills, the system will be more efficient.
DoLS authorisations only apply to care homes and hospital settings. A Court of Protection authorisation must be sought for other locations, which is a complex and expensive process.	LPS authorisations cover all settings, including transport and domestic settings. This improves human rights outcomes.
DoLS authorisations apply to individuals aged 18 and over.	LPS authorisations apply to 16 / 17-year olds in line with the MCA. This improves protection and human rights outcomes.
DoLS authorisations last up to 12 months	LPS authorisations for stable conditions can last for up to three years (after the initial authorisation of 12 months and renewal of 12 months).
The duty under the MCA to consult with appropriate persons with an interest in the person's welfare only applies to care home residents.	There is an explicit duty in the Mental Capacity (Amendment) Act 2019 to consult with those interested in the person's welfare. There is therefore greater involvement for families within LPS.
An IMCA is appointed if there is no independent person to consult about the individual's best interests, or when an individual wishes to challenge the authorisation.	Access to advocacy for both the individual and the Appropriate Person supporting them will be widened and brought closer to the Law Commission's proposed opt out system.

12. Cost/benefit analyses

12.1 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 benefits of the proposed reforms cannot be monetised. These include impact on care outcomes, equity and fairness, and public confidence. The overall Net Present Value (net benefit) of the policy is therefore likely larger than we have quantified.

12.2 The analysis follows the same method as 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 as they are outlined in the 2019 Act. In some cases, this entails providing estimates where reliable data is not available or using assumptions as part of the methodology. **Full methodology is offered in Annex 2.**

12.3 **Unless otherwise stated, all costs have been uplifted to 2018/19 prices. Costs in the text (apart from Table 7) and in Annex 2 are at 2018/19 levels of demand, but the 10-year costs in Table 7 and in the summary pages at the front of this IA reflect an annual increase in Adult Social Care demand as estimated by the Personal Social Services Research Unit (PSSRU).** Where possible, the latest published NHS Digital data is used. Unit costs are rounded to the nearest pound.

13. Costing Option 0 – Status Quo (DoLS and CoP authorisations at present)

13.1 We first 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 the status quo as in the Law Commission Impact Assessment but updated data has been used in some cases. These costs are not included in the front pages for Option 0 (which as the status quo option are, by definition, zero). They are instead deducted from the gross costs of Option 1 to identify the net cost of the policy and are presented as the monetised benefits (savings) of Option 2.

13.2 The following section presents the estimated cost of DoLS as it operates currently (i.e. using current authorisation volumes) in England and Wales using the same methodology as the Law Commission. In the main body of this IA we only present best estimate figures (BE). Low estimate (LE) and high estimate (HE) figures can be found in Annex 2 (sensitivity analysis). The costs break down as follows:

- **Costs of authorising DoLS** which fall on supervisory bodies: **£320.89m**.
- **Costs of authorisations for deprivations of liberty outside of DoLS settings: £33.84m.**
- **Legal costs**: This includes the cost to the courts, legal aid, Official Solicitor and people who lack the relevant mental capacity and their families or carers: **£63.77m**.
- **Costs to regulatory bodies**: The Care Quality Commission, Care Inspectorate Wales and Healthcare Inspectorate Wales currently incur costs in monitoring and reporting on the DoLS: **£9m**
- **Recurrent training costs of BIAs: £0.43m**

13.3 Total per annum costs of the status quo are estimated to be **£427.93m**. We have included a spreadsheet and further explanation of methodology as an Annex to show clearly how the

costs in Table 1 are calculated. The Annex and the below table also include low (LE) and high estimates (HE).

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

At 2018/19 prices and 2018/19 levels of demand:

Total costs (per annum)	**Low estimate**	**Best estimate**	**High estimate**
Cost to managing and supervisory bodies	£216.65 m	£320.89 m	£462.18 m
Costs of DoL outside of DOLS settings	£31.58 m	£33.84 m	£36.66 m
Total legal system costs	£16.80 m	£23.16 m	£30.22 m
Total self-funded legal costs	£27.71 m	£40.61 m	£53.30 m
Costs to regulatory bodies	£6.00 m	£9.00 m	£15.00 m
Ongoing training costs	£0.21 m	£0.43 m	£0.64 m
Total costs (per annum)	**£298.95 m**	**£427.93 m**	**£598.00 m**

14. Costing Option 1- Existing deprivation of liberty mechanisms fully operationalised

14.1 This section estimates what the DoLS model and CoP authorisations would cost if they were to operate as intended following increased eligibility caused by Cheshire West and Re D judgements. 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 health, care and court systems of fully funding it. The difference between these two figures is the additional revenue required to fully resource the current DoLS model.

Costs (monetised)

14.2 The modelling for Option 1 is identical to that of the status quo other than the following changes, which are explained in more detail in the Annex:

- All applications received assumed to be processed each year
- All deprivations of liberty in community settings and for 16/17-year olds assumed to be processed through the Court of Protection
- Increased training costs to cope with volume of authorisations

14.3 Total per annum costs of Option 1, excluding transitional costs, are estimated to be around **£2,294m.** A summary of these costs is presented in the table below. Detailed calculations along with low and high estimates are contained within Annex 2.

Table 3: Summary of costs under existing deprivation of liberty mechanisms fully operationalised

At 2018/19 prices and 2018/19 levels of demand:

Total transitional costs	**Low estimate**	**Best estimate**	**High estimate**
Upfront training costs	£12.16m	£19.59m	£27.02m
Total transitional costs	**£12.16m**	**£19.59m**	**£27.02m**

Total ongoing costs (per annum)	**Low estimate**	**Best estimate**	**High estimate**
Cost to managing and supervisory bodies	£257.80m	£383.59m	£554.04m

Costs of DoL outside of DOLS settings	£669.76m	£717.60m	£777.40m
Total legal system costs	£233.35m	£320.66m	£418.17m
Total self-funded legal costs	£587.54m	£861.12m	£1130.22m
Costs to regulatory bodies	£6.60m	£10.35m	£18.00m
Ongoing training costs	£0.45m	£0.90m	£1.35m
Total ongoing costs (per annum)	**£1755.50m**	**£2294.22m**	**£2899.18m**

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

Costs (non-monetised)

14.5 We do not identify any non-monetised costs.

Benefits (monetised)

14.6 We do not identify any monetised benefits. Unlike Option 2, this option does not bring any financial savings compared to the current model. However, the non-monetised benefits to care user outcomes, rights and compliance with the law are likely significant, as described below.

Benefits (non-monetised)

14.7 This policy option would result in greater compliance with international human rights obligations in England and Wales, reduced exposure to damages for unauthorised deprivations of liberty, and significant but unquantifiable improved health, human rights, social and education outcomes as everyone who requires an authorisation receives one. A fully funded DoLS system would enable Supervisory Bodies and the Court of Protection to process all applications they receive in a timely manner, therefore reducing the chances of people being unlawfully deprived of their liberty.

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

Summary of option

15.1 As with previous costings, most of the methodology and figures are taken from the Law Commission IA. We have made some adjustments based on additional evidence that we have received during consultation with stakeholders. We have provided an explanation at the start of this Impact Assessment where we have done this. Overall the IA represents the best available view of costs as the Bill went through, but costs can be expected to change during implementation planning, which is now underway.

