

Liberty Protection Safeguards (LPS) – the law

This is an annotated version of the Mental Capacity (Amendment) Act 2019 which replaces DoLS with the Liberty Protection Safeguards. The wording of the Act is unchanged, but we have added summary boxes to explain key parts and side headings to help readers navigate the pages. We have produced this version of the Act to help staff who are preparing for the introduction of LPS in April 2022.

The Act has been available since May 2019. Reading it you will see that it provides details on the where, when how and who of LPS. Although a Code of Practice is due prior to the start of LPS, it must follow what the Act says and given how much information is contained in the Act organisations and staff have more than enough information to plan for its introduction. This is the law and it tells us what legal duties and responsibilities NHS Trusts, CCGs (future NHS ICS), Welsh Health Boards and local authorities have under LPS.

A series of free resources on LPS are available from <https://www.bookswise.org.uk/lps>

In addition, a range of training courses are available from <https://www.edgetraining.org.uk/>

Produced by Steven Richards and Aasya F Mughal authors of [The Deprivation of Liberty Safeguards \(DoLS\) Handbook](#) (ISBN: 978-0-9931324-0-7) and Directors of Edge Training and Consultancy Ltd.

Summary boxes are not legal advice and should not be relied on as such.



Mental Capacity (Amendment) Act 2019

2019 CHAPTER 18

An Act to amend the Mental Capacity Act 2005 in relation to procedures in accordance with which a person may be deprived of liberty where the person lacks capacity to consent; and for connected purposes.
[16th May 2019]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Safeguards

1 Deprivation of liberty: authorisation of arrangements enabling care and treatment

(1) The Mental Capacity Act 2005 is amended as follows.

(2) In section 4A (restriction on deprivation of liberty) for subsection (5) substitute—

“(5) D may deprive P of liberty if, by doing so, D is carrying out arrangements authorised under Schedule AA1 (arrangements enabling the care and treatment of persons who lack capacity).”

Summary: The Act never uses the term ‘Liberty Protection Safeguards’ (LPS) but this is the name that has become attached to it. The law refers to people being deprived of their liberty and how this can be authorised through the LPS procedure (‘Schedule AA1’). Following the language of the Act above, LPS authorises ‘arrangements enabling the care and treatment’ of cared-for people which give rise to a deprivation of liberty.

(3) After section 4B insert—

“4C Carrying out of authorised arrangements giving rise to deprivation of liberty

- (1) This section applies to an act that a person (“D”) does in carrying out arrangements authorised under Schedule AA1.
- (2) D does not incur any liability in relation to the act that would not have been incurred if the cared-for person—
 - (a) had had capacity to consent in relation to D doing the act, and
 - (b) had consented to D doing the act.
- (3) Nothing in this section excludes a person’s civil liability for loss or damage, or a person’s criminal liability, resulting from that person’s negligence in doing the act.
- (4) Paragraph 31 of Schedule AA1 applies if an authorisation ceases to have effect in certain cases.
- (5) “Cared-for person” has the meaning given by paragraph 2(1) of that Schedule.”

Protection for staff: This provides staff and others with legal protection if they apply LPS properly. If a person is deprived of their liberty (‘carrying out arrangements’) and this has been authorised under LPS they are protected (‘not incur any liability’). Legal action however, can be taken against staff or others if their actions/care/treatment are negligent.

(4) Before Schedule 1 insert the Schedule AA1 set out in Schedule 1 to this Act.

2 Deprivation of liberty: authorisation of steps necessary for life-sustaining treatment or vital act

For section 4B of the Mental Capacity Act 2005 substitute—

“4B Deprivation of liberty necessary for life-sustaining treatment or vital act

- (1) If Conditions 1 to 4 are met, D is authorised to take steps which deprive P of liberty.
 - (2) Condition 1 is that the steps—
 - (a) are wholly or partly for the purpose of giving P life-sustaining treatment or doing any vital act, or
 - (b) consist wholly or partly of giving P life-sustaining treatment or doing any vital act.
 - (3) 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.
 - (4) Condition 2 is that the steps are necessary in order to give the life- sustaining treatment or do the vital act.
 - (5) Condition 3 is that D reasonably believes that P lacks capacity to consent to D taking the steps.
 - (6) Condition 4 is that—
 - (a) subsection (7) applies, or
 - (b) there is an emergency.
- (7) This subsection applies if—
 - (a) a decision relevant to whether D is authorised to deprive P of liberty is being sought from the court, or
 - (b) a responsible body is carrying out functions under Schedule AA1 with a view to determining whether to authorise arrangements that give rise to a deprivation of P’s liberty.
- (8) In subsection (7) it does not matter—
 - (a) whether the decision mentioned in paragraph (a) relates to the steps mentioned in subsection (1);
 - (b) whether the arrangements mentioned in paragraph (b) include those steps.
- (9) There is an emergency if D reasonably believes that—

- (a) there is an urgent need to take the steps mentioned in subsection (1) in order to give the life-sustaining treatment or do the vital act, and
- (b) it is not reasonably practicable before taking those steps—
 - (i) to make an application for P to be detained under Part 2 of the Mental Health Act,
 - (ii) to make an application within subsection (7)(a), or
 - (iii) to secure that action within subsection (7)(b) is taken.”

Life-sustaining treatment or vital act: This is limited to cases of life-sustaining treatment or vital act only. If the restrictions that lead to a deprivation of liberty are for the purpose of giving life-sustaining treatment or vital act and there is an emergency or the Responsible Body have not been able to complete an LPS in time or a Court of Protection application, then the deprivation of liberty will still be authorised. There is no time limit as long as the criteria above are met and it can apply to any setting (hospital or otherwise). Responsible bodies will need to record their use of this type of LPS so a form will be needed (national non-statutory template forms are being created for this). The Code of Practice may give further guidance on what situations would constitute a ‘vital act’. There is also provision to use this power when an application under Part 2 of the Mental Health Act is not reasonably practical.

3 Powers of the court to determine questions

After section 21 of the Mental Capacity Act 2005 insert—

“Powers of the court in relation to Schedule AA1

21ZA Powers of court in relation to Schedule AA1

- (1) This section applies where an authorisation under Schedule AA1—
 - (a) has effect, or
 - (b) is to have effect from a date specified under paragraph 28 of that Schedule.
- (2) The court may determine any question relating to—
 - (a) whether Schedule AA1 applies to the arrangements, or whether the authorisation conditions are met;
 - (b) what period the authorisation has effect for;
 - (c) what the authorisation relates to.
- (3) If the court determines a question under subsection (2), the court may make an order—
 - (a) varying or terminating the authorisation;
 - (b) directing the responsible body to vary the authorisation.
- (4) Where the court makes an order under subsection (3) the court may make an order about a person’s liability for anything done in carrying out the arrangements before the variation or termination.
- (5) An order under subsection (4) may, in particular, exclude a person from liability.
- (6) “Authorisation conditions” has the meaning given by paragraph 13 of Schedule AA1.”

