

Liberty Protection Safeguards (LPS)



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- June 2019: The Mental Capacity (Amendment) Act 2019 which creates the Liberty Protection Safeguards received Royal Assent on 16th May 2019. The Act is not expected to come into force until 1st October 2020 in order to give organisations time to prepare for the implementation of LPS.
- To download the Act and explanatory notes go to: <https://services.parliament.uk/Bills/2017-19/mentalcapacityamendment.html>. Some details not in the Act (qualification for AMCPs, transitional arrangements) will be addressed in statutory regulations and the new Code of Practice.
- A series of resources and a full day training course on LPS are available from www.edgetraining.org.uk or email admin@edgetraining.org.uk for details.

Approved Mental Capacity Professional (AMCP)	Replaces the role of the Best Interests Assessor (BIA) under DoLS. The AMCP will undertake the <i>pre-authorisation review</i> in certain circumstances for example, where the person is objecting to the arrangements. Edge have produced a detailed information sheet for existing BIAs on what the changes mean for them: www.edgetraining.org.uk/news
Appropriate Person	A person appointed by the <i>Responsible Body</i> who must represent and support the <i>cared-for person</i> in matters relating to the deprivation of liberty. They are most likely to be friend/family. They cannot be someone that is engaged in caring/treating the <i>cared-for person</i> in a professional capacity. Under DoLS this role was called the Relevant Person's Representative (RPR).
Arrangements	The care/treatment/restrictions/residence that results in the deprivation of liberty. This could also include transport between places.
Authorisation Record	A document completed to give authority to deprive a person of their liberty. This will include other key information such as the terms of review of the authorisation.
Cared-for person	The person that is (or will be) deprived of their liberty.
Conditions	<p>The term 'condition' means several different things in LPS:</p> <ol style="list-style-type: none"> There are three authorisation conditions that must be met as part of the legal criteria for an authorisation. They are: 1. The cared-for person lacks mental capacity 2. They have a <i>mental disorder</i> 3. The arrangements (restrictions) are <i>necessary and proportionate</i>. The term conditions also applies to the <i>excluded arrangements</i> (Part 7) assessment. If a person meets certain conditions under Part 7, an LPS authorisation is not applicable because the Mental Health Act would apply instead. The Responsible Body may authorise an LPS if the conditions are met. These are (para 18): <ol style="list-style-type: none"> the person must be aged 16 or over (or 18 in a care home) (the schedule applies) the arrangements are a <i>deprivation of liberty</i> (the schedule applies) the Mental Health Act does not prevent the use of LPS (<i>excluded arrangements</i>) (the schedule applies) they lack mental capacity (condition) they have a <i>mental disorder</i> (condition) the deprivation of liberty is <i>necessary and proportionate</i> to prevent harm to the person (condition) the person and others have been consulted an <i>appropriate person</i> has been identified (if not an <i>IMCA</i> is appointed) the person is or is not objecting (this affects who completes the <i>pre-authorisation review</i>) <p>The Responsible Body will need to have evidence the nine conditions above are met. This will be through assessments carried out specifically for the LPS or other existing assessments on record that were done for another purpose but satisfy the</p>