Costs (monetised)

15.2 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 Annex 2. The costs breakdown is as follows:

Transitional

- **Training cost for the primary job roles affected by LPS, recognising that there will be others (including doctors, social workers, AMCPs, advocates): £38.83m.**
- **Training/familiarisation costs for care home managers: £2.28m**.

Ongoing

- **Cost of authorisations: £0.00m.**
- **Cost of administration: £55.98m.**
- **Cost of new assessments: £46.23m**
- **Total cost of advocacy: £125.24m**.
- **Cost of approval by Approved Mental Capacity Professionals (AMCP): £9m.**
- **Legal costs – Court of Protection: £30.18m**.
- **Regulatory bodies: £14.10m.**

15.3 Total per annum costs of Option 2 (Adjusted Liberty Protection Safeguards) are estimated to be **£281m**. We have included a spreadsheet and further methodology as an Annex to show clearly how the Option 2 costs in the below table are calculated. Table 5 below also includes low (LE) and high estimates (HE). This contrasts with the predicted costs of the best estimate for LPS.

Table 5 – Summary of costs for Option 2, Adjusted LPS

At 2018/19 prices and 2018/19 levels of demand:

Total costs	**Low estimate**	**Best estimate**	**High estimate**
Transitional			
Training costs	£26.53 m	£38.83 m	£56.67 m
Recruitment costs	£0.00 m	£0.00 m	£0.00 m
Time cost of familiarisation for care providers	£1.14 m	£2.28 m	£3.43 m
Total transitional costs	**£27.67 m**	**£41.11 m**	**£60.10 m**
Ongoing			
Cost of Authorisations (net)	£0.00 m	£0.00 m	£0.00 m
Cost of admin (desktop reviews)	£55.98 m	£55.98 m	£55.98 m
Cost of reviews and new 'necessary and proportionate' assessments	£38.38 m	£46.23 m	£54.08 m
Total cost of advocacy	£103.36 m	£125.24 m	£153.67 m
Total cost of AMCP approval	£3.77 m	£9.24 m	£15.10 m
Total legal system costs	£11.22 m	£14.71 m	£18.38 m
Costs to supervisory body from CoP reviews	£14.45 m	£15.48 m	£16.90 m
Regulation	£10.90 m	£14.10 m	£17.30 m
Total ongoing costs (per annum)	**£238.06 m**	**£280.97 m**	**£331.41 m**

**Costs shown in this table have not been subject to demand increases. They show the expected costs of LPS based on 18/19 demand and prices.*

Costs (non-monetised)

15.4 We do not identify any non-monetised costs.

Benefits (monetised)

15.5 The benefits of Option 2 are defined as the costs of Option 0, i.e. the money saved from no longer operating the current DoLS system. There are significant non-monetised benefits in terms of service user outcomes and rights, and compliance with the law.

Table 6, Monetised Benefit from no longer running current DoLS system

Annualised over a 10-year period at 2018/19 prices with rising demand:

	Low estimate	**Best estimate**	**High estimate**
Average annual savings from no longer running current DoLS system	£414m	£593m	£828m

15.6 This is calculated by taking an average of the annual savings from no longer running DoLS, taking into account demand increase.

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

Benefits (non-monetised)

15.8 With the adjusted LPS model the main unquantified benefit is the improvement in quality of life for users achieving the optimal outcome from this process. This policy offers the same improvements to human rights as Option 1, but also offers a simpler process that is less difficult for professionals to navigate, resulting in greater compliance with the law and ultimately, improved human rights outcomes for individuals.

15.9 Engagement with care providers showed a general view that the current assessment process duplicates a lot of work. This will be reduced by moving to Option 2.

16. Net Present Values

16.1 This section estimates the Net Present Value of Option 1 and Option 2 models over a 10-year period, defined as the Present Value Benefits of the option minus its Present Value Costs. These are the numbers that are used in the front summary pages of this IA. The 10-year time period is 2022/23 to 2031/32, the first year includes transition costs. The Net Present Values of Options 1 and 2 are likely significantly higher than we have quantified as each option has significant non-monetised benefits.

16.2 Present value costs and benefits need to be discounted (reflecting that costs and benefits further in the future are of less value than costs and benefits closer to the present) and need to account for increases in social care demand over time as follows. We use a 3.5% discount rate, and account for increasing demand over time using a demand index taken from adult social care user demand projections up to 2031/32.[20] We use these two indices to calculate present value benefits and costs over the 10-year period.

[20] https://www.pssru.ac.uk/publications/pub-5421/. Interpolated to single years using compound average growth rates.

Table 7: Net Present Values

Over a 10-year period at 2018/19 prices with rising demand:

Present Value Costs	**Low estimate**	**Best estimate**	**High estimate**
Preferred Model	£2788m	£3299m	£3903m
Additional cost of DoLS fully operationalised	£16900m	£21659m	£26709m

Present Value Benefits	**Low estimate**	**Best estimate**	**High estimate**
Preferred Model	£3466m	£4962m	£6934m
DoLS fully operationalised	£0	£0	£0

NPV Net Benefits	**Low estimate**	**Best estimate**	**High estimate**
Preferred Model	£678m	£1663m	£3031m
DoLS fully operationalised	-£16900m	-£21659m	-£26709m

16.3 In the Present Value Costs in the above table, we have chosen to present the gross cost of LPS (not netting off the current DoLS), but the net/additional cost of DoLS fully operationalised (over and above the cost of current DoLS). This is because under LPS, it makes sense to present the benefits/savings not from having to run DoLS at present, but under fully operationalised DoLS, it makes sense to present zero benefits/savings as the baseline activity will remain.

16.4 The Present Value Benefits for LPS above reflect the cost of DoLS at present, which will no longer be operational.

16.5 We are then able to calculate a Net Present Value for each option by taking the Present Value Cost from the Present Value Benefit. We have not monetised any benefits for DoLS fully operationalised, so present the Net Present Value figure above as the negative of the Present Value Costs. The Net Present Values above do not fully reflect the benefits of the policy options, as both have significant non-monetised benefits.

17. Summary

17.1 In summary, keeping the DoLS system as it is at present is not a viable option as people frequently are not granted safeguards and may continue to be unlawfully deprived of their liberty. The preferred option is to move to the adjusted LPS model. This makes the system more efficient and reduces the number of people who will potentially be unlawfully deprived of their liberty. It is important to note that the Net Present Value figure for the preferred model may be an underestimate due to important non-monetised benefits.

18. Further considerations

Statutory equality duty

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

18.2 We anticipate that the new system will have beneficial impacts for older people and people with disabilities aged 16 and above. 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. This Act will also move England and Wales closer towards compliance with the demanding requirements of the United Nations Convention on the Rights of Persons with Disabilities. An equalities assessment of the Act has been published.[21]

Competition

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

Small firms

18.4 Although there are substantial numbers of small firms in the care home industry, with CQC data for June 2019[22] showing that 25% 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 the care home is large or small, if it is looking after people, the care home is expected to conduct good care planning.

Environmental impact and wider environmental issues

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

EU Exit Impacts

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

Health and well-being

18.7 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 or the associated safeguards. Our rationalised system should make it possible for these groups to receive the attention they deserve.

Human rights

18.8 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 (right to liberty) of the European Convention on Humans 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) and the United Nations Convention on the Rights of the Child which are not adequately protected under the present system.

