



Department
of Health &
Social Care

Equality Analysis

Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

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1. Introduction

This analysis examines the potential equality impact of the Mental Capacity (Amendment) Bill.

The Mental Capacity (Amendment) Bill sets out the measures the Government will take to replace the Deprivation of Liberty Safeguards scheme in the Mental Capacity Act 2005. The measures will implement a new legal process in England and Wales for authorising arrangements that enable the care and treatment of persons without capacity which give rise to a deprivation of their liberty.

The fundamental nature of the Bill is that it applies to those who lack capacity to make decisions: we recognise that because of this those with a disability, or who are older, will be impacted more than others.

Equality analysis is an important component of the policy decision-making process as it helps identify the likely negative impacts that policy proposals may have on certain protected and disadvantaged groups, providing an opportunity to mitigate any negative impacts and advance equalities. This analysis also contributes to fulfilling DHSC's obligations under the Public-Sector Equality Duty.

Any questions or queries on this analysis, please contact Rosily.Jones@dh.gsi.gov.uk

Public Sector Equality Duty (PSED)

Under the Equality Act 2010, the Department for Health and Social Care, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions – this is known as the Public Sector Equality Duty (PSED). We must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

- Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
- Remove or minimise disadvantages suffered by persons with protected characteristics;
- Take steps to meet the needs of persons who share a relevant protected characteristic; and,
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The Public-Sector Equality Duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

This equality analysis assesses the expected impacts of the reform proposals set out in the Bill, on those individuals with protected characteristics. The analysis also assesses the expected impacts on other affected or disadvantaged groups.

In addition, in respect of England, this document considers issues relevant to the Secretary of State's duty to have regard to the need to reduce health inequalities under the National Health Service Act 2006, and the Family Test.

As the PSED is an ongoing duty, we will give due regard to equality issues when considering all amendments to the Bill, engage with stakeholders to consult, and update documentation as appropriate.

This equality analysis has been updated to take into account amendments to the Bill following report stage in the House of Lords.

There is a limited amount of analysis we can do for amendments made to the Bill. This is in part because the data is not available, and because we have not been able to communicate and consult on amendments with stakeholders beforehand to gather their input. We therefore cannot say for certainty what the precise impact will be, but have considered them throughout policy making and analysed as detailed in this document. We will continue to monitor closely.

Policy aims and objectives

Background to Bill

Article 5 of the European Convention on Human Rights (ECHR) guarantees the right to personal liberty and security, and provides that no one should be deprived of their liberty in an arbitrary fashion. The **Deprivation of Liberty Safeguards (DoLS)**, introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007, provides a legal process in England and Wales for authorising deprivations of liberty in hospitals and care homes.

The Supreme Court judgment in **2014**, *P v Cheshire West and Chester Council and P v Surrey County Council* (known as “Cheshire West”), gave a **significantly wider** definition of deprivation of liberty than had previously been understood. The Court held that a person who lacks capacity to consent to their confinement will be deprived of liberty where they are under continuous supervision and control and are not free to leave, irrespective of whether or not they appear to object to that state of affairs (subject to the deprivation of liberty being the responsibility of the state).

Since the judgment the DoLS regime has struggled to cope with the increased number of cases:

- 2013/14 (prior to Cheshire West) total number of DoLS application in England was **13,715**.
- 2017-18 (post Cheshire West) total number of DoLS applications in England increased to **227,400**.

(Figures: NHS Digital, *Mental Capacity Act 2005 Deprivation of Liberty Safeguards 2017-2018 report*)

These figures do not capture people who are deprived of liberty in settings not covered by the DoLS, (e.g. supported living, shared lives and private and domestic settings) where the only available mechanism to provide Article 5 safeguards is via authorisation by the Court of Protection (this number was estimated by the Law Commission’s Impact Assessment at around 53,000).

The current system is unable to cope with the number of people requiring a deprivation of liberty to be authorised. As well as being a drain on resource, the backlog (currently reported as 125,630) of applications that have not been approved means many number of individuals are left without safeguards for an extended period.

In 2014 the House of Lords, in their post-legislative review into the Mental Capacity Act, concluded that DoLS ‘were not fit for purpose’ and recommended reform.

