



Joint Committee on Human Rights

Rt Hon James Murray MP
Secretary of State for Health and Social Care
[Delivered by email]

8 July 2026

Supreme Court judgment on the meaning of “deprivation of liberty”

Dear Secretary of State,

On 2 June 2026 the Supreme Court handed down its judgment in *A reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998* [2026] UKSC 16. This judgment made a significant change to the law, setting out a new approach to establishing whether a person has been deprived of their liberty for the purposes of Article 5 of the European Convention on Human Rights (ECHR). The Joint Committee on Human Rights has noted concerns raised about this change in the law and has questions about the Government’s response to it.

Article 5 ECHR

Article 5 ECHR, which is binding on all public authorities through the Human Rights Act 1998, guarantees the right to liberty. It provides that a person may only be deprived of their liberty for a limited set of purposes and only where the deprivation of liberty is provided for by law. The limited purposes include the lawful detention of a person following a criminal conviction, the lawful detention of persons to prevent them effecting an unauthorised entry to the country and the lawful detention of persons on mental health grounds. Article 5(4) provides a specific safeguard, entitling a detained person to institute proceedings by which the lawfulness of their detention is decided speedily by a court. For a person who is being detained indefinitely on mental health grounds, this includes a right to have their detention reviewed at reasonable intervals, with the lawfulness of that detention depending on the persistence of the disorder and that disorder meriting compulsory confinement.¹ A person will not, however, be considered to be deprived of their liberty under Article 5 if they have given ‘valid consent’ to their confinement.

Safeguards for those deprived of their liberty

In the law of England & Wales, the rights of those deprived of their liberty in health or social care settings are protected through the ‘Deprivation of Liberty Safeguards’ scheme (known as ‘DOLS’) or

¹ See *Winterwerp v Netherlands* (1979–80) 2 EHRR 387, para 39



Joint Committee on Human Rights

through the need for authorisation from the Court of Protection. The DOLS scheme, which applies in hospitals and care home, includes independent assessment of whether confinement is in the person's best interests and the right to reviews if deprivation of liberty is authorised.

These safeguards do not apply to individuals who are not found to be deprived of their liberty within the meaning of Article 5, so the precise definition of what amounts to a deprivation of liberty is of real significance.

Supreme Court's decision: changes to the law

Prior to the Supreme Court's decision, the legal position was that a person would be considered to be deprived of their liberty if they were subject to "*continuous supervision or control*" and "*not free to leave*".² The Supreme Court has now held that this is not the correct legal test. Instead, their judgment explains that there should be a multifactorial approach to determining when a person is deprived of liberty: account should be taken of a whole range of factors including the type, duration, effects and manner of implementation of the measure in question.

Significantly, the Supreme Court also found that the previously understood legal position that a person without legal capacity could not consent to a deprivation of liberty (and thereby take themselves outside the protections of Article 5) was incorrect. Instead, a person who is conscious of their environment and has a basic understanding of their living circumstances so that they can express their view about their situation, who manifests their acceptance of the situation they are in, should have their opinion respected when an assessment is made of whether they are deprived of liberty under Article 5.

Concerns raised by interested parties

Following the Supreme Court judgment, the Association of Directors of Adult Social Services expressed their optimism that the changes in the law "will allow the refocusing of resources on those people most in need". They noted that the "[t]he judgement provided a welcome reminder that the European convention focuses on the rights of all people to be treated with dignity and to have their voices heard" and that "the Care Act, The Human Rights Act and above all the Mental Capacity Act [still] provide great protections and also empowerment for people with impaired mental capacity."³

Nevertheless, a number of prominent charities, campaigning organizations and experts have raised concerns about its implication. For example:

- Mind, Mencap and the National Autistic Society (who intervened in the case) jointly stated that the Supreme Court's decision "sets us back decades and removes safeguards that history shows us are vital for disabled people", and that it "devalues the rights and dignity of disabled people in this country."⁴

² *Cheshire West and Chester Council v P* [2014] UKSC 19

³ Rashpal Bishop, ADASS Vice President, '[ADASS responds to Supreme Court ruling on Deprivation of Liberty Safeguards](#)', 5 June 2026