Justice system

[21] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765385/equality-impact-assessment.pdf
[22] Care Quality Commission (June 2019), Care Directory With Filters, http://www.cqc.org.uk/about-us/transparency/using-cqc-data

18.9 The impact on the justice system has been considered throughout this impact assessment. A further Justice Impact Assessment will be completed to determine the direct impact on the justice system.

Rural proofing

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

Sustainable development

18.11 We do not foresee any implications for sustainable development.

Annex 1

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 Quality Commission (CQC) in England
- Healthcare Inspectorate Wales (HIW)
- Care Inspectorate Wales (CIW)
- Ofsted in England
- Estyn in Wales

Annex 2

All estimates in the following tables are based on 2018/19 prices and levels of demand.

The front pages of the IA show costs adjusted upwards in line with 10-year demand projections based on a published report[23].

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

	Low estimate	Best estimate	High estimate
Unit cost per internal review application	£300	£620	£1,050
Unit cost per granted DoLS application	£995	£1,470	£2,080
Unit cost per completed but refused DoLS application	£850	£1,300	£1,950
Unit cost per internal review application	£300	£620	£1,050
Unit cost incurred by supervisory bodies per S.21 Court of Protection review	£11,200	£12,000	£13,100
Unit costs per Court of Protection review (non S.21)	£11,200	£12,000	£13,000
Unit cost of legal aid per case hearing	£5,900	£8,400	£11,000
Legal aid unit costs for paper reX authorisations	£360	£520	£680
Unit cost for Official Solicitor	£11,200	£12,000	£13,000
Self-funded legal costs by the person or carers per case	£13,100	£19,200	£25,200
Unit Cost per CQC inspection		£7,184	
Unit cost of annual refresher training for Best Interest Assessor		£158	

[23] https://www.pssru.ac.uk/publications/pub-5421/.

Option 0 – Status quo

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

18.12 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.**

18.13 **Total cost of authorisations, advocacy and RPR costs per application:** calculated as (i) cost per granted DoLS application (£1,470)[24] multiplied by the 2018/19 number of granted applications (116,940), plus (ii), the cost per completed but refused DoLS application (£1,300) multiplied by the 2018/19 number of non-granted applications (99,065), giving £300.69m.

18.14 **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 (9,940). 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 derives from the internal review rate reported by the Welsh regulators.[25] Multiplying gives a cost of £6.16m.

18.15 **Cost to supervisory body of Court of Protection (CoP) challenge:** we take the number of applications to CoP for s.21A challenge (1,170) and multiply by the cost incurred by supervisory bodies per s.21A Court of Protection challenge (£12,000) to give £14.04m.

18.16 Summing the above three costs gives a total cost of **£320.89m**.

Costs of authorisations for deprivations of liberty outside of DoLS settings

18.17 The CoP recovers its costs by charging the applicant, for example, the relevant public body. Costs are normally 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, private and domestic settings and settings for 16/17-year olds. This cost is calculated as **(unit cost per S. 16 CoP authorisation** multiplied by **number of S. 16 authorisation cases)** added to **(unit cost per Re X CoP authorisation** multiplied by **number of s.16 and Re X authorisation cases**). S.16 cases allow a person to challenge a deprivation of liberty that occurs in a non-DoLS setting in the CoP. S.16 cases include Re X cases, which is the procedure that applies in non-contentious cases.

18.18 The unit cost of each CoP authorisation of each s.16 case is given as £12,000, compared to the £520 unit cost of each CoP Re X case. The number of CoP authorisation cases are given as the number of Re X applications (2,314) plus the number of s.16 applications (506) and the number of s.21 cases (1,170), giving 3,990 cases in total. A Re X case is where a case goes to the CoP without objection and a decision is made of the paperwork alone, meaning a Re X case has a shorter process.

18.19 Multiplying gives a total cost of **£33.84m.**

[24] 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.

[25] 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.

Legal costs

18.20 Calculated as: **Total legal aid costs** plus **total self-funded and Official Solicitor costs.** These costs ultimately fall on public authorities such as LAs and self-funded applicants due to the high cost recovery of the CoP, detailed in para 18.28. There will be a cost to Her Majesty's Courts and Tribunals Service (HMCTS).

18.21 **Total legal aid costs** are given as the sum of legal aid hearing costs plus legal aid paper costs for ReX applications. Legal aid for pre-proceedings work is assumed to have negligible costs based on conversations with MoJ.

18.22 Legal aid hearing costs are given as the cost of 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.21A cases requiring legal aid. Under s.21A, a person who is subject to DoLS can challenge their deprivation of liberty in the Court of Protection. We assume that 100% of s.21A cases (1,170) require legal aid, and that 25% of s.16 cases require legal aid (0.25*506 = 127). These assumptions are taken from the Law Commission. They give a legal aid hearing cost of £10.89m per annum.

18.23 Legal aid paper costs for ReX applications are given as the legal aid unit cost for paper reX authorisations (£520[26]) multiplied by the number of legal aid paper cases (assumed to be 25% of ReX cases = 579). This gives a cost of £0.30m.

18.24 Adding gives the total legal aid cost as £11.19m.

18.25 **Total self-funded and Official Solicitor costs** are calculated as the sum of self-funded legal costs and Official Solicitor costs. Self-funded legal 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 the Official Solicitors (total cases going to CoP multiplied by assumed % of cases going to the Official Solicitors). This gives 3,990*25% = 998 cases. Multiplying gives the Official Solicitor cost of £11.97m. Summing gives a total self-funded and the Official Solicitor cost of £52.58m.

18.26 Summing gives a total legal cost of **£63.77m**.

18.27 We follow the Law Commission IA by not providing any costs associated with damages claimed 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 underestimate.

18.28 The CoP incurs costs in hearing applications to authorise deprivations of liberty in settings falling outside the DoLS and for 16/17-year olds, 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

[26] 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.

liberty.[27] These costs are charged to the local authority and self-funders who lack capacity and are costed above.

18.29 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 fees.[28] 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

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

18.31 **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[29] 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.

18.32 **The cost of the DoLS component of inspection** is calculated by first taking the £87.22m 2017/18 total of CQC's Adult Social Care costs[30] for inspection, registration, monitoring/analysis and their Independent Voice function, dividing by 12,141 ASC inspections in 2017/18 (ASC) inspection costs, and multiplying by the estimated % of the duration of each inspection that is devoted to DoLS assessment (15%). This gives a cost of £1,078.

18.33 Multiplying gives a total cost to regulatory bodies of (8,352 * £1,078 =) **£9m**.

Training costs

18.34 The only training costs which we have costed for DoLS at present are recurrent annual training costs. 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 estimated using the same methodology as the Law Commission.

18.35 There are also 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 in the preferred model we include these costs as upfront transitional costs.