Appeals: Appeals under LPS are heard by the Court of Protection (just like DoLS). The court can consider any questions relating to whether a person is deprived of their liberty, whether they lack mental capacity, they have a mental disorder or the deprivation of liberty is necessary and proportionate (the LPS conditions). The court can also consider the duration of the LPS and what the LPS relates to. The court has the power to vary or discharge the LPS.

4 Deprivation of liberty: code of practice

- (1) Section 42 of the Mental Capacity Act 2005 (codes of practice) is amended as follows.
- (2) After subsection (1) insert—
 - “(1A) Guidance about what kinds of arrangements for enabling the care or treatment of a person fall within paragraph 2(1)(b) of Schedule AA1 must be included in the code, or one of the codes, issued under subsection (1).”
- (3) After subsection (2) insert—
 - “(2A) Before the end of each review period the Lord Chancellor must—

- (a) review each code for the guidance of persons exercising functions under Schedule AA1, and
- (b) lay a report of the review before Parliament.

But this does not affect the Lord Chancellor's functions under subsection (2).

(2B) A review period is—

- (a) in relation to the first review, the period of 3 years beginning with the day on which this subsection comes into force, and
- (b) in relation to subsequent reviews, each period of 5 years beginning with the day on which the report of the previous review was laid before Parliament.”

(4) In subsection (3) after “preparation” insert “,review”.

Code of Practice: Guidance on LPS will be contained in a Code of Practice. Codes of Practice are subservient to law and so it will repeat large parts of what is contained in the law (here) but written in a more user friendly way. In addition, the Code will include guidance on what restrictions (arrangements) would constitute a deprivation of liberty (although this will have to follow existing case law in particular the Supreme Court ruling in *Cheshire West* – the acid test). The Code will be reviewed on a regular basis. A new single unified MCA Code is being written including a number of chapters on LPS. This is due to be open for consultation spring/summer 2021 and then published at the end of the year.

General

5 Consequential provision etc

(1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act.

(2) Regulations under this section—

- (a) may make different provision for different purposes or areas;
- (b) may amend, repeal or revoke any provision made by or under an Act passed before this Act or in the same Session.

(3) The power to make regulations under this section is exercisable by statutory instrument.

(4) Regulations under this section that repeal or amend a provision of an Act may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

(5) Any other regulations under this section are subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Schedule 2 makes minor and consequential amendments.

Regulations: The Secretary of State (or in some cases the Welsh Ministers) can make regulations in relation to certain parts of LPS. These are legally binding like the Act but are limited in scope. The following regulations are expected as they are listed in the Act:

1. The date for LPS to come into force (this is currently April 2022)
2. Transitional arrangements (what happens to people under authorised DoLS when LPS comes into force). The DHSC has indicated those on DoLS when LPS comes into force will remain on DoLS until the authorisation is due to expire. They will then need to be assessed and authorised under LPS. The same approach is expected for Court of Protection DoL authorisations.
3. Monitoring of LPS. In England this will be the CQC and Ofsted. In Wales it will be HIW, CIW and Estyn (see later detail on monitoring).
4. Who can complete the LPS mental capacity and mental disorder assessments (see later detail on these assessments).
5. The exclusion of people as assessors if they have a connection with a care home (financial etc)
6. Who can complete the necessary and proportionate assessment (see later detail on these assessments).
7. Approval and qualification for Approved Mental Capacity Professionals (AMCP) (expected to be very similar to the qualification for DoLS BIAs and in addition existing BIAs may be able to 'convert' into AMCPs via a reduced training requirement).

6 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This section, and section 5 except subsection (6), come into force on the day this Act is passed.
- (3) The other provisions of this Act come into force—
 - (a) for the purpose only of enabling the exercise of any power to make regulations, on the day this Act is passed;
 - (b) for all other purposes, on whatever day the Secretary of State appoints by regulations.
- (4) Different days may be appointed for different purposes or different areas.
- (5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (6) Regulations under subsection (5) may make different provision for different purposes or different areas.
- (7) The power to make regulations under this section is exercisable by statutory instrument.
- (8) This Act may be cited as the Mental Capacity (Amendment) Act 2019.

Start and transitional arrangements: LPS covers England and Wales only. The Secretary of State will (through regulations) decide when LPS comes into force (currently April 2022) and any transitional arrangements from DoLS to LPS (see Regulations previously).

SCHEDULES

SCHEDULE 1

Section 1(4)

SCHEDULE TO BE INSERTED AS SCHEDULE AA1 TO THE MENTAL CAPACITY ACT 2005

“SCHEDULE AA1

Section 4A(5)

DEPRIVATION OF LIBERTY: AUTHORISATION OF ARRANGEMENTS ENABLING CARE AND TREATMENT

PART 1 INTRODUCTORY AND

INTERPRETATION

Contents of this Schedule

- 1 In this Schedule—
 - Part 1 (this Part) describes the arrangements dealt with and gives definitions (including “the responsible body”)
 - Part 2 sets out the procedure for the responsible body to authorise arrangements
 - Part 3 is about the duration, renewal, variation and review of authorisations
 - Part 4 is about Approved Mental Capacity Professionals (involved under Part 2 in certain cases)
 - Part 5 is about appointing persons to give representation and support in connection with arrangements
 - Part 6 gives power to provide for monitoring and reporting Part 7 excludes—
 - (a) mental health arrangements, and
 - (b) arrangements that are not in accordance with mental health requirements
 - Part 8 contains transitory provision.

Arrangements this Schedule applies to

- 2 (1) This Schedule applies to arrangements—
- (c) for enabling the care or treatment of a person (the “cared- for person”) described in sub-paragraph (2),
 - (d) that give rise to a deprivation of the cared-for person’s liberty, and
 - (e) that are not excluded by Part 7.
- (2) The cared-for person must be a person who—
- (a) is aged 16 or over,
 - (b) lacks capacity to consent to the arrangements, and
 - (c) has a mental disorder.
- (3) The arrangements may for example be—
- (a) for the cared-for person to reside in a particular place;
 - (b) for the cared-for person to receive care or treatment at a particular place;
 - (c) for the means and manner of transport for the cared-for person to, from or between particular places.
- (4) The arrangements may be ones that are proposed, or that are being carried out.
- (5) If they are proposed, references in this Schedule to where or how they are carried out are to whatever is proposed in the arrangements.
- (6) If provision to which sub-paragraph (1)(a) and (b) apply and other provision are combined, the “arrangements” for the purposes of this Schedule do not include that other provision.