In March 2017 the Law Commission's Report recommended replacing the current DoLS system as a matter of urgency with the Liberty Protection Safeguards. The Joint Committee on Human Rights concluded in a June 2018 report that the Law Commission's recommendations could be used as a basis for an improved DoLS system.

Summary of Bill policy

The objective of the Bill is to replace the current Deprivation of Liberty Safeguards (DoLS), with a new system – the Liberty Protection Safeguards. The policy being introduced will ensure that those requiring these safeguards will follow a streamlined, person-centric and less bureaucratic process.

The reform measures set out in the Bill intend to:

- Reduce and eliminate the backlog which local authorities currently have. This will be done with a streamlined process which will:
- Eliminate Duplication - by embedding Liberty Protection Safeguards assessments into existing care planning and removing duplication of existing assessments.
- Provide an option to extend the period be renewed for individuals with long term conditions from which they are unlikely to recover, such as dementia, from one year to up to three years (but only after two initial one-year authorisations)
- Reduce bureaucracy by allowing authorisations to apply in more than one setting.
- Require **three assessments rather than six.**
- Ensure that people are supported and afforded their rights throughout the process by an '**appropriate person**' similar to that in the Care Act, or the **Independent Mental Capacity Advocate ("IMCA")**.
- Ensure that carers and families play a stronger role in the new model, for example through the duty to consult.
- Add checks and balances throughout the model to ensure that person's wishes and feelings inform any authorisation and where there are objections, that those cases get a swift and independent determination by a new role of the **Approved Mental Capacity Professional.**
- Extend the application beyond hospitals and care homes to a **wider range of settings** including supported living, shared live schemes and domestic settings. Currently people who are deprived of their liberty in these settings must apply to the Court of Protection for access to safeguards.

- Allow NHS organisations and Clinical Commissioning Groups to authorise applications in their own settings.

These measures should relieve the cost pressure on the system – the Law Commission estimated that the full implementation of the current DoLS stands at £2.2 bn.

The LPS will be more streamlined than the existing system because of the fewer assessments and increased period by which authorisations can be renewed. We know that under the current DoLS system many people are not receiving Article 5 safeguards for significant periods of time, or in some cases at all, as result of the backlog of cases awaiting authorisation. We believe the Bill with the effective safeguards built in to the LPS process represents an efficient way to deliver effective Article 5 protections.

Engagement and involvement

The Law Commission extensively consulted on the DoLS system over a four-year period to arrive at its proposals for reform in its report on the Mental Capacity and Deprivation of Liberty Safeguards published in March 2017. The Department then conducted a range of engagement activities, including on implementation, with a diverse range of participants across England and Wales, including:

- People with care needs
- Paid and unpaid carers
- Local Authorities
- Third sector organisations
- NHS Trust and CCGs

To reach as wide a breadth of people as possible, including those with protected characteristics, phone calls with individuals who were unable to attend sessions were conducted and written submissions encouraged. We have also used the extensive engagement carried out by the Law Commission to inform this assessment.

2. Analysis by protected characteristic

Data Sources

To consider the impact of DoLS and Liberty Protection Safeguards, we have used data from the NHS Digital's 2017/18 Official DoLS Statistics report for information for figures on protected characteristics. These statistics apply to England only. We have also used assumptions from the Law Commission's report and Impact Assessment.

For data in Wales we have used the Care Inspectorate Wales (CIW) and Healthcare Inspectorate Wales (HIW) monitoring report, although this report provided limited information about protected characteristics.

Disability

People with a disability, as defined in the Equality Act 2010, will be disproportionately affected by the Bill (which specifically applies to **people of mental disorder who lack mental capacity to consent to arrangements enabling care or treatment that give rise to a deprivation of liberty**) in comparison to those without disability. This includes those with learning difficulties and autism. Improving outcomes for people sharing this characteristic is a key aim of the Bill.

The new authorisation and assessments in the Bill will be less burdensome than the current process which will mean those with disabilities, including learning difficulties, will be able to access the safeguards more easily. As LPS can be considered when planning a person's care, before they are strictly needed, this can help to make the process less stressful for the individual. Additionally, the explicit duty to consult with the cared-for person will impact disabled people more as a whole.