The following table is at 2018/19 prices and 2018/19 levels of demand:

[27] 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
[28] 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
[29] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/lc372_mental_capacity_impact.pdf page 16
[30] Care Quality Commission, Annual Report and Accounts 2017/18, https://www.cqc.org.uk/sites/default/files/20180711_annualreport201718.pdf

	Low estimate	Best estimate	High estimate
APPLICATION VOLUMES			
Number of granted applications		116,940	
Number of non-granted applications		99,065	
ALL COSTS ARE ONGOING COSTS			
Unit cost per granted DoLS application	£995	£1,470	£2,080
Unit cost per completed but refused DoLS application	£850	£1,300	£1,950
Authorisations advocacy and RPR costs per application	**£200,560,550**	**£300,686,300**	**£436,411,950**
% of DoLS applications leading to internal review		8.5%	
Number of DoLS applications leading to internal review		9,940	
Unit cost per internal review application	£300	£620	£1,050
Total cost of internal reviews	**£2,981,970**	**£6,162,738**	**£10,436,895**
Unit cost incurred by supervisory bodies per S.21 Court of Protection review	£11,200	£12,000	£13,100
Cost to supervisory body of CoP review	**£13,104,000**	**£14,040,000**	**£15,327,000**
Total cost to managing and supervisory bodies	**£216,646,520**	**£320,889,038**	**£462,175,845**
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	
Unit costs per Court of Protection review (non S.21)	£11,200	£12,000	£13,000
Total costs outside of DOLS settings	**£31,584,000**	**£33,840,000**	**£36,660,000**
Unit cost of 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 unit costs for paper re X authorisations	£360	£520	£680
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	997.5	1197
Unit cost for Official Solicitor	£11,200	£12,000	£13,000

Total Official Solicitor costs	**£8,937,600**	**£11,970,000**	**£15,561,000**
Total legal system costs	**£16,795,210**	**£23,161,420**	**£30,215,880**
Self-funded legal costs by the person or carers per case	£13,100	£19,200	£25,200
Total self-funded legal costs	**£27,706,500**	**£40,608,000**	**£53,298,000**
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%
Unit cost per CQC inspection		£7,184	
Hence cost of DOLS component of inspection	£718.43	£1,077.64	£1,796.07
Total inspection costs	**£6,000,615**	**£9,000,922**	**£15,001,537**
Number of Best Interest Assessors needed	1,360	2,720	4,080
Unit cost of annual refresher training for Best Interest Assessor		£158	
Ongoing annual training cost	**£214,880**	**£429,760**	**£644,640**

SUMMARY TABLE

Total costs (per annum)	**Low estimate**	**Best estimate**	**High estimate**
Cost to managing and supervisory bodies	£216.65 m	£320.89 m	£462.18 m
Costs of DoL outside of DOLS settings	£31.58 m	£33.84 m	£36.66 m
Total legal system costs	£16.80 m	£23.16 m	£30.22 m
Total self-funded legal costs	£27.71 m	£40.61 m	£53.30 m
Costs to regulatory bodies	£6.00 m	£9.00 m	£15.00 m
Ongoing training costs	£0.21 m	£0.43 m	£0.64 m
Total costs (per annum)	**£298.95 m**	**£427.93 m**	**£598.00 m**

Option 1 – Existing deprivation of liberty mechanisms fully operationalised

Identical methodology is used as in Option 0 but with the following assumptions:

- All 254,082 applications are assumed to be processed each year (240,455 for England 2018/19 and 13,627 for Wales). 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 59,600 community DoLS and cases concerning 16/17-year olds are covered by authorisations of deprivations of liberty by the Court of Protection. This figure is calculated based on an Association of Directors of Adult Social Services (ADASS) study and Department for Education (DfE) estimates. The ADASS study estimated 53,000[31] people in domestic settings are potentially deprived of their liberty, and DfE estimates of increased numbers of 16/17 year olds being deprived of their liberty. Following the Re D judgement, which ruled that parents could not consent to the arrangements for care and treatment which amount to a deprivation of liberty on behalf of their children, a further 6,600 16/17-year olds are estimated to be subject to authorisations by the Court of Protection.
- We assume that 20% of doctors and social workers will require training if DoLS were fully operationalised. Using the number of doctors and social workers from the LPS section below, this gives 43,367 doctors needing training and 19,715 social workers needing training. We also assume a two-hour training course for health and social care professionals costs £23[32] per person (after the price uplift) and added on the costs of the professionals' time. This gives a total cost of £111 for social workers and £167 for doctors.
- 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 (Net Present Value) calculations. Ongoing costs are only comprised of the BIA refresher course.

18.36 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. The upfront training costs of these staff are considered in the cost to transition to 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 £158 BIA refresher training costs as the status quo, but this is applied to the higher number of BIAs.

18.37 We also use the same methodology as the status quo to estimate legal costs. We follow the Law Commission IA in assuming that 1% of all granted applications will lead to a challenge at the Court of Protection. Approximately 54% of completed applications were granted in 2018/19. Therefore, if all applications were completed, we expect that 137,554 would be granted. 1% is 1,376 s.21A cases.

The following table is at 2018/19 prices and 2018/19 levels of demand:

[31] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related (page 24)
[32] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related page 22

	Low estimate	Best estimate	High estimate
APPLICATION VOLUMES			
Number of DOLS applications		254,082	
Percentage of applications granted		54%	
Percentage of applications not granted		46%	
Number of granted applications		137,554	
Number of non-granted applications		116,528	
TRANSITION COSTS			
Number of additional Best Interest Assessors needed	1,494	2,988	4,482
Unit cost of training for new Best Interest Assessor		£1,581	
Upfront Best Interest Assessor training cost	**£2,361,790**	**£4,723,580**	**£7,085,370**
Number of additional advocates needed	856	1,712	2,568
Unit cost of training for new advocate		£1,581	
Upfront advocate training cost	**£1,353,208**	**£2,706,415**	**£4,059,623**
Number of additional representatives needing training	856	1712	2568
Unit cost of training for new paid relevant persons representative		£1,581	
Cost of training representatives	**£1,353,207.60**	**£2,706,415.20**	**£4,059,622.80**
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
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
Cost of training health and social care professionals	**£7,090,615**	**£9,454,153**	**£11,817,691**
Total upfront training cost	**£12,158,820**	**£19,590,563**	**£27,022,306**
ONGOING COSTS			
Number of DOLS applications (from above)		254,082	
% of DoLS applications leading to internal review		8.50%	

Number of DoLS applications leading to internal review		21,597	
Unit cost per internal review application	£300	£620	£1,050
Total cost of internal reviews	**£6,479,091**	**£13,390,121**	**£22,676,819**
Number of granted applications (from above)		137,554	
Number of non-granted applications (from above)		116,528	
Unit cost per granted DoLS application	£995	£1,470	£2,080
Unit cost per completed but refused DoLS application	£850	£1,300	£1,950
Authorisations advocacy and RPR costs per application	**£235,915,028**	**£353,690,778**	**£513,341,918**
Unit cost incurred by supervisory bodies per S.21 Court of Protection review	£11,200	£12,000	£13,100
Cost to supervisory body of Court of Protection review	**£15,406,047**	**£16,506,479**	**£18,019,572**
Total cost to managing and supervisory bodies	**£257,800,166**	**£383,587,378**	**£554,038,309**
Court of Protection Appeal rate		1%	
Applications to Court of Protection for S.21 review		1,376	
reX applications to Court of Protection (paper cases)		0	
S.16 applications to Court of Protection		59,800	
Total applications to Court of Protection		61,176	
Unit costs per Court of Protection review (non S.21)	£11,200	£12,000	£13,000
Total costs outside of DOLS settings	**£669,760,000**	**£717,600,000**	**£777,400,000**
Unit 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		1,376	
Number of S.16 cases requiring legal aid		14,950	
Total number of legal aid hearings		16,326	
Legal aid hearing costs	£96,320,685	£137,134,535	£179,580,939
Legal aid unit costs for paper reX authorisations		£520	
Legal aid paper costs for reX applications		£0	
Total legal aid costs	**£96,320,685**	**£137,134,535**	**£179,580,939**
Number of self-funded litigants		44,850	
% of cases involving Official Solicitor	20%	25%	30%
Number of cases involving Official Solicitor	12235	15294	18353
Unit cost for Official Solicitor	£11,200	£12,000	£13,000
Total self-funded and Official Solicitor costs	**£137,033,209**	**£183,526,620**	**£238,584,606**
Total legal system costs	**£233,353,895**	**£320,661,155**	**£418,165,544**
Unit self-funded legal costs by the person or carers per case	£13,100	£19,200	£25,200
Total self-funded legal costs	**£587,535,000**	**£861,120,000**	**£1,130,220,000**