⁴ '[The biggest rollback of disability rights in a generation](#)' – Charities respond to Supreme Court ruling, 2 June 2006



Joint Committee on Human Rights

- The British Geriatrics Society said the change in the law “should empower patient and proxy involvement in clinical decision-making”, but also that it leaves healthcare professionals “with new uncertainties and challenges about how the rights of older people should be protected in practice” and “may result in some older people losing access to the necessary protections of their human rights to liberty especially those who have complex needs and who lack mental capacity.”⁵
- Dr Oliver Lewis, a health and human rights barrister at Doughty Street Chambers, has commented that “these widespread changes, described by the disability rights community as the biggest rollback of disability rights in a generation, were made by the Supreme Court in proceedings where there was no appellant, no factual matrix and no Court of Appeal judgment. There has been no legislative scrutiny, no impact assessment, no public debate and no consultation with disabled people and their families.”⁶

Government response

We can see that the change to the law made by the Supreme Court is likely to narrow the circumstances in which a person will be considered to have been deprived of their liberty, so that a significantly smaller number of people will receive the protections of the DOLS scheme and/or judicial oversight of their situation. By replacing the previous test for deprivation of liberty with a ‘multifactorial assessment’ and by introducing a new approach to ‘valid consent’ under Article 5 that is not aligned with the test for legal capacity, the Supreme Court judgment also appears likely to create greater uncertainty about when Article 5 and the safeguards it requires will apply. This would affect healthcare professionals but, more fundamentally, the individuals concerned and their families.

We have taken note of the guidance issued promptly by your department following the Supreme Court’s judgment, in which you have recognised that the judgment has “wide-ranging implications” and have encouraged providers and local authorities to “take a proportionate and considered approach in how they respond”. You have also indicated that further government guidance will be published and that you are working with stakeholder partners and charities to develop that guidance. We look forward to seeing that important guidance, but in the meantime, could you please provide us with responses to the following questions:

1. This significant change in the law has come without the scrutiny, impact assessment and consultation that would precede legislative change. Article 5 creates a floor, not a ceiling so domestic law could provide for greater protections than it demands. Do you welcome the change in the law? Is it consistent with the Government’s desired approach to deprivation of liberty safeguards and consent? Do you consider that any legislative response is needed?
2. How do you anticipate ensuring consistency across different institutions and areas when a multifactorial approach to deprivation of liberty is taken? Will further training be introduced?

⁵ [‘Commentary on the 2026 Supreme Court decision to redefine deprivation of liberty \(DoL\)’](#), British Geriatrics Society, 9 June 2026

⁶ [‘Supreme Court abolishes ‘acid test’ in determining deprivation of liberty for disabled people’](#), Doughty Street Chambers, 3 June 2026



Joint Committee on Human Rights

3. The Supreme Court has introduced the possibility of consent to a deprivation of liberty being given by a person who lacks legal capacity. Your guidance recognises that establishing consent may involve considering matters including the individual's "actions and behaviour" and whether they "appear happy or unhappy". You have said that where there is any doubt, referral should be made to the local authority for a DOLS consideration or to the Court of Protection. Do you consider that there are currently sufficient safeguards in place to ensure that individuals without capacity are not wrongly deprived of their liberty on the basis of perceived consent? How will the system guard against poor quality or rushed assessments of 'valid consent'?
4. Your guidance on the Supreme Court judgment recognises that "it is [now] unlikely to be a deprivation of liberty if a person's liberty is constrained by their own illness, condition or impairment". How can you ensure that this approach does not result in decision-making that discriminates against people with disabilities?
5. The Joint Committee on Human Rights is concluding its inquiry into the human rights of children in the social care system. What implications do you think the Supreme Court judgment has for children who are deprived of their liberty?
6. What assurances can you provide to the families of the many individuals who were treated as deprived of their liberty prior to the Supreme Court's decision that their loved ones' rights will continue to be adequately protected?

I would be grateful for a response to this letter by 21 August 2026.

Yours Sincerely

Lord Alton of Liverpool
Chair, Joint Committee on Human Rights

CC: Rt Hon David Lammy MP, Lord Chancellor and Secretary of State for Justice