Age + transportation + application: This explains who LPS applies to and what LPS can be used to authorise.

1. LPS applies to ‘arrangements’ (restrictions) in a care plan that give rise to a deprivation of liberty. It cannot be used where there is a conflict with Part 7 of the Act which covers whether the Mental Health Act should or could be used instead. This is nearly the same as the Eligibility rules under DoLS, and before a person is put on LPS the Responsible Body must check if there is any conflict with the Mental Health Act (see further details later).
2. For LPS to apply the person must be aged 16 or over and lack mental capacity to consent to the ‘arrangements’ (care plan) and have a mental disorder.
3. The ‘arrangements’ referred to above may include for the person to live in a particular place and/or the care or treatment at a particular place and/or the means and manner of transport to, from or between particular places.
4. An LPS authorisation should be obtained in advance for example, before a person moves into the place they will receive care. Later, paragraph 28 states this can be up to 28 days ahead of its use.

Definitions

- 3 In this Schedule—
- “Approved Mental Capacity Professional” means a person approved in accordance with Part

- 4 as an Approved Mental Capacity Professional for the purposes of this Schedule; “arrangements” must be read in accordance with paragraph 2;
- “authorisation” means authorisation of arrangements under this Schedule, and “authorise” and related words are to be read accordingly;
- “authorisation conditions” has the meaning given by paragraph 13;
- “authorisation record” has the meaning given by paragraph 27;
- “care home” means—
- (f) a place which is a care home within the meaning given by section 3 of the Care Standards Act 2000, or
 - (g) a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is provided wholly or mainly to persons aged 18 or over;
- “care home arrangements” means arrangements, in relation to a cared-for person aged 18 or over, carried out wholly or partly in a care home;
- “care home manager”, in relation to a care home or care home arrangements, means—
- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the care home, and
 - (b) in relation to Wales, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) in respect of the provision of a care home service, in the care home;
- “cared-for person” has the meaning given by paragraph 2(1); “clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;
- “Education, Health and Care plan” means a plan within the meaning of section 37(2) of the Children and Families Act 2014;
- “English responsible body” has the meaning given by paragraph 11;
- “hospital manager” has the meaning given by paragraph 7;
- “independent hospital” has the meaning given by paragraph 5;
- “local authority” has the meaning given by paragraph 4;
- “Local Health Board” means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
- “mental disorder” has the meaning given by section 1(2) of the Mental Health Act;
- “mental health arrangements” has the meaning given by paragraph 46;
- “mental health requirements” has the meaning given by paragraph 57;
- “NHS hospital” has the meaning given by paragraph 5;
- “responsible body” has the meaning given by paragraph 6;
- “specified”, except in paragraph 57, means specified in an authorisation record;
- “Welsh responsible body” has the meaning given by paragraph 12.

- 4 (1) “Local authority” means—
- (a) in England—
 - (i) the council of a county;
 - (ii) the council of a district for which there is no county council;
 - (iii) the council of a London borough;
 - (iv) the Common Council of the City of London;
 - (v) the Council of the Isles of Scilly;
 - (b) in Wales, the council of a county or county borough.
- (2) For the purposes of this Schedule the area of the Common Council of the City of London is to be treated as including the Inner Temple and the Middle Temple.

NHS hospital and independent hospital

- 5 (1) “NHS hospital” means—
- (a) a health service hospital as defined by section 275 of the National Health Service Act 2006 or section 206 of the National Health Service (Wales) Act 2006, or
 - (b) a hospital as defined by section 206 of the National Health Service (Wales) Act 2006 vested in a Local Health Board.
- (2) “Independent hospital”—
- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not an NHS hospital, and
 - (b) in relation to Wales, means a hospital as defined by section 2 of the Care Standards Act 2000 that is not an NHS hospital

Responsible body

- 6 (1) The responsible body, in relation to a cared-for person, means—
- (a) if the arrangements are carried out mainly in an NHS hospital, the hospital manager;
 - (b) if the arrangements are carried out mainly in an independent hospital in England, the responsible local authority determined in accordance with paragraph 9;
 - (c) if the arrangements are carried out mainly in an independent hospital in Wales, the Local Health Board for the area in which the hospital is situated;
 - (d) if none of paragraphs (a) to (c) applies and the arrangements are carried out mainly through—
 - (i) the provision of NHS continuing healthcare under arrangements made by a clinical commissioning group, or
 - (ii) in Wales, the provision of an equivalent to NHS continuing healthcare under arrangements made by a Local Health Board, that clinical commissioning group or Local Health Board;
 - (e) if none of paragraphs (a) to (d) applies, the responsible local authority determined in accordance with paragraph 10.
- (2) If an independent hospital is situated in the areas of two or more Local Health Boards, it is to be regarded for the purposes of sub-paragraph (1)(c) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.
- 7 (1) “Hospital manager”, in relation to an NHS hospital, means—
- (a) if the hospital—
 - (i) is vested in a relevant national authority for the purposes of its functions under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or
 - (ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of a relevant national authority under either of those Acts,
 - the Local Health Board or Special Health Authority responsible for the administration of the hospital;
 - (b) in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;
 - (c) if the hospital is vested in an NHS trust or an NHS foundation trust, that trust;
 - (d) if the hospital is vested in a Local Health Board, that Board.
- (2) In sub-paragraph (1) “relevant national authority” means—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Secretary of State and the Welsh Ministers acting jointly.
- 8 In paragraph 6(1)(d) “NHS continuing healthcare” is to be construed in accordance with standing rules under section 6E of the National Health Service Act 2006.
- 9 (1) In paragraph 6(1)(b), “responsible local authority”, in relation to a cared-for person aged 18 or over, means—
- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if paragraph (a) does not apply and the cared-for person has needs for care and support which are being met under Part 1 of the Care Act 2014, the local authority meeting those needs;
 - (c) in any other case, the local authority determined in accordance with sub-paragraph (4).
- (2) If more than one local authority is meeting the needs of a cared-for person for care and support under Part 1 of the Care Act 2014 the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Part of that Act.