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	
Unit cost per CQC inspection		£7,184	
% of inspection devoted to DOLS assessment	10%	15%	25%
Hence cost of DOLS component of inspection	£718	£1,078	£1,796
Uplift	10%	15%	20%
Total inspection costs	**£6,600,676**	**£10,351,060**	**£18,001,844**

Total number of Best Interest Assessors	2,854	5,707	8,561
Unit cost of annual refresher training for Best Interest Assessor		£158	
Annual Best Interest Assessor refresher training cost	**£450,932**	**£901,706**	**£1,352,638**

SUMMARY TABLE

Total transitional costs	**Low estimate**	**Best estimate**	**High estimate**
Upfront training costs	£12.16m	£19.59m	£27.02m
Total transitional costs	**£12.16m**	**£19.59m**	**£27.02m**

Total ongoing costs (per annum)	**Low estimate**	**Best estimate**	**High estimate**
Cost to managing and supervisory bodies	£257.80m	£383.59m	£554.04m
Costs of DoL outside of DOLS settings	£669.76m	£717.60m	£777.40m
Total legal system costs	£233.35m	£320.66m	£418.17m
Total self-funded legal costs	£587.54m	£861.12m	£1130.22m
Costs to regulatory bodies	£6.60m	£10.35m	£18.00m
Ongoing training costs	£0.45m	£0.90m	£1.35m
Total ongoing costs (per annum)	**£1755.50m**	**£2294.22m**	**£2899.18m**

Option 2 – Adjusted Liberty Protection Safeguards System

Key assumptions in the Liberty Protection Safeguards costings below

Assumption	Basis
257,984 applications will be received and completed per year in Option 2	This is calculated as 240,455 English DoLS applications in 2018/19 plus 13,627 Welsh DoLS applications. These numbers are then scaled back to 78% of their starting value to reflect an NHS Digital estimate that at most 78% of applications are 'first time' applications, with the remainder being repeat applications for the same individual. We then add extra applications for 16- and 17-year olds and domestic settings. This was estimated by the Law Commission to be 53,000[33] and has been uplifted to 59,600 following the Re D judgement.
Formula for training costs	Training cost = Price of training course + (Unit cost of employment per hour * Training hours)
£167 training cost per doctor	This includes the cost of the existing DoLS[34] awareness training course (£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 costs[35] of employing hospital doctors and GPs of different grades per hour. Unit costs of doctors come from the latest Unit Costs of Health and Social Care.[36] 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 2018[37], we have estimated a weighted unit cost for a doctor at £72 per hour.[38]
£111 training cost per social worker	This includes the cost of the existing DoLS[39] awareness training course (£23) which runs for two hours (many of these social workers will be familiar with the current DoLS system) and we have used this as a proxy. The unit cost of a social worker's time is estimated to be £44[40] per hour.
76,682 doctors and social workers will receive full training, and 238,726 doctors will receive awareness-raising activity	The best evidence available suggests there are around 216,835 doctors and 98,573 social workers (of

[33] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related (page 24)
[34] https://www.highspeedtraining.co.uk/safeguarding-people/dols-training.aspx
[35] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/
[36] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/
[37] https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics/september-2018
[38] Further details available from the Department of Health and Social Care
[39] https://www.highspeedtraining.co.uk/safeguarding-people/dols-training.aspx
[40] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/

	which 17,000 are employed by local authorities in adult social care roles).[41] We assume that 100% of social workers who are employed by local authorities in adult social care will need training, as well as 20% of doctors and other social workers (including children's social workers). The 20% assumption is in line with the Law Commission's Impact Assessment. All doctors and social workers not receiving full training will receive awareness-raising activity.
£3,693 training cost for each new AMCP	This includes the Law Commission IA estimate for the price of the AMCP course uplifted to 2018/19 prices at £1,581.[42] The course runs for 48 hours. The unit cost of an AMCP's time is estimated to be £44[43] per hour - we have used the social worker hourly cost for estimation purposes since social workers perform the BIA role under DoLS.
107 new AMCPs will be needed	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. Therefore, only 10% of AMCPs will require full training.
£1,850 training cost for each new IMCA	This is based on City and Guild course prices. 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.
Training needed for 10,602 new IMCAs	Comprised of 6,899 IMCAs to provide direct support and 3,704 IMCAs to support Appropriate Persons. The calculations imply that each IMCA can support 36 direct support cases per annum (1,350 working hours per annum divided by 38 hours per case) or 79 Appropriate Person support cases per annum (1,350 working hours per annum divided by 17 hours per case).

Transitional costs

Training costs

18.38 A range of staff across the health and care sectors, including children's services and local authorities, will require training on the new LPS system. The Government is in the process of developing a training strategy for the system which will set this out, and this may impact the cost of training for the new system. For the purposes of this Impact Assessment, we have focused on the key roles requiring significant levels of training which the Law Commission identified as doctors, social workers, AMCPs and advocates, as these will be the professionals taking the largest role in the new system. These costs are calculated as the

[41] Links: General Medical Council Data Explorer ; Health and Care Professionals Council ; Social Care Wales
[42] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related
[43] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/

sum of: **total cost of doctor and social worker training; cost of conversion; cost of AMCP upfront training courses, and total advocate training cost**.

18.39 All health and care staff will need awareness training in the new system. We expect this to be built into existing refresher training for staff.

18.40 To estimate the **total cost of doctor and social worker training**, we note that there are approximately 216,835 doctors and 98,573 social workers (of which 17,000 are employed by local authorities in adult social care roles). The Law Commission estimated that 20% of these staff groups would need training two hours of training each. We increase the percentage to 100% for the 17,000 social workers employed by local authorities in adult social care but keep it at 20% for doctors and other social workers. We also now assume that all doctors and social workers who do not receive the two-hour training will instead receive awareness raising activity, at 20% of the cost of the full training. The cost of the training and staff time is £167.46 per doctor and £111.19 per social worker. This gives a cost of £18.23m.

18.41 **The cost of conversion** is the cost of converting BIAs to AMCPs. BIAs already perform a similar role to AMCPs, so the cost of conversion is lower than training a new AMCP. The Law Commission estimated that 90% of AMCPs would be existing BIAs. We have therefore multiplied the number of AMCPs converted from BIAs (90%, giving 966), by the unit cost of a BIA to AMCP conversion course (£615). This gives a cost of £0.6m.