The process set out in the Bill may operate slightly differently for people with different kinds of disabilities. For example, the Bill provides that authorisations could last up to three years where appropriate (after two initial authorisations of up to one year), compared to a maximum of one year under DoLS. To mitigate any risk with longer authorisation periods that arrangements may become inappropriate if their condition changes, authorisations may only be renewed where it is unlikely that there will be any significant change in the person's condition. There will also be a regular programme of reviews in place during this period and a change in the person's condition or circumstances will trigger a review. This proportionate approach will have the effect of reducing the burden of potentially invasive assessments upon people with long term and stable conditions and their families.

For people who are objecting to arrangements, especially complex cases, the Bill provides for an Approved Mental Capacity Professional (AMCP) to carry out reviews. It is possible that people with certain kinds of disabilities will be less able or less likely to object to their arrangements and it could therefore be more difficult for their case to be reviewed by an AMCP. We recognise this, and the Bill allows for objections to be raised on a person's behalf. There will also be the role for IMCAs and appropriate persons in representing and supporting people with disabilities under the LPS.

Another example of people with different disabilities being treated slightly differently, is that people with mental illnesses who are subject to the Mental Health Act may need any deprivation of liberty for the purpose of their care and treatment to be authorised under the Mental Health Act. This replicates the current policy in this area. While people with mental illnesses might be subject to different legislation, they will still have access to legal safeguards and protections as required by Article 5 and so will not be disadvantaged by the Bill.

The level of restrictions applied to the person will be based on the nature of their disability and where they are located. However, there is a requirement under the Bill that these arrangements must be necessary and proportionate, this is in addition to the existing principle under the Mental Capacity Act that regard must be had to acting in a way that is as least restrictive as possible in relation to the person's rights and freedom of action.

The extension of the reformed model to deprivation of liberty in community settings removes an inequality between people with disabilities being cared for at home, versus those who are being cared for in care homes or hospitals.

There will be some people who do not have a disability (as defined by the Equality Act 2010) but who still lack mental capacity and would still be potentially affected by the Bill.

Sex

The NHS Digital Report shows that 60% of applications for DoLS are made in relation to women, across both England and Wales. This may be because women have a longer life expectancy so are therefore more likely to lose capacity because of age related conditions. This means that women will be impacted more and benefit more from the increased access to safeguards provided by the Liberty Protection Safeguards. As this proportion is in line with those receiving long term support in social care, there is no indication that the system disadvantages men: we do not expect this to change.

According to Carers UK, 58% of unpaid carers are women, so they will disproportionately benefit from the benefits envisaged for carers outlined in 'Impacts for Other People'.

Race

Table 1: Ethnic breakdown of DoLS applications, social care population and overall population

	<i>Asian/Asian British</i>	<i>Black/Black British</i>	<i>Mixed/Multi ple/ other</i>	<i>White</i>	<i>Undeclared/ No data</i>
<i>% DoLS applications</i>	1.7	2.0	1.3	89.5	5.5
<i>% social care population</i>	5.9	4.7	1.3	84.2	3.1
<i>% overall 18+ population</i>	7.7	3.4	2.8	86.1	0.0

As the above figures show, the proportion of applicants for DoLS from BAME backgrounds is lower than that compared to the proportion in social care, and of the overall 18+ population. This is especially stark for those who are Asian/Asian British.

DHSC conducted engagement workshops with a range of stakeholders including those from BAME backgrounds. Participants from BAME communities indicated that people from their communities have a preference to receive care in their own home. This is evidenced by the statistics for care settings:

Table 2: Ethnic breakdown of care settings

	<i>Asian/Asian British</i>	<i>Black/Black British</i>	<i>White</i>
<i>% in a community setting</i>	5.91	4.75	84.24
<i>% in a nursing setting</i>	1.84	2.52	92.17
<i>% in a residential care home setting</i>	1.51	2.01	93.26

Under the current system, deprivations of liberty that occur in domestic and community settings must be authorised by the Court of Protection. Under the proposed system, deprivations of liberty in domestic and community settings will be covered by the Liberty Protection Safeguards as well, meaning individuals can be assessed and authorised without going to court. This will cost less than the current process of applying to the Court of Protection, takes less time and is more straightforward which is beneficial to the individual and their family. Whilst the Court of Protection provides effective safeguards in the cases brought before them, we know that in many situations applications are simply not made - leaving people without safeguards entirely. The easier access to the LPS should advance equality of opportunity, making the authorisations representative of the overall population, and improve the experience for those of BAME backgrounds.