- (3) In paragraph 6(1)(b), “responsible local authority”, in relation to a cared-for person aged 16 or 17, means—
- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if paragraph (a) does not apply and the cared-for person is being provided with accommodation under section 20 of the Children Act 1989, the local authority providing that accommodation;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act, and a local authority in England is responsible under the order for the care of the cared-for person, that local authority;
 - (d) if none of paragraphs (a) to (c) applies, the local authority determined in accordance with sub-paragraph (4).
- (4) In the cases mentioned in sub-paragraphs (1)(c) and (3)(d), the “responsible local authority” is the local authority for the area in which the independent hospital mentioned in paragraph 6(1)(b) is situated.
- (5) If an independent hospital is situated in the areas of two or more local authorities, it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.
- 10 (1) In paragraph 6(1)(e), “responsible local authority”, in relation to a cared-for person aged 18 or over, means—
- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if there is an individual development plan for the cared-for person—
 - (i) the local authority responsible for maintaining that plan, or
 - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person has needs for care and support which are being met under Part 1 of the Care Act 2014 or under Part 4 of the Social Services and Well-being (Wales) Act 2014 (anaw 4), the local authority meeting those needs;
 - (d) in any other case, the local authority determined in accordance with sub-paragraph (6).
- (2) If more than one local authority is meeting the needs of a cared-for person for care and support under Part 1 of the Care Act 2014 the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Part of that Act.
- (3) If more than one local authority is meeting the needs for care and support of a cared-for person under the Social Services and Well-being (Wales) Act 2014 (anaw 4), the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Act.
- (4) If the cared-for person is having needs for care and support met under both of the Acts mentioned in sub-paragraph (1)(c), the responsible local authority is the local authority determined in accordance with sub-paragraph (6).
- (5) In paragraph 6(1)(e), “responsible local authority”, in relation to a cared-for person aged 16 or 17, means—
- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if there is an individual development plan for the cared-for person—
 - (i) the local authority responsible for maintaining that plan, or
 - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person is being provided with accommodation—
 - (i) under section 20 of the Children Act 1989, or
 - (ii) under section 76 of the Social Services and Well-being (Wales) Act 2014 (anaw 4),

- the local authority providing that accommodation;
- (d) if none of paragraphs (a) to (c) applies and the cared-for person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act, the local authority that is responsible under the order for the care of the cared-for person;
- (e) if none of paragraphs (a) to (d) applies, the local authority determined in accordance with sub-paragraph (6).
- (6) In the cases mentioned in sub-paragraphs (1)(d), (4) and (5)(e), the “responsible local authority” is—
- (a) if the arrangements provide for the cared-for person to reside in one place, the local authority for the area in which that place is situated;
- (b) if the arrangements provide for the cared-for person to reside in more than one place, the local authority for the area in which the main place of residence is situated;
- (c) in any other case, the local authority for the area in which the arrangements are mainly carried out.
- (7) If a building is situated in the areas of two or more local authorities, it is to be regarded for the purposes of sub-paragraph (6) as situated in whichever of the areas the greater (or greatest) part of the building is situated.
- (8) In this paragraph—
- “individual development plan” means a plan within the meaning of section 10 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2).
- 11 “English responsible body” means—
- (a) a hospital manager of a hospital in England;
- (b) a clinical commissioning group;
- (c) a local authority in England.
- 12 “Welsh responsible body” means—
- (a) a hospital manager of a hospital in Wales;
- (b) a Local Health Board;
- (c) a local authority in Wales.

Responsible Body: This is the detailed explanation of who the Responsible Body is in different situations. The Responsible has a legal duty to undertake the LPS assessments and authorise an LPS if the criteria are met. They then have ongoing duties (detailed across the following pages). The Responsible Body is identified as follows:

1. If the arrangements are ‘mainly’ in an NHS Hospital = the NHS Trust (hospital manager)
2. If the arrangements are ‘mainly’ in an independent hospital in England = a local authority in England (see para 9 above)
3. If the arrangements are ‘mainly’ in an independent hospital in Wales = the local health board for the area in which the hospital is situated
4. If the arrangements are ‘mainly’ through the provision of NHS continuing healthcare (CCG or Local Health Board) = the CCG or local health board. Note: continuing healthcare means fully funded NHS care so that split packages of care do not meet this criteria. In the future NHS ICS will replace CCGs in England as Responsible Bodies.
5. If none of the above apply = the local authority (see para 10)

When a local authority is the Responsible Body it is generally the one responsible for any Education Health & Care plan that applies or is meeting the person’s need under Part 1 of the Care Act 2014 or where the person is ordinarily resident or the local authority is providing accommodation under section 20 of the Children Act 1989. If more than one local authority is meeting the needs of the person under the Care Act 2014 the local authority will be the one in which the person is ordinarily resident. The equivalent Welsh legislation and provisions are also listed above.

The authorisation conditions

- 13 The authorisation conditions are that—
- (a) the cared-for person lacks capacity to consent to the arrangements,
 - (b) the cared-for person has a mental disorder, and
 - (c) the arrangements are necessary to prevent harm to the cared-for person and proportionate in relation to the likelihood and seriousness of harm to the cared-for person.

Assessments: This is part of the legal criteria (assessments) required for an LPS authorisation. The DHSC guidance for LPS refers to 3 assessments but the Act refers to them as 'authorisation conditions'. There are three conditions that must be met as part of the LPS criteria. These are:

1. the cared-for person lacks mental capacity to consent to arrangements (restrictions leading to a deprivation of liberty) and
2. they have a mental disorder and
3. the arrangements are necessary to prevent harm to the cared-for person and proportionate in relation to the likelihood and seriousness of harm to the cared-for person.

As noted previously other criteria must also be met (and assessed) such as whether the Mental Health Act could or should be used. The further criteria that must also be met are given in the following pages.

Rights to information etc

- 14 (1) The following must publish information about authorisation of arrangements under this Schedule—
- (a) the hospital manager of each NHS hospital;
 - (b) each clinical commissioning group;
 - (c) each Local Health Board;
 - (d) each local authority.
- (2) The information must include information on the following matters in particular—
- (a) the effect of an authorisation;
 - (b) the process for authorising arrangements, including making or carrying out—
 - (i) assessments and determinations required under paragraphs 21 and 22;
 - (ii) consultation under paragraph 23;
 - (iii) a pre-authorisation review (see paragraphs 24 to 26);
 - (c) the circumstances in which an independent mental capacity advocate should be appointed under paragraph 42 or 43;
 - (d) the role of a person within paragraph 42(5) (an “appropriate person”) in relation to a cared-for person and the effect of there being an appropriate person;
 - (e) the circumstances in which a pre-authorisation review is to be carried out by an Approved Mental Capacity Professional under paragraph 24;
 - (f) the right to make an application to the court to exercise its jurisdiction under section 21ZA;
 - (g) reviews under paragraph 38, including—
 - (i) when a review will be carried out;
 - (ii) the rights to request a review;
 - (iii) the circumstances in which a referral may or will be made to an Approved Mental Capacity Professional.
- (3) The information must be accessible to, and appropriate to the needs of, cared-for persons and appropriate persons.
- 15 (1) Where arrangements are proposed, the responsible body must as soon as practicable take such steps as are practicable to ensure that—
- (a) the cared-for person, and
 - (b) any appropriate person in relation to the cared-for person, understands the matters mentioned in sub-paragraph (3).
- (2) If, subsequently, at any time while the arrangements are being proposed the responsible

body becomes satisfied under paragraph 42(5) that a person is an appropriate person in relation to the cared-for person, the responsible body must, as soon as practicable, take such steps as are practicable to ensure that the appropriate person understands the matters mentioned in sub-paragraph (3).