18.42 **The cost of AMCP upfront training courses** is calculated by multiplying the number of AMCPs who need training (107) by the unit cost of the AMCP upfront training course (£3,693), giving a cost of £0.40m. The number of AMCPs who need training is 10% of the overall number of AMCPs needed. This assumption is taken from the Law Commission.

18.43 **The total advocate training cost** is calculated by multiplying the number of advocates needed (10,602) by the advocate training cost (£1,850), giving £19.6m.

18.44 Summing the costs of training social workers, doctors, advocates and AMCPs gives a **total training cost of £38.83m.**

18.45 **As previously mentioned, we recognise there will be other roles requiring training, and the Government is currently working with stakeholders to develop the overall training strategy.**

Training/familiarisation costs for care home managers

18.46 There will be a particular cost to train care home managers as they will have a specific role in the Liberty Protection Safeguards system and therefore have a specific training need. It is important to note that the role for care home managers introduced by the Act formalises functions they perform currently, and they will be not be responsible for new substantive functions such as completing assessments. It should also be noted that the Government is committed to supporting the care sector in preparing for the Liberty Protection Safeguards.

18.47 Training costs are calculated by multiplying **total care homes (June 2019)**, **care home manager salary per working day** and **working days taken for training**.

18.48 **Total care homes** is the number of English adult homes[44] in June 2019 (15,692) plus 1,085 Welsh adult care homes.

18.49 **Care home manager salary per working day** is the weighted average care home manager salary for residential and nursing homes (£31,303)[45], divided by the number of working days in a year (230). This gives £136.

18.50 **Working days taken for training** is an assumption for how long it will take care home managers to take on board the new policy (BE = 1 day).

18.51 Multiplying gives a best estimate of **£2.28m**.

Ongoing costs

Cost of authorisations in care homes

18.52 The intention of our reform is to make the authorisation process less cumbersome for the person and for the system as a whole, while ensuring that people at the centre of the authorisations receive protections. The Liberty Protection Safeguards creates a specific role for care home managers in adult settings which formalises functions they already perform. These include preparing the statement provided to the responsible body and completing consultation and ongoing review.

18.53 The statement provided to the responsible body is broadly similar to the current DoLS application. However, under LPS the statement will be accompanied by valid pre-existing assessments which care homes should keep as best practice. This will allow the statement to provide the basis of the draft authorisation record. If there are not valid assessments available, the care home manager might work with the responsible body to arrange them.

18.54 LPS introduces the power for care home managers to complete consultation about the person's arrangements and to review the person's condition and circumstances, where asked to by the local authority. However, care home managers are already performing these functions as part of delivering care more widely and we expect that the consultation and review for LPS will be conducted alongside this.

18.55 Since care home managers currently perform all functions of their formalised LPS role under DoLS, we are unable to quantify any differences in administrative costs for them so have worked on the basis of zero net cost. In our programme of work to implement the Liberty Protection Safeguards, we will work with the care sector to minimise administrative burdens and to ensure preparedness for this change.

Cost of administration and pre-authorisation review

18.56 Calculated as the **number of applications per year under preferred model (257,984)** multiplied by **cost of administration and pre-authorisation review (£217).** The cost represented here is the cost to responsible bodies of undertaking pre-authorisation reviews (when this is not done by an AMCP) and other administrative tasks such as providing the person with information, managing ongoing reviews and arranging for an advocate to be

[44] Latest CQC directory of registered care providers can be found at: *https://www.cqc.org.uk/file/148450*
[45] Skills for Care, 2016, estimate that the average nursing home manager earns £33,700 and the average nursing 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

appointed. To cost this we have taken the cost of administration under DoLS at present from the Law Commission IA (£310) and reduced it by 30% to £217. This is to account for the fact that the new process will be less cumbersome and will work better alongside existing care planning.

18.57 Multiplying gives a total cost of **£55.98m.**

Assessment Costs

Cost of new assessments

18.58 The cost of new assessments is expected to be met by the responsible body. There are three assessments required under LPS: necessary and proportionate, mental capacity and medical assessments.

Necessary and proportionate assessments

18.59 New necessary and proportionate assessments will be needed in every case. However, for those who have a care plan under the Care Act or as part of Continuing Healthcare arrangements, the necessary and proportionate assessment can be completed alongside the care planning for this. Approximately 50% of those subject to the Liberty Protection Safeguards will have such a plan. For these people we estimate that the cost of completing the necessary and proportionate assessment alongside this care planning will be 20% of the standard cost of completing a new standalone necessary and proportionate assessment. This totals an equivalent of an assessment on 10% of all cases. The remaining 50% will not have such a care plan and they will all require standalone 'necessary and proportionate' assessments. This totals at the equivalent of 154,790 (or 60%) standalone 'necessary and proportionate' assessments at a cost of £152 each.

Medical and capacity assessments

18.60 In many cases, capacity and medical assessments will already be available for the purposes of a Liberty Protection Safeguards authorisation. For example, if someone has a diagnosis of dementia that is still valid, this can be used for the purposes of an assessment for mental disorder. Similarly, if a capacity assessment has been completed as part of the hospital discharge process shortly before the Liberty Protection Safeguards authorisation is applied for and the proposed arrangements remain the same, this capacity assessment might be used.

18.61 The Law Commission predicted that a medical assessment would be available in 85% of cases. Using this as a basis and uplifting slightly to consider applications concerning 16/17-year olds which are likely to be first time authorisations, we estimate that new medical assessments will need to be completed in 20% of cases. The medical assessment under the Liberty Protection Safeguards system will not need to cover the level of detail of those completed in the current DoLS by Section 12 doctors. It is therefore difficult to establish the cost of a medical assessment, so we have used £115 per medical assessment as a best estimate, uplifted from the Law Commission cost of £102.

18.62 There is limited information available to establish how many capacity assessments will be required. However, stakeholders have indicated that a new capacity assessment will be needed more often than a new medical assessment. Using this as a basis and allowing for

16/17-year olds as above, a new capacity assessment will be needed in 40% of cases at a cost of £162 per capacity assessment (uplifted from the Law Commission estimate to 2018/19 prices).

18.63 Multiplying and summing gives a total annual cost of **£46.23m** for the assessments required for LPS.

Total cost of advocacy

18.64 Under the Liberty Protection Safeguards most people will receive representation and support from either an Independent Mental Capacity Advocate or from an appropriate person. Local authorities will be responsible for ensuring there are enough advocates available, but they will be appointed by a responsible body, which could also be a hospital trust, CCG or local Health Board.

18.65 For the purposes of this impact assessment, we have calculated this cost by summing the **cost of direct IMCA support to persons subject to an LPS authorisation** and the **cost of IMCA support to appropriate persons**. Our calculations consider the different advocacy needs of a person subject to an LPS authorisation and an appropriate person. Voiceability (an advocacy provider) estimates that 95% of first-time applicants require some form of representation and support. The number of applications per year needing some form of representation and support is calculated by multiplying the **number of (first time) applications (257,984) by 95%.** This give **245,085 applications per year** requiring some form of representation and support**.**

18.66 We have calculated the **cost of direct IMCA support to persons subject to an LPS authorisation** by assuming that, of individuals requiring some form of representation and support, **25% have direct IMCA support** (61,271) and that an IMCA provides **38 hours of direct support per client**. The cost of IMCA support is roughly **£35 per hour.** These figures are devised by Voiceability and are used as a best estimate. There is a great deal of variation in the number of hours per client; PohWER Advocacy have indicated that this can range between 9 and 81 hours in an individual case. Multiplying the number of individuals requiring direct IMCA support with 38 hours of direct support and the cost of £35 per hour gives a cost of **£81.49m.**

18.67 **Cost of IMCA support for appropriate persons** is calculated by assuming that **75%** of people requiring some form of representation and support have an appropriate person, and **40%** of appropriate persons have an IMCA. Therefore, **73,525 appropriate persons require IMCA support.** An IMCA provides **17 hours of support** to an appropriate person at a cost of **£35 per hour**. Multiplying gives a cost of **£43.75m.**

18.68 Adding gives a total cost of **£125.24m**.

Cost of approval by AMCP

18.69 Comprised of the sum of: **AMCP cost for all cases requiring their approval, cost of repeat assessments,** and **cost of refresher courses**.