It is also worth observing that people from BAME groups have much higher rates of detention under the Mental Health Act than White people nationally, as reported by the CQC in their 2018 report, *The rise in the use of the MHA to detain people in England*.

We recognise that this is a potential equality impact in relation to the protected characteristic of race, in terms of access to the new scheme. However, the Bill replicates the current interface between mental health and mental capacity legislation, which means that a person detained under the Mental Health Act may need to have their deprivation of liberty authorised under that Act rather than the DoLS (as the system is now), or the LPS (the new system). We recognise that detention under the Mental Health Act is potentially more restrictive and may be stigmatising but this area is currently being considered as part of the Mental Health Act Review, chaired by Sir Simon Wessely. This independent review is due to report at the end of this year.

Age

Older people are more likely to be deprived of their liberty under the DoLS and so will feel the greatest impact of the changes. In England 2016-17 almost three quarters of applications for DoLS were for those over 75, and one in every 17 adults over 85 were subject to a DoLS application. This is mirrored in Wales, where people over 85 have 7,593 applications per 100,000, and 18 to 56-year olds only had 71 applications per 100,000. This is due to the higher number of older adults being in care homes compared to younger adults, compounded with the fact that age-related conditions such as dementia affect mental capacity: dementia accounts for more than half of DoLS authorisations.

Some amendments brought forward apply to care home settings only and will add safeguards there (Excluding care home staff from completing assessments and the pre-authorisation review, the Responsible body to have ability to remove care home managers role in performing certain functions). As the population of care homes is typically older people, they will benefit most from the improved safeguards and reduction in any potential bullying, harassment or discrimination that could occur. We intend with this amendment that they are on an equally safe level as those in other settings, so do not expect anyone in any other setting to be disadvantaged by this amendment. As with the other safeguards of LPS, this will also affect those with disability, and women, more than the overall population.

Under the proposals of the Bill, if there is no 'appropriate person', there is a presumption that Independent Mental Capacity Professional is appointed unless it is not in the persons best interests. This will mainly affect those who are unfriended. Typically, those of this status will be those who are much older, whereas those with a learning disability, for example, are more likely to have existing family to support them. This will be beneficial for older people and as such have the effect of removing or minimising the disadvantages suffered by persons with this protected characteristic, by ensuring that everyone has equal access to advocacy.

Younger people (aged 18-64) are generally supported more in the community to a greater extent than for those aged 65 and over. They will be impacted as the safeguards will now

apply to this cohort of persons in domestic community settings. As mentioned above under the section titled Race, this will be beneficial as it is a more streamlined process than having to apply to the Court of Protection.

The Law Commission recommended extending the legal authorisation process to 16 and 17-year olds (currently it applies only to those 18 and up). We are now taking these recommendations and extending the scheme to that group. When the Department for Education worked with the Law Commission and DHSC to develop proposals for 16-17-year olds to be included in the new Liberty Protection Safeguards (LPS) system, our focus was on disabled young people. We worked with expert stakeholders and disability organisations to explore how the proposals would safeguard and support this group of especially vulnerable young people.

Arrangements for 16 and 17-year olds are currently authorised through parental consent, or through the Court of Protection. Currently going through the Court of Protection is burdensome and could be distressing for a young person: this would be alleviated by having access to the Liberty Protection Safeguards and this group would have easier access to safeguards. One of the problems government is attempting to address through introduction of the LPS system is the lack of formal procedure that currently protect young people lacking mental capacity who are being deprived of their liberty. For example, young people formally in care require local authorities to apply for a Court of Protection order to sanction deprivations of liberty, but on average there are only between four and twelve applications made by local authorities each year.