- (3) Those matters are—
- (a) the nature of the arrangements, and
 - (b) the matters mentioned in paragraph 14(2) as they apply in relation to the cared-for person's case.
- (4) If it is not appropriate to take steps to ensure that the cared-for person or any appropriate person understands a particular matter then, to that extent, the duties in sub-paragraphs (1) and (2) do not apply.
- (5) In this paragraph “appropriate person”, in relation to a cared-for person, means a person within paragraph 42(5).
- 16 (1) After authorising arrangements the responsible body must, without delay, arrange for a copy of the authorisation record to be given or sent to—
- (a) the cared-for person,
 - (b) any independent mental capacity advocate appointed under paragraph 42 to represent and support the cared-for person,
 - (c) any person within paragraph 42(5) in respect of the cared-for person (the “appropriate person”), and
 - (d) any independent mental capacity advocate appointed under paragraph 43 to support the appropriate person.
- (2) If the responsible body has not, within 72 hours of arrangements being authorised, arranged for a copy of the authorisation record to be given or sent to each of the persons mentioned in paragraphs (a) to (d) of sub-paragraph (1), the responsible body must review and record why not.
- (3) As soon as practicable after authorising arrangements, the responsible body must take such steps as are practicable and appropriate, having regard to the steps taken under paragraph 15 and the length of time since they were taken, to ensure that the cared-for person and any appropriate person understands the matters mentioned in paragraph 14(2)(a), (c), (d), (f), and (g) as they apply in relation to the cared-for person's case

Rights to information: Responsible Bodies have a series of duties to provide information on rights for the person and others.

1. Every NHS hospital, CCG, Local Health Board and local authority must publish information about LPS (including process, assessments, pre-authorisation review, advocacy, appropriate person, appeal and reviews). The information must be accessible and appropriate to the needs of the cared-for-person and appropriate persons.
2. The Responsible Body must take practicable steps to ensure the cared-for-person and appropriate person understands the above information when LPS is proposed.
3. After an LPS is authorised the Responsible Body must ensure a copy of the authorisation record (see later) is given/sent to the cared-for-person, any appointed IMCA, any appropriate person within 72 hours.
4. If a copy of an LPS authorisation record (see later) has not been given/sent out within 72 hours (above) the Responsible Body must review and record why not.
5. As soon as practicable after an LPS is authorised the Responsible Body must ensure (as practicable and appropriate) the cared-for-person and any appropriate person understands the LPS and rights.

Note: under DoLS the duty to inform the person of their rights rested with Managing Authorities (care homes and hospitals). LPS removes Managing Authorities so the duty moves to Responsible Bodies. A system to record evidence of compliance with this duty will be required. The inspection bodies for LPS (see later) are likely to request evidence from Responsible Bodies of meeting this duty during their monitoring visits.

Authorisation

- 17 The responsible body may authorise arrangements—
- (a) under paragraph 18, if the conditions in that paragraph are met, or
 - (b) under paragraph 19 if—
 - (i) the arrangements are care home arrangements,
 - (ii) the responsible body decides that authorisation should be determined under that paragraph instead of under paragraph 18, and
 - (iii) the conditions in paragraph 19 are met.

Summary: For people in care homes the responsible body can decide whether it will ask the care home manager to gather the evidence for it to authorise the LPS or otherwise the responsible body can do it itself. Note: the DHSC has indicated that this part of the Act is initially going to be suspended when LPS starts so that care homes cannot arrange assessments.

- 18 The conditions in this paragraph are that—
- (a) the responsible body is satisfied that this Schedule applies to the arrangements,
 - (b) the responsible body is satisfied, on the basis of the determinations required by paragraphs 21 and 22, that the authorisation conditions are met,
 - (c) the responsible body has carried out consultation under paragraph 23,
 - (d) the responsible body is satisfied that any requirement under paragraph 42 or 43, that arises in relation to the arrangements before they are authorised, has been complied with,
 - (e) a pre-authorisation review, arranged by the responsible body, has been carried out in accordance with paragraphs 24 to 26,
 - (f) the person carrying out the review has determined—
 - (i) under paragraph 25, that the authorisation conditions are met, or
 - (ii) under paragraph 26, that it is reasonable for the responsible body to conclude that those conditions are met, and
 - (g) a draft authorisation record has been prepared in accordance with paragraph 27.

Legal criteria (assessments): This gives the legal criteria (assessments) needed for a responsible body to authorise an LPS. We have copied the paragraph and annotated it below to help clarify what is required:

The responsible body may authorise arrangements—under paragraph 18, if the conditions in that paragraph are met

- 18 The conditions in this paragraph are that—
- (a) the responsible body is satisfied that this Schedule applies to the arrangements,
[for the Schedule to apply 1. the person must be 16 and 2. the person is assessed as being deprived of their liberty and 3. the Mental Health Act does not prevent the use of LPS (excluded arrangements)]
 - (b) the responsible body is satisfied, on the basis of the determinations required by paragraphs 21 and 22, that the authorisation conditions are met,
[the conditions are that the person 4. lacks mental capacity and 5. has a mental disorder and 6. the deprivation of liberty is necessary and proportionate to prevent harm to the person]
 - (c) the responsible body has carried out consultation under paragraph 23,
[7. a duty to consult the person and others about the deprivation of liberty]
 - (d) the responsible body is satisfied that any requirement under paragraph 42 or 43, that arises in relation to the arrangements before they are authorised, has been complied with,
[8. an Appropriate person can be identified and if not an IMCA may be appointed]
 - (e) a pre-authorisation review, arranged by the responsible body, has been carried out in accordance with paragraphs 24 to 26,
[9. If the person does not wish to live in a placement or receive care or treatment or they are in an independent hospital or other important reason, the pre-authorisation review will require an AMCP (see later)]
 - (f) the person carrying out the review has determined—
 - (i) under paragraph 25, that the authorisation conditions are met, or
 - (ii) under paragraph 26, that it is reasonable for the responsible body to conclude that those conditions are met, and
 - (g) a draft authorisation record has been prepared in accordance with paragraph 27.