18.70 **AMCP cost for all cases requiring their approval** is calculated by multiplying the number of cases requiring an AMCP (26% of the 257,984 applications per annum = 67,076 cases) by the AMCP cost per approval (£125), taken from the Law Commission. This gives a cost of £8.41m.

18.71 If the AMCP is not satisfied with existing assessments, they can choose to do their own. **Cost of repeat assessments** is calculated by using the Law Commission assumptions and multiplying the number of assessments in the new model (257,984), the cost per repeat assessment (£51) and an assumption on the repeat assessment rate (5%). This gives a cost of £0.17m.

18.72 **Cost of refresher** training is assumed to be £615. This includes the Law Commission's estimate of a conversion course[46] 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 registered psychologist by law) and is estimated to be £44[47] 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 (1,073) by the cost of a refresher training (£615), gives a cost per annum of £0.66m.

18.73 Summing these gives a total cost per annum of **£9m.**

Legal costs – Court of Protection

18.74 Legal costs are comprised of **total legal aid costs, total costs to responsible body for CoP reviews,** and **total Official Solicitor costs.**

18.75 We expect this to be mainly offset by increased fee income however fees do not currently fully recover costs

18.76 **Total legal aid costs** are calculated as the number of Court of Protection challenges (1,290) multiplied by the cost of non-means tested legal aid (£8,400), provided by MOJ.

18.77 Under the preferred adjusted LPS model more applications are processed per annum, therefore we expect there to be more challenges to the Court of Protection. However, in the adjusted LPS model, AMCPs will be considering cases where objections are raised prior to an authorisation being given, which may mean fewer authorisations are subsequently challenged in the Court of Protection. The Law Commission estimated that 1% of DoLS applications end up being challenged in the Court of Protection. We assume, by introducing the role of the AMCP, 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 (1,290, 0.5% of applications) by the legal aid cost (£8,400). This gives a cost per annum of £10.84m.

18.78 Recognising the uncertainty around this figure, we have provided some sensitivity analysis around this assumption below:

Table 4: Estimates of Legal aid costs

Court of Protection appeal rate	Legal aid cost under preferred model (best estimate)
1%	£21.67m
0.75%	£16.25m
0.5%	£10.84m
0.25%	£5.42m

[46] https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related (pages 29 – 35)
[47] https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-2018/

18.79 This shows that option 2 is expected to have a very similar legal aid cost to DoLS at present (£11.19m). It is also important to emphasise that by bringing 16-17-year olds and community deprivations of liberty into the system, the preferred model stops the large cost pressure on legal aid of option 1, DoLS fully operationalised, being realised.

18.80 **Costs to responsible body of CoP challenges** is calculated by taking the cost of a CoP challenge (£12,000) and multiplying by the number of challenges per annum (1,290). This gives a cost of £15.48m.

18.81 Unlike under the DoLS (at present or fully operationalised), under LPS there will be no cost to the responsible body to take deprivation of liberty cases outside current DoLS settings to the Court of Protection, as the LPS scheme is not setting-specific. Cases outside DoLS settings are now covered by LPS and included in the volume of these applications. Under DoLS at present this cost is estimated at £33.8m per annum. Doing this also removes the legal costs of authorisations to people who lack capacity and their families / carers. 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 s.16 authorisations requiring legal aid (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.

18.82 **Total Official Solicitor costs** are calculated by multiplying the number of challenges per annum (1,290), 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 £3.87m.

18.83 Summing total legal aid costs, costs to supervisory bodies for CoP challenges and Official Solicitor costs gives a total legal cost per annum of **£30.18m**.

Regulatory bodies (CQC and Ofsted)

18.84 Calculated as **cost of CQC regulation and Ofsted monitoring.**

18.85 **The cost of CQC regulation for LPS has been estimated at £13.5 million per annum once DoLS is no longer in operation.** The working assumption is that this will be recoverable through fees. These figures are based on initial analysis done by the CQC team.

18.86 **Initial analysis by Ofsted suggests a new cost of around £600,000 per annum.**

18.87 It should be noted that the statutory instrument determining the exact role of regulators and inspectors in the new system has yet to be developed. CQC and Ofsted have indicated that further work will be needed to determine the cost of reporting and monitoring the scheme because of this.

Option 2 – Adjusted LPS

The following table is at 2018/19 prices and 2018/19 levels of demand:

	Low estimate	Best estimate	High estimate
APPLICATION VOLUMES			
Number of DoLS applications received 16/17		254,082	
Number of 16-17-year olds and community DoLS assessments that fall under the new scheme		59,800	
% of assessments that are first (not repeat) assessments		78%	
Number of applications per year under preferred model		257,984	
TRANSITION COSTS			
Numbers of doctors		216,835	
Numbers of social workers		98,573	
Of which adult social workers		17,000	
Of which children's social workers		31,720	
Of which other social workers		49,853	
% of doctors needing full training		20%	
% of adult social workers needing full training		100%	
% of children's social workers needing full training		20%	
% of other social workers needing full training		20%	
Number of doctors needing full training		43,367	
Number of social workers needing full training		33,315	
Unit cost of full training for doctors		£167	
Unit cost of full training for social workers		£111	
Total cost of full training for doctors		£7,262,086	
Total cost of full training for social workers		£3,704,250	
% of doctors needing awareness raising*		80%	
% of adult social workers needing awareness raising*		0%	
% of adult social workers needing awareness raising*		80%	
% of adult social workers needing awareness raising*		80%	
Awareness raising* cost as a % of full training cost		20%	
* this is the percentage of doctors and social workers who do not have full training – all will have some form of training			
Number of doctors needing awareness raising		173,468	
Number of social workers needing awareness raising		65,258	
Unit cost of awareness raising for doctors		£33	
Unit cost of awareness raising for social workers		£22	
Total cost of awareness raising for doctors		£5,809,669	
Total cost of awareness raising for social workers		£1,451,216	
Total cost of doctor and social worker training		**£18,227,222**	