However, it is worth noting that the Court of Protection, as a highly diligent judicial authority, has very high standards for the protection of both younger groups (16 and 17-year olds, and those in community settings): a guarantee lost in the Liberty Protection Safeguards system. This is also the case for young people detained under the Mental Health Act (if they are in a psychiatric unit) who now could possibly fall under LPS. Government will need to work with stakeholders including Children's services to ensure that safeguards are not lost through being excluded from these robust systems.

Due to the low number of 16 and 17-year olds receiving authorisations through the Court of Protection there is limited information available to assess the impact on other groups.

Religion or belief

All people will be subject to the same process for Liberty Protection Safeguards, regardless of religion or belief. We do not hold any data on religion or belief so are unable to analyse whether the current system applies to anyone disproportionately based on this characteristic, and accordingly whether they would experience an adverse impact.

Currently if an individual died while being deprived of their liberty and waiting for a DoLS application, a coroner must hold an inquest with a jury into the death. This could risk delaying a swift burial, a potential issue of concern for people of Jewish or Muslim faith. However, if a person dies whilst under an authorised DoLS any inquest does not need to be held with a jury (As a result of the Policing and Crime Act 2017 (which amended s.48 of the Coroners and Justice Act 2009)), so this delay should not occur. Reducing the backlog with the Liberty Protection Safeguards system will decrease the number of cases waiting for authorisation, therefore reducing the negative impact on people who are Jewish or Muslim and die in this situation.

Those who are actively practising a religion may want to have these included in their care arrangements, their families may also see this as in the best interest of the person, care arrangements facilitating observation of religious custom and rituals will be considered as part of care provision.

Those responsible for planning a person's care involving a deprivation of liberty should ensure that their religious needs are taken fully into account. This can be assisted by involving the family and carers in addition to engaging with the person.

The Liberty Protection Safeguards has an explicit duty to conduct consultation and this will help advance equality of opportunity and experience for those of religion or belief.

Other protected Characteristics considered: gender reassignment (Including transgender) and sexual orientation, and pregnancy and maternity

All people subject to the Liberty Protection Safeguards will be subject to the same process for assessment and authorisation of a deprivation of liberty regardless of gender reassignment, their sexual orientation or the characteristic of pregnancy and maternity. We have considered these protected characteristics but do not have sufficient data to make a robust analysis of the potential impact to people who share them. However, we do not expect these groups will be differentially or adversely effected by the implementation of the LPS.

Impacts on other people

Carers

Under the Mental Capacity Act people who lack capacity to consent and receive care or treatment in domestic settings (outside of the current DoLS system) must have any deprivation of liberty authorised by the Court of Protection. This is a long process which requires the person, a family member or other carer or the CCG/local authority to go to

court (potentially at financial cost to themselves) and leaves them with a level of uncertainty as it can be months before some cases are heard. However, the Law Commission estimates that 53,000 cases of deprivation of liberty occur in domestic settings compared to just 3,995 applications in 2017 for authorisation of a deprivation of liberty by the Court of Protection: implying there are many people going without safeguards.

Deprivations of liberty in domestic settings will be brought under the Liberty Protection Safeguards. We have considered the benefits of applying to the Court of Protection, in its high standards of care, but believe that overall the LPS alternative will have a positive impact on carers. They will not be required to be brought into a potentially stressful and costly court process, while ensuring that the cared-for person receives an appropriate level of safeguards.

Other impacts include carers being given a greater say in the planning of a person's care when they are deprived of their liberty, which should lead to an improved quality of care and its plan.

The LPS will reduce the resource pressure required for DoLS by local authorities, which can instead be utilised for improved frontline care. The care home manager role will require training and support to deliver their role in the model and secure improvements for the person and families.

Regional Difference

DoLS applications made, and completion, can vary across regions. In the North East of England there were 1,054 applications per 100,000 people. This contrasts with the South West where there were 445, although a consistent reflection of sociodemographic variation is not observed. Factors such as urgent authorisation applications and supervisory bodies being granted applications for shorter periods of time are possible influences. Nursing and residential care homes are consistently seen as the primary source of applications, 68 percent of applications came from these settings with a small variation between regions.