- 19 The conditions in this paragraph are that—
- (a) the care home manager has provided the responsible body with a statement in accordance with paragraph 20,
 - (b) having regard to the statement (and the accompanying material), the responsible body is satisfied—
 - (i) that this Schedule applies to the arrangements,
 - (ii) that the authorisation conditions are met, and
 - (iii) that the care home manager has carried out consultation under paragraph 23,
 - (c) the responsible body is satisfied that any requirement under paragraph 42 or 43, that arises in relation to the arrangements before they are authorised, has been complied with,
 - (d) a pre-authorisation review, arranged by the responsible body, has been carried out in accordance with paragraphs 24 to 26, and
 - (e) the person carrying out the review has determined—
 - (i) under paragraph 25, that the authorisation conditions are met, or
 - (ii) under paragraph 26, that it is reasonable for the responsible body to conclude that those conditions are met.
- 20 (1) A statement for the purposes of paragraph 19(a) is a statement in writing by the care home manager—
- (a) that the cared-for person is aged 18 or over,
 - (b) that the arrangements give rise to a deprivation of the cared-for person's liberty,
 - (c) that the arrangements are not excluded by Part 7,
 - (d) that the determinations required by paragraphs 21 and 22 have been made,
 - (e) that the care home manager has carried out consultation under paragraph 23, and
 - (f) that the care home manager—
 - (i) is satisfied that paragraph 24(2)(a) or (b) applies,
 - (ii) is satisfied that neither applies, or
 - (iii) is not satisfied that a decision can be made as to whether either applies.
- (2) The statement—
- (a) must include the reasons for what is stated under sub-paragraph (1)(b) and (f);
 - (b) must be accompanied by—
 - (i) a record of the assessments on which the determinations required by paragraphs 21 and 22 were made,
 - (ii) evidence of the consultation mentioned in sub-paragraph (1)(e), and
 - (iii) a draft authorisation record prepared in accordance with paragraph 27.

Care home procedure: The DHSC have indicated that this part of the Act will initially be suspended when LPS starts and care homes will not be able to arrange assessments or provide evidence for Responsible Bodies to use to authorise an LPS. The DHSC however has stated this will be temporary and at a later date this part of the Act could be triggered. It should be noted that care home bodies, charities and many other groups have lobbied against care homes having a direct role in LPS assessments.

If Paragraphs 19 and 20 do come into force at a later date, for people in care homes, the Responsible Body can request that the care home manager produces a written statement of evidence that the legal criteria are met – a (aged 18 or over), b (the person is deprived of their liberty), c (not excluded by Mental Health Act), d (they lack mental capacity, have a mental disorder and the deprivation of liberty is necessary and proportionate), e (the person and others have been consulted), f (the person is or is not objecting to care/treatment or residence).

It should be noted the statement must be in writing and by the care home manager only (not other staff). The care home manager must provide evidence (reasons) for why the person is deprived of liberty, they are objecting or not objecting, the consultation of the person and others.

Determinations made on capacity and medical assessments

- 21 (1) The determinations required by this paragraph are—
- (a) a determination made on an assessment in respect of the cared-for person, that the person lacks capacity to consent to the arrangements, and
 - (b) a determination made on an assessment in respect of the cared-for person, that the person has a mental disorder.
- (2) The person who makes the determination need not be the same as the person who carries out the assessment.
- (3) The appropriate authority may by regulations make provision for requirements which must be met by a person—
- (a) making a determination, or
 - (b) carrying out an assessment, under this paragraph.
- (4) Regulations under sub-paragraph (3) may make different provision—
- (a) for determinations and assessments, and
 - (b) for determinations and assessments required under sub-paragraph (1)(a) and determinations and assessments required under sub-paragraph (1)(b).
- (5) But if the arrangements are care home arrangements and authorisation is being determined under paragraph 19, an assessment may not be carried out by a person who has a connection, of a kind prescribed by regulations, with a care home.
- (6) Regulations made by the appropriate authority under sub-paragraph (5)—
- (a) may make provision about a connection of any kind (financial or otherwise), and
 - (b) may make different provision for assessments under sub-paragraph (1)(a) and sub-paragraph (1)(b).
- (7) The “appropriate authority” means—
- (a) where the determination or assessment is in relation to an authorisation by an English responsible body, the Secretary of State, and
 - (b) where the determination or assessment is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.
- (8) An assessment may be one carried out for an earlier authorisation or for any other purpose, provided that it appears to the relevant person that it is reasonable to rely on the assessment.
- (9) The relevant person must have regard to—
- (a) the length of time since the assessment was carried out;
 - (b) the purpose for which the assessment was carried out;
 - (c) whether there has been a change in the cared-for person’s condition that is likely to affect the determination made on the assessment.
- (10) In this paragraph “relevant person” means—
- (a) the care home manager, if the arrangements are care home arrangements and authorisation is being determined under paragraph 19, or
 - (b) the responsible body, in any other case.

Mental Capacity and Mental Disorder assessments: The two assessments of mental capacity and mental disorder can be undertaken directly for an LPS authorisation or pre-existing assessments on record can be used. A person must ‘determine’ whether the responsible body can rely on pre-existing assessments and para 21(9) provides guidance on this. Regulations are expected in relation to which staff can undertake these assessments. Indications are that the mental capacity assessment must be completed by a registered professional (nurse, social worker, OT, SALT, psychologist, doctor) with 2 years post registration experience. This will be front line staff working in local authorities, NHS Trusts, CCGs and Health Boards. It is expected that the mental disorder assessment will need to be from a registered doctor or psychologist with 2 years post registration experience. The DHSC has indicated that the role of care home managers described above will not come into force when LPS starts and will be suspended until a later date.

Determination that arrangements are necessary and proportionate

22 (1) The determination required by this paragraph is a determination by a person, who meets requirements prescribed by regulations made by the appropriate authority, made on an assessment by that person that the arrangements are necessary to prevent harm to the cared-for person and proportionate in relation to the likelihood and seriousness of harm to the cared-for person.

- (2) When making a determination under this paragraph regard must be had (amongst other matters) to the cared-for person's wishes and feelings in relation to the arrangements.
- (3) If the arrangements are care home arrangements and authorisation is being determined under paragraph 19, a determination may not be made by a person who has a connection, of a kind prescribed by regulations, with a care home.
- (4) Regulations made by the appropriate authority under sub-paragraph (3) may make provision about a connection of any kind (financial or otherwise).
- (5) The "appropriate authority" means—
 - (a) where the determination is in relation to an authorisation by an English responsible body, the Secretary of State, and
 - (b) where the determination is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.