AMCP hours per assessment		5.4	
AMCP working hours per year		1,350	
Hence assessments per full time AMCP per annum		250	
% of cases requiring an AMCP	11%	26%	41%
Number of applications per year under preferred model (from above)		257,984	
Hence number of cases requiring an AMCP	28,378	67,076	105,773
Hence number of full time AMCPs needed	114	268	423
Multiplier to adjust for fact that AMCPs are part time	2	4	6
Number of AMCPs	227	1,073	2,539
Of which converted from BIAs (90%)	204	966	2,285
Unit cost of BIA to AMCP conversion training		£615	
Cost of BIA to AMCP conversion	**£125,659**	**£594,024**	**£1,405,094**
Unit cost of AMCP upfront training		£3,693	
Percentage of AMCPs requiring upfront training		10%	
Number of AMCPs (from above)	227	1,073	2,539
Cost of AMCP upfront training course	**£83,841**	**£396,338**	**£937,491**
Advocate full time working hours per year		1,350	
IMCA hours per client for direct support		38	
IMCA hours per client to support an appropriate person		17	
Hence direct support cases per full time advocate per annum		36	
Hence appropriate person support cases per full time advocate per annum		79	
% of cases requesting an advocate or appropriate person	95%	95%	95%
of those, % of cases requiring an advocate		25%	
of those, remaining % use an appropriate person		75%	
% of those using an appropriate person who have an advocate to support them	20%	40%	66%
Number of applications per year under preferred model (from above)		257,984	
Hence number of cases requiring an advocate	61,271	61,271	61,271
Number of advocates to provide direct support	1,725	1,725	1,725
Multiplier to adjust for fact that advocates are part time	2	4	6
Number of advocates to provide direct support (after multiplier)	3,449	6,899	10,348
Number of cases requiring an appropriate person	36,763	73,525	121,317
Number of advocates to support appropriate persons	463	926	1,528
Multiplier to adjust for fact that advocates are part time	2	4	6
Number of advocates to support appropriate persons (after multiplier)	926	3,704	9,166
Total number of advocates needed (after multipliers)	4,375	10,602	19,514
Unit cost of advocate training		£1,850	
Total advocate training cost	**£8,094,151**	**£19,614,043**	**£36,101,258**
Total upfront training cost	**£26,530,873**	**£38,831,626**	**£56,671,065**

Residential home manager salary		£29,900	
Nursing home manager salary		£34,900	
Number of adult residential homes in England June 2019		11,289	
Number of adult nursing homes in England June 2019		4,403	
Number of Welsh adult care homes		1,085	
Total care homes in England and Wales		16,777	
% of residential homes in England June 2019		71.94%	
% of nursing homes in England June 2019		28.06%	
Weighted average care home manager salary		£31,303	
Working days per year		230	
Hence care home manager salary per working day		136	
Working days taken for familiarisation	0.50	1.00	1.50
Time cost of familiarisation for care providers	**£1,141,673**	**£2,283,346**	**£3,425,018**

ONGOING COSTS

Unit cost of administration under DoLS at present		£310	
Unit cost of administration under preferred Model (assuming 30% reduction)		£217	
Number of applications per year under preferred model (from above)		257,984	
Total cost of administration		**£55,982,519**	
% of authorisations leading to a review		0%	
% of authorisations needing new necessary and proportionate assessments	40%	60%	80%
Number of applications per year under preferred model (from above)		257,984	
Hence number of reviews and necessary and proportionate assessments	103,194	154,790	206,387
Unit cost of a review/ necessary and proportionate assessment	£152	£152	£152
% of authorisations needing a medical assessment	20%	20%	20%
Unit cost of medical assessment	£115	£115	£115
% of authorisations needing a capacity assessment	40%	40%	40%
Unit cost of a capacity assessment	£162	£162	£162
Total cost of reviews and necessary and proportionate assessments per annum	**£38,376,757**	**£46,226,548**	**£54,076,339**
Number of applications per year under preferred model (from above)		257,984	
% of first applications requiring advocacy support	95%	95%	95%
Hence number of applications per year needing advocacy support	245,085	245,085	245,085
IMCA hours per client for direct support		38	
IMCA hours per client to support an appropriate person		17	

Unit cost of IMCA support per hour		£35	
% of advocacy need met with direct IMCA support		25%	
Number of applications per year receiving direct IMCA support	61,271	61,271	61,271
Cost of direct IMCA support	**£81,490,683**	**£81,490,683**	**£81,490,683**
% of advocacy need met by an appropriate person		75%	
% of appropriate persons requiring IMCA support	20%	40%	66%
Number of appropriate persons requiring IMCA support	36,763	73,525	121,317
Cost of IMCA support for appropriate persons	**£21,873,815**	**£43,747,630**	**£72,183,590**
Total annual cost of advocacy	**£103,364,498**	**£125,238,313**	**£153,674,273**
Unit cost of AMCP approval		£125	
Number of cases requiring an AMCP (from above)	28,378	67,076	105,773
AMCP cost for all cases requiring their approval	**£3,558,915**	**£8,411,980**	**£13,265,045**
Unit cost per repeat assessment		£51	
Repeat assessment rate		5.0%	
Number of cases requiring an AMCP (from above)	28,378	67,076	105,773
Cost of repeat assessments	**£72,527**	**£171,426**	**£270,326**
Unit cost of AMCP refresher training		£615	
Number of AMCPs (from above)	227	1,073	2,539
Cost of refresher training	**£139,621**	**£660,026**	**£1,561,216**
Total annual AMCP costs	**£3,771,062**	**£9,243,432**	**£15,096,587**
Assessment appeal rate		0.5%	
Number of applications per year under preferred model (from above)		257,984	
Number of appeals per annum		1,290	
Unit cost of legal aid	£5,900	£8,400	£11,000
% of cases involving Official Solicitor		25%	
Unit cost of Official Solicitor	£11,200	£12,000	£13,000
Total Legal Aid costs	£7,610,527	£10,835,326	£14,189,118
Total Official Solicitor costs	£3,611,775	£3,869,759	£4,192,239
Total legal system costs	**£11,222,302**	**£14,705,086**	**£18,381,357**
Unit cost to supervisory body per Court of Protection review	£11,200	£12,000	£13,100
Number of appeals per annum (from above)		1,290	
Costs to supervisory body from CoP reviews	**£14,447,102**	**£15,479,038**	**£16,897,949**
Annual cost to CQC of LPS	**£10,300,000**	**£13,500,000**	**£16,700,000**
Annual total additional cost to Ofsted		**£600,000**	
Total cost of inspections	**£10,900,000**	**£14,100,000**	**£17,300,000**

SUMMARY TABLE

Total costs	**Low estimate**	**Best estimate**	**High estimate**
Transitional			
Training costs	£26.53 m	£38.83 m	£56.67 m
Recruitment costs	£0.00 m	£0.00 m	£0.00 m
Time cost of familiarisation for care providers	£1.14 m	£2.28 m	£3.43 m
Total transitional costs	**£27.67 m**	**£41.11 m**	**£60.10 m**
Ongoing			
Cost of Authorisations (net)	£0.00 m	£0.00 m	£0.00 m
Cost of admin (desktop reviews)	£55.98 m	£55.98 m	£55.98 m
Cost of reviews and new 'necessary and proportionate' assessments	£38.38 m	£46.23 m	£54.08 m
Total cost of advocacy	£103.36 m	£125.24 m	£153.67 m
Total cost of AMCP approval	£3.77 m	£9.24 m	£15.10 m
Total legal system costs	£11.22 m	£14.71 m	£18.38 m
Costs to supervisory body from CoP reviews	£14.45 m	£15.48 m	£16.90 m
Regulation	£10.90 m	£14.10 m	£17.30 m
Total ongoing costs (per annum)	**£238.06 m**	**£280.97 m**	**£331.41 m**