There is no significant difference in overall number of applications between England and Wales: Wales data shows an average of 548 DoLS applications per 100,000 people in 2016-17, and England 492 per 100,000 in 2016-17. The Monitoring report for Wales observes that "A lack of up-to-date national guidance and an inconsistent response by supervisory bodies may be leading to reduction in applications by managing authorities." This indicates that the issuing of up-to-date, easier to understand legislation and guidance could increase the number of applications in Wales. However, as the same system will be implemented across both England and Wales there may be an equal rise in applications.

Other

We have also considered the need to foster good relations between those who share a protected characteristic and persons who do not share it, and are not aware of any evidence on the potential impact of the Bill on such relations.

Health Inequalities and the Family Test

Health Inequalities

We have considered the Secretary of State's duty in the NHS Act 2006 to have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the Health Service. The DoLS scheme is unable to cope with current numbers and does not provide adequate safeguards under Article 5. The reformed model will reduce the backlog and ensure that all those who need access to safeguards can do so, this will promote equality.

One area to highlight is the reduction in overall cost envisaged in this new system. By alleviating the resource required, local authorities and care providers will have more to spend on other patients and cared-for persons. This will be especially impactful in more deprived areas, helping to reduce health inequalities. As people from BME groups are more likely to live in deprived areas, as shown in the Statement of Care, this difference in access care services may also have an effect of improving health inequalities that arise as a result of race.

We are aware that sufficient diligence will need to be given to training all those involved in implementing the new scheme. This will be achieved through training and reinforced by a new Code of Practice, to mitigate potential variations in quality of administration and care. The regulators in England (as will also be the case in Wales) will also have a role in providing scrutiny over how the LPS are being implemented.

Appointing a responsible body and a care home manager will assist in a joined-up plan that means that people who self-fund their care in private care homes will have greater oversight than before, under the current system there is a risk that these 'self-funders' may fall into a gap.

The new system will also reduce an existing inequality between people who currently find themselves in the backlog of applications awaiting authorisation therefore unable to access Article 5 safeguards and those whose deprivations of liberty have been authorised under the DoLS. It is our intention that by creating a more efficient and streamlined system and therefore reducing and in time eradicate the backlog, this health inequality will disappear.

Family Test

The objective of The Family Test is to introduce an explicit family perspective to the policy making process, and ensure that potential impacts on family relationships and functioning are made explicit and recognised in the process of developing new policy.

The Bill provides an explicit duty for consultation with those interested in the person's welfare, including families and carers. This duty to consult will be especially powerful when considering 16-17-year olds.

Where it is reasonable to believe that the person objects to the arrangements, such as where a family member reports an objection on the person's behalf, these will be reviewed by a new Approved Mental Capacity Professional. The responsible body or care home has a duty to consult with those interested in the cared for person's welfare. This consultation better protects the rights of people and families. Including the family in the consultation process gives the family power in the care arrangements; helping to ensure they are necessary and proportionate and so the cared-for person might continue to play a role in the family life. Empowering family members will also improve maintenance of the family unit.

A family member will be able to trigger a review by making a reasonable request: although this could be a burden on the family to have to make decisions for the person, they are empowered to support the person's care and treatment arrangements and advocate for decisions which will ensure good and effective care for the individual whom they will know best.

Alternatively, there may be difficulty with involving the person's family in their care arrangements if the relationships are already estranged, and if there is conflict amongst those family and friends who are to be consulted there is the risk that relationships may deteriorate. The Bill provides for the appointment of an Independent Mental Capacity Advocate to address these cases (where there is no one suitable to act as an appropriate person), and the Code of Practice will outline the detail on engagement and supporting family members in the care or treatment of the person.

We have engaged with carers and families and the prevailing view was that Liberty Protection Safeguards are beneficial for family life, especially through the consultation duties introduced by the Bill. The improvements brought, including streamlining and removal of duplication, may reduce stress on families that experience a deprivation of liberty within the family unit who currently do not have access to safeguards. Making sure the Liberty Protection Safeguards are quickly accessible for everyone will improve life for families.