Necessary and proportionate: This is the assessment of whether the arrangements (restrictions) that lead to a deprivation of liberty are necessary to prevent harm to the cared-for person and proportionate in relation to the likelihood and seriousness of harm to the cared-for person. Pre-existing assessments cannot be used. Regulations are expected to say only qualified professionals can undertake this assessment (nurse, social worker, OT, SALT, psychologist or doctor with 2 years post registration experience).

The DHSC has indicated the role of care home managers described above will not come into force when LPS starts and will be suspended until a later date.

Consultation

- 23 (1) Consultation under this paragraph must be carried out—
- (a) if the arrangements are care home arrangements and—
 - (i) authorisation is being determined under paragraph 19, or
 - (ii) renewal is being determined under paragraph 35, by the care home manager;
 - (b) otherwise, by the responsible body.
 - (2) The following must be consulted—
 - (a) the cared-for person,
 - (b) anyone named by the cared-for person as someone to be consulted about arrangements of the kind in question,
 - (c) anyone engaged in caring for the cared-for person or interested in the cared-for person's welfare,
 - (d) any donee of a lasting power of attorney or an enduring power of attorney (within the meaning of Schedule 4) granted by the cared-for person,
 - (e) any deputy appointed for the cared-for person by the court, and
 - (f) any appropriate person and any independent mental capacity advocate concerned (see Part 5).
 - (3) The main purpose of the consultation required by sub-paragraph (2) is to try to ascertain the cared-for person's wishes or feelings in relation to the arrangements.
 - (4) If it is not practicable or appropriate to consult a particular person falling within sub-paragraph (2) the duty to consult that person does not apply.

Consultation: a legal duty to consult a range of people (para 2(a) to (f)) for all LPS authorisations. All people on the list must be consulted unless it is not 'practicable or appropriate' to do so. It is expected that the Code of Practice will provide guidance on what circumstances would mean it was not practicable or appropriate to consult a person listed. The purpose of consultation is to try to ascertain the cared-for person's wishes or feelings in relation to the arrangements (restrictions leading to the deprivation of liberty). The views of people consulted will need to be recorded by the assessor as evidence that this duty has been met and these views should be taken into account as part of the 'necessary and proportionate assessment'.

The DHSC has indicated the role of care home managers described above is not due to come into force when LPS starts and will be suspended until a later date.

Pre-authorisation review

- 24 (1) A pre-authorisation review for the purposes of paragraph 18(e) or 19(d) must not be by—
- (a) a person who is involved—
 - (i) in the day-to-day care of the cared-for person, or
 - (ii) in providing any treatment to the cared-for person, or
 - (b) a person who has a connection, of a kind prescribed by regulations, with a care home.
- (2) **The review must be by an Approved Mental Capacity Professional if—**
- (a) the arrangements provide for the cared-for person to reside in a particular place, and it is reasonable to believe that the cared-for person does not wish to reside in that place,
 - (b) the arrangements provide for the cared-for person to receive care or treatment at a particular place, and it is reasonable to believe that the cared-for person does not wish to receive care or treatment at that place,
 - (c) the arrangements provide for the cared-for person to receive care or treatment mainly in an independent hospital, or
 - (d) the case is referred by the responsible body to an Approved Mental Capacity Professional and that person accepts the referral.
- (3) In determining whether either of paragraph (a) or (b) of sub-paragraph (2) applies, the responsible body must consider the views of any relevant person about the wishes of the cared-for person that are brought to the responsible body's attention.
- (4) In sub-paragraph (3) "relevant person" means a person engaged in caring for the cared-for person or a person interested in the cared-for person's welfare.
- (5) Regulations made by the appropriate authority under sub-paragraph (1)(b) may make provision about a connection of any kind (financial or otherwise).
- (6) The "appropriate authority" means—
- (a) where the pre-authorisation review is in relation to an authorisation by an English responsible body, the Secretary of State, and
 - (b) where the pre-authorisation review is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.
- 25 (1) If the review is by an Approved Mental Capacity Professional, the Approved Mental Capacity Professional must—
- (a) review the information on which the responsible body relies, and
 - (b) determine whether the authorisation conditions are met.
- (2) Before making the determination the Approved Mental Capacity Professional must—
- (a) meet with the cared-for person, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so, and
 - (b) consult any other person listed in paragraph 23(2), or take any other action, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so.

26 If the review is not by an Approved Mental Capacity Professional, the person carrying out the review must—

- (a) review the information on which the responsible body relies, and
- (b) determine whether it is reasonable for the responsible body to conclude that the authorisation conditions are met.

Pre-authorisation review (non AMCP): once the legal criteria (assessments) for an LPS are completed, a pre-authorisation review of them by the responsible body must be undertaken. This is similar to the role of the DoLS signatory (scrutinising assessments on behalf of the authorising body). In all cases, a pre-authorisation review cannot be undertaken by a person involved in the day-to-day care of the cared-for person or providing any treatment to the care-for person or with a connection to the care home (if the person is in a care home).

The role of a pre-authorisation reviewer (not AMCP) is to: *‘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.’*

In the following cases the pre-authorisation review must be undertaken by an Approved Mental Capacity Professional (AMCP): 1. it is reasonable to believe the cared-for person does not wish to reside in the place they are being detained or to receive care/treatment at that place. 2. the person is in a private hospital. In addition, the Responsible Body can ask an AMCP to undertake a pre-authorisation review in any other case. It is expected that the Code of Practice will give examples of cases that may be considered for the latter referral for example, where there is a dispute with the family, where the case is particularly complex or where unusual restrictions are in place.

Where an AMCP is undertaking a pre-authorisation review they must meet the cared-for person, consult others or take any other action as practicable and appropriate to do so. Note: this does mean there may be cases where the AMCP does not meet the cared-for person or consult others. We would expect the Code of Practice to give guidance on situations where it may be considered not appropriate or practicable to meet the cared-for person. The role of the AMCP is to: *‘..review the information on which the responsible body relies, and determine whether the authorisation conditions are met.’*

In all other cases where the pre-authorisation review does not have to involve an AMCP above there is no requirement to meet the cared-for person or consult others (like a DoLS signatory) and the expectation would be the review consists of reading/scrutinising the assessments/evidence for meeting the legal criteria of LPS.

Authorisation record

27 (1) An authorisation record is a record relating to a cared-for person, specifying all arrangements authorised for the time being, and the responsible body for the time being, for that person, and specifying in relation to any arrangements—

- (a) the time from which the authorisation has effect, and when it is to cease to have effect under paragraph 29(1), (2) or (3),
- (b) the programme for reviewing the authorisation,
- (c) how the requirements of Part 5 are complied with, and
- (d) anything else this Schedule requires to be specified.

