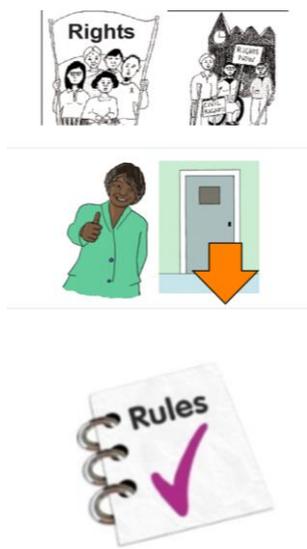


Liberty Protection Safeguards (LPS) – Staff Briefing September 2020

In July 2018, the government published the Mental Capacity (Amendment) Bill, which passed into law in May 2019. This change in legislation ends the Deprivation of Liberty Safeguards (DoLS) and the Court of Protection Deprivation of Liberty process (CoPDOL) and brings in the Liberty Protection Safeguards (LPS), as the new process when there is a need to deprive someone of their liberty in any setting. However, the full implementation of the LPS has been delayed until April 2022, after the government accepted that an October 2020 go-live date was not possible.

What you need to know



Under the European Convention on Human Rights, people have a right to **Liberty** (Article 5 of the convention).

Sometimes a person needs to live somewhere and be under continuous supervision and control, so that they can have **care and treatment**. This can take away their liberty.

The Liberty Protection Safeguards (LPS) contain rules that will safeguard the **Article 5 rights** of a person (aged 16 or more) if they **need** to be **deprived of their liberty**.

Authorisation cannot be given for other things under LPS, such as restriction of family contact (that would be dealt with under the Mental Capacity Act).

For professionals working with younger people, an important change from DoLS to LPS is that LPS will apply to young people from the age of 16 and not 18, as DoLS does (CoPDOL already applies to young people from the age of 16).

The government have committed to publishing a draft code of practice and regulations for implementing the LPS which would then be subject to a 12-week consultation. This has not been published yet, but we expect this will probably take place mid-2021.

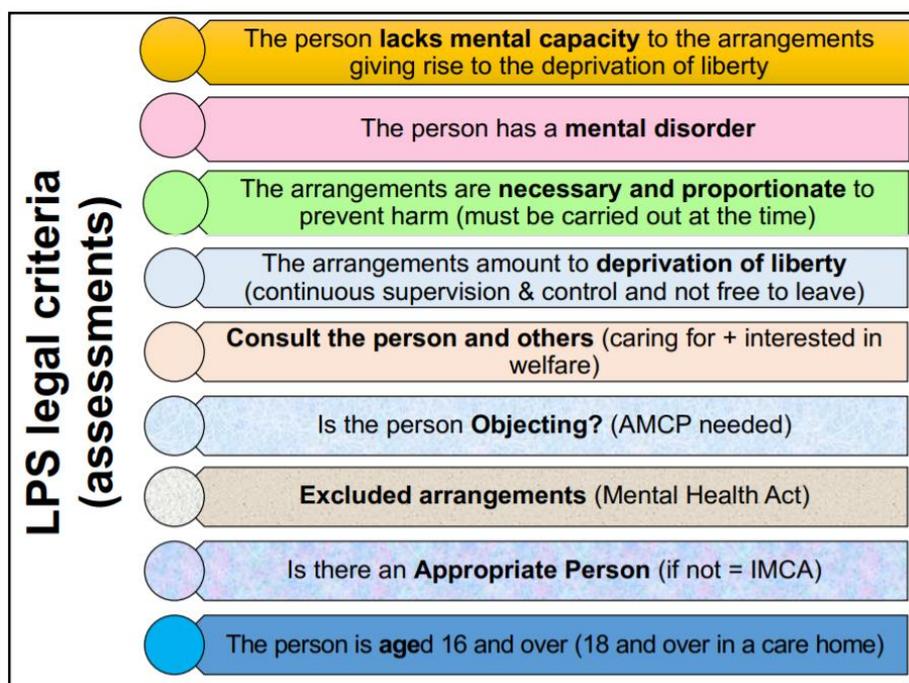
Following the response to the consultation, the final code and regulations will need to be laid before Parliament for scrutiny and approval. The Health and Social Care Sector would then be given six months, from the time of the publication of the final code of practice, to prepare for implementation, which will be April 2022. However, some of the regulations – e.g. those covering training and the establishment of new roles – will come into force before this date.

Senior managers across our Children's and Adults Services are regularly meeting to anticipate and plan how our services can meet the new expectations that LPS will bring. Additional training on the Mental Capacity Act is being commissioned; staff may be confident in their knowledge, but if you don't feel totally confident, or would like a refresher, there will be opportunity for you to access this training.

Assessments and Determinations

DoLS and CoPDoLS now, and LPS in the future, protect people's rights by creating a clear system for authorising very restrictive care plans – this is so that nobody is deprived of their liberty if there is a less restrictive way to keep them safe. They also provide a way for users of services, or those who care about them, to challenge deprivation of liberty in Court.

The LPS assessments will be part of a mainstream assessment and care planning process for the person. Regulations will set out which staff (qualified or otherwise) will be responsible for ensuring that the level of care and support is right for the person; staff must think about how much freedom is taken away from someone and if they really need this level of support (necessary and proportionate assessment). It will be then be the responsibility of identified staff (to be determined in the Regulations) to ensure that any support arranged and/or commissioned, that constitutes a deprivation of liberty, receives the appropriate authorisation. There must also be an assessment to determine if the person lacks capacity; the person must also have a medical assessment that determines if the person has a mental disorder.



Responsible Body (RB)

A new role set out in the LPS – that of 'Responsible Body' – will authorise deprivation of liberty in any setting or settings and gives new responsibilities to NHS hospitals and clinical commissioning groups (CCGs).

- Arrangements mainly in a NHS Hospital: Hospital Manager will be the RB
- Arrangements mainly CHC (Continuing Health Care): Clinical Commissioning Group will be the RB
- Everything else (including independent hospitals and residential schools): Local Authority will be the RB

If the person lives in a registered care home, for example, then the Responsible Body can ask the registered care home manager to coordinate the assessments, carry out the consultation and prepare the paperwork for the pre-authorisation review. However, Lancashire County Council is not sure which of the homes we will task with this, as yet.

If the person is objecting or in a private hospital, the preauthorisation review must be completed by an Approved Mental Capacity Professional (AMCP), who must also meet the person and consult others if appropriate & practicable.

Right to Representation

The Responsible Body will check if the person has somebody who can act as an Appropriate Person to represent them and, if not, they should take all reasonable steps to appoint an Independent Mental Capacity Advocate (IMCA) to support them through the process and duration of the authorisation.

Consultation

Staff **must** consult the person and their family and others, including people chosen by the person, about their wishes and feelings.

Further Information

- [Mental Capacity \(Amendment\) Act 2019](#)
- [Mental Capacity Act 2005](#)
- Mental Capacity Act Code of Practice
<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>
- Government Statement on Implementation of Liberty Protection Safeguards
<https://questions-statements.parliament.uk/written-statements/detail/2020-07-16/HCWS377>
- Quick Guide to Deprivation of Liberty Orders (ADASS)
<https://www.adass.org.uk/media/5895/quick-guide-to-deprivation-of-liberty-orders.pdf>
- Quick Guide to Deprivation of Liberty Safeguards (ADASS)
<https://www.adass.org.uk/media/5896/quick-guide-to-deprivation-of-liberty-safeguards.pdf>
- [SCIE updates](#)