	<p>Responsible Body. In addition, the government have stated that a health and welfare lasting power of attorney or deputy can block some (or all) of the arrangements and so a check must be made on their existence and views. The government have also stated that best interests assessments (section 4 MCA) are still required.</p> <p>4. For care homes, a separate list of conditions applies (para 19) as care home managers can be authorised by the Responsible Body to provide a written statement that certain conditions are met. Following a pre-authorisation review the Responsible Body can authorise an LPS based on this.</p>
Deprivation of Liberty	LPS does not define what a deprivation of liberty is itself so existing case law under the ECHR applies. Most notably this means the cases of <i>Guzzardi v Italy</i> and <i>P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19</i> (also known as 'Cheshire West' or the 'Acid test'). The Code of Practice will provide practical details on the application of the existing case law.
Determinations	The law uses the term determination to indicate a conclusion made on the available evidence. However, the person providing the evidence (assessment) and the person making a determination may not always be the same person.
Excluded Arrangements	Currently known as eligibility. This Part of the Act deals with the interface between the Mental Health Act and LPS. It will be a particularly pertinent assessment for in-patient mental health hospital settings. Excluded arrangements under LPS closely follow the existing eligibility rules under DoLS. At present, this assessment is usually completed by a Section 12 doctor.
IMCA	An independent mental capacity advocate. If one is appointed, they will support and represent the <i>cared-for person</i> . They can also be appointed to support the <i>Appropriate Person</i> for example, if they lack mental capacity to ask for an IMCA.
Mental Disorder	This is the same definition as under Section 1(2) of Mental Health Act and currently used under DoLS which is: ' <i>any disorder or disability of the mind</i> '.
Medical Assessment	An assessment to establish whether the person has a <i>mental disorder</i> in accordance with the definition above. It is expected that future statutory regulations will state who can complete these assessments. In practice, it is highly likely to be a doctor.
Necessary and proportionate	This is one of the legal criteria for LPS (authorisation condition). This assessment needs the assessor to consider the arrangements and evidence why they are necessary to prevent harm to the <i>cared-for person</i> and proportionate to the likelihood and seriousness of the harm. Guidance will be in the Code.
Pre-Authorisation Review	Once the assessments have been completed under LPS, the <i>Responsible Body</i> must arrange for a pre-authorisation review of them by a person not directly involved in the day to day care of the <i>cared-for person</i> . In some cases, the person undertaking this review will be an AMCP. The role of a pre-authorisation reviewer is to ' <i>review the information on which the responsible body relies and determine whether it is reasonable for the responsible body to conclude that the authorisation conditions are met.</i> '
Relevant Person	<p>The term relevant person has three different definitions in LPS.</p> <ol style="list-style-type: none"> 1. It can be the <i>Responsible Body</i> in relation to the assessments of mental capacity and mental disorder. 2. It can be a care home manager (para 21) in relation to the assessment of mental capacity and mental disorder. In this case the relevant person can decide whether to use a pre-existing assessment of mental capacity and/or mental disorder when completing an LPS. 3. In other parts of LPS the term refers to: '<i>a person engaged in caring for the cared-for person or a person interested in the cared-for person's welfare.</i>' (para 24).
Responsible Body	Under LPS, this will be the state body responsible for authorising the deprivation of liberty and will be either a Clinical Commissioning Group, Local Authority, NHS Trust or local health board (Wales). They will be responsible for organising assessments, conducting the pre authorisation review, the reviews, authorising renewals, managing LPS appeals, providing

	rights information, appointing IMCAs and Appropriate Persons. Currently under DoLS this is the Supervisory Body and limited to local authorities in England or local authorities and health boards in Wales.
Review	Every authorised LPS must contain a programme of regular reviews and in addition there are a series of triggers in LPS that lead to additional reviews (a significant change in the person's condition for example). Depending on the circumstances, a review can be completed by a care home manager, any member of staff of a <i>Responsible Body</i> or an <i>AMCP</i> .
Statements	For people in care homes, <i>Responsible Bodies</i> can request care home managers to provide written statements showing the person meets the legal criteria for LPS (evidence). This does not mean they undertake the assessments, but they would be responsible for confirming the legal criteria is still met and provide evidence of consultation.
Vital act	'A vital act is any act which the person doing it reasonably believes to be necessary to prevent a serious deterioration in P's condition.' The term vital act is used in relation to situations where an LPS may not have been completed but a deprivation of liberty will be still be authorised because the restrictions relate to life-sustaining treatment or 'doing a vital act'. We would expect the Code of Practice to provide further detail on the scope of the term. For example, in certain situations would moving a person from their home to a care home be considered a vital act?
Variation	The <i>Responsible Body</i> can vary an authorised LPS if it has consulted the <i>cared-for person</i> and others (listed in the Act) and is satisfied it is reasonable to make the variation. If a variation takes place, a review is required. It is likely the Code of Practice will provide further detail on the scope and reasons for making variations.