3. Summary of Analysis

What is the overall impact?

The aims of this Bill include ensuring the process for authorising deprivations of liberty are straightforward and accessible for people who lack capacity, and their families and carers, **regardless of their protected characteristics**. They also include making sure that the process is fairer and more consistently applied so that all have access to safeguards. This should improve equality in the way that everyone is processed within the system, limiting victimisation, harassment and discrimination.

We have noted that due to the nature of the scheme being introduced, certain groups, namely the elderly and the disabled, will be impacted more than others by this Bill. The safeguards put in place by a streamlined and rigorous assessment process should **work towards eliminating discrimination and inequalities between these groups and others**. A less burdensome system will improve the quality of experience for all protected characteristics. Having an easier to understand process will be especially helpful for those who are more likely to lack capacity due to age or disability.

Additionally, reduction of the backlog will mean those with disabilities (including learning difficulties) can access safeguards more quickly. New access to the LPS will improve equality of rights between them and those who already have a DoLS authorisation.

A large impact will be increasing the equality of opportunity for those who now fall under DoLS jurisdiction in the **community** (settings including supported living, shared living schemes and domestic settings). They can use the LPS rather than having to go through the **Court of Protection**. We have considered the considerable benefits provided by the Court of Protection, but when considering the burden of process and stress associated with going through the court process we believe that accessing the LPS system will be an easier and more streamlined way of accessing safeguards and human rights. This is something we will continue to work closely with stakeholders to ensure that safeguards are not lost in the system. Ultimately, people will also retain the right to challenge their authorisation in the Court of Protection.

The change from Court of Protection to LPS is very significant in the racial equality context, where the majority of those of BAME background are cared for in a community/domestic setting. Inclusion of community settings will also reach younger persons (under 65) who are more often cared for in the community. Overall this will **improve equality** for these groups.

The retention and addition of monitoring bodies is important; the independent reviewer, the Approved Mental Capacity Professional and the appropriate person will provide a layer of

scrutiny that will help to eliminate the chances of prejudice or discrimination in the assessing and authorising process.

Conclusion

The LPS will be more streamlined and less intrusive than the existing system, and a more effective and proportionate way of ensuring Article 5 rights for all. We expect that all people who lack capacity and need to be deprived of their liberty for their care or treatment will have the same access to the same protections, regardless of protected characteristic.

By putting the person at the heart of the system, and by extending access to the system, the Liberty Protection Safeguards will advance equality of opportunity, especially for those with disabilities. The consultation process, involving families and carers, aims to improve the process for the person and can consider needs particular to protected characteristics.

Making this process as straightforward as possible is an important factor in making sure everyone can access and use the system equally, regardless of age, disability or race.

To amplify this advantage, it is vital that all using the process understand it. This includes thoroughly training reviewers, AMCPs and care providers, as well as ensuring that the person, families and carers understand LPS when planning care.

At the Bill's introduction, it referred to applying to those of "unsound mind" who lack capacity. Feedback from stakeholders and peers said that this was outdated and stigmatising. Bearing in mind this feedback, and the Department's duties under the Equality Act 2010 in developing policy, we opted to change this to "mental disorder". This is widely accepted term that is being opted for as a policy to reduce stigma for those who are disabled. This will also have a positive impact on the feelings of other protected characteristics, especially age, who also fall under the term "mental disorder".

Next Steps

If - during the passage of the Bill through Parliament - it is identified that there is likely to be a significant adverse negative and disproportionate impact on a group, we will look at options to mitigate the impact. However, our overall aim is to ensure that all people who lack the mental capacity to consent to any arrangements in place for their care and treatment that give rise to a deprivation of liberty are afforded the same level of safeguards through a scheme designed to protect the rights of individuals and better serve the population affected.

The creation of an Easy Read version of the Bill will increase its accessibility.

The Public-Sector Equality Duty is an ongoing duty so we will continue to keep this under review as the Bill progresses. We will seek to:

- Continue our stakeholder engagement;
- Monitor and evaluate the impact of the changes brought in by the Bill, and
- Embed the findings where appropriate.

References

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