(2) An authorisation record may include any other information.

(3) When the responsible body authorises arrangements the draft authorisation record required by paragraph 18(g) or 20(2)(b)(iii)—

- (a) becomes the authorisation record, and
- (b) supersedes any earlier authorisation record.

(4) The responsible body must revise the authorisation record if there is any change in any of the matters that are specified or required to be specified in it.

Authorisation record: the responsible body must produce an authorisation record when an LPS is authorised. This must set out the start date, expiry date, the name of the responsible body, the arrangements (restrictions) authorised, the programme of reviews, if there is an Appropriate Person or an IMCA and any other information considered appropriate. If there are any subsequent changes to the points listed on the authorisation record, the responsible body must review the record. This record (not the assessments as under DoLS) must be given to the cared-for person, any IMCA and any Appropriate Person (see later) as detailed in the ‘Rights to information’ duty (paragraphs 14, 15 and 16 earlier).

PART 3

DURATION, RENEWAL, VARIATION AND REVIEW OF AUTHORISATION

Time for which authorisation has effect

- 28 (1) An authorisation has effect from the time at which the responsible body gives the authorisation, unless at that time the responsible body specifies a later time.
- (2) The time specified must not be later than the end of the period of 28 days beginning with the day on which the responsible body gives the authorisation.
- 29 (1) An authorisation ceases to have effect (if not renewed)—
- (a) at the end of the period of 12 months beginning with the day it first has effect, or
 - (b) at the end of any shorter period specified by the responsible body at the time it gives the authorisation.
- (2) If the authorisation is renewed in accordance with paragraph 32, it ceases to have effect at the end of the renewal period.
- (3) If the responsible body at any time determines that an authorisation is to cease to have effect from any earlier day, it ceases to have effect from that day.
- (4) An authorisation ceases to have effect if, at any time, the responsible body believes or ought reasonably to suspect that any of the authorisation conditions are not met.
- (5) An authorisation ceases to have effect in relation to arrangements so far as at any time they are not in accordance with mental health requirements.

Notification that arrangements have ceased to have effect

- 30 If an authorisation of arrangements ceases to have effect (in whole or in part) under paragraph 29(4) or (5), the responsible body must take reasonable steps to ensure any person likely to be carrying out the arrangements is notified.

Authorisation coming to an end early: arrangements to be treated as authorised

- 31 (1) This paragraph applies if an authorisation ceases to have effect (in whole or in part) under paragraph 29(4) or (5).
- (2) For the purposes of section 4C (carrying out of authorised arrangements: restriction of liability) the arrangements are to be treated as authorised unless the person carrying out the arrangements knows or ought to know that—
- (a) the arrangements are no longer authorised,
 - (b) any of the authorisation conditions are not met, or
 - (c) the arrangements are not in accordance with mental health requirements.

Duration: An LPS can be authorised up to 28 days ahead of its start date (for example, in preparation for a person moving into a placement that will deprive them of their liberty). An LPS initially lasts up to 12 months but the time period is flexible so it could be less than this (just like DoLS). The responsible body can discharge an LPS at any time (there is no procedure in the Act for this).

If the responsible body believes (or ought reasonably to suspect) any of the conditions of an LPS are no longer met the LPS ends. If the person becomes subject to the excluded arrangements (detained under the Mental Health Act in conflict with the LPS) at any time the LPS ends. In these cases, the responsible body must take reasonable steps to inform the people carrying out the arrangements (deprivation of liberty) that the LPS authorisation has ceased.

Renewal

- 32 (1) The responsible body may, on one or more occasions, renew an authorisation in accordance with paragraph 34 or 35 for a specified period (“the renewal period”) of—
- (a) 12 months or less, on the first renewal, and
 - (b) 3 years or less, on any subsequent renewal.
- (2) An authorisation which has ceased to have effect cannot be renewed.
- 33 The responsible body may renew an authorisation—
- (a) under paragraph 34, if the conditions in that paragraph are met, or
 - (b) under paragraph 35 if—
 - (i) the authorisation relates to care home arrangements,
 - (ii) the responsible body decides that renewal should be determined under that paragraph instead of under paragraph 34, and
 - (iii) the conditions in paragraph 35 are met.
- 34 The conditions in this paragraph are that—
- (a) the responsible body is satisfied—
 - (i) that the authorisation conditions continue to be met, and
 - (ii) that it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and
 - (b) the responsible body has carried out consultation under paragraph 23.
- 35 The conditions in this paragraph are that—
- (a) the care home manager has provided the responsible body with a statement in accordance with paragraph 36, and
 - (b) having regard to the statement (and the accompanying material), the responsible body is satisfied—
 - (i) that the authorisation conditions continue to be met,
 - (ii) that it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and
 - (iii) that the care home manager has carried out consultation under paragraph 23.
- 36 (1) A statement for the purposes of paragraph 35(a) is a statement in writing by the care home manager—
- (a) that the authorisation conditions continue to be met,
 - (b) that it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and
 - (c) that the care home manager has carried out consultation under paragraph 23.
- (2) The statement must be accompanied by evidence of the consultation.

Renewal: LPS can be renewed multiple times. The first renewal can be for up to 12 months and thereafter renewals are for up to 3 years at a time. The renewal process means the original procedure of authorising an LPS (assessments, pre-authorisation review etc) are not repeated. An LPS can be renewed if the responsible body is satisfied that: 1. that the authorisation conditions continue to be met 2. it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and 3. the responsible body has carried out consultation (see consultation above). Within the wording of the Act there appears to be considerable scope for what information/ assessments/ evidence would be needed to satisfy the responsible body of parts 1 and 2 of the renewal process. It is expected that the Code of Practice will give further detail or examples. Any staff of the responsible body can complete a renewal and it will be for individual Responsible Bodies to decide which staff it allows to do this.

If a person is in a care home, the responsible body can ask the care home manager to provide the evidence of 1 and 2 above and also to consult the person and others. Based on this information alone the responsible body can agree the renewal. Note: the DHSC has said the role of care home managers will be suspended when LPS starts so this would not apply at least when LPS starts.

Note: there is no specific role for AMCPs in the renewal process.

Variation

- 37 The responsible body may vary an authorisation if the responsible body is satisfied—
- (a) that consultation under paragraph 23 has been carried out, and
 - (b) that it is reasonable to make the variation.

Variation: This allows for an existing LPS authorisation to be 'varied' by the Responsible Body if they have undertaken consultation (see earlier) and it is 'reasonable' to make the variation. The Act does not say what a variation could include or what evidence would be required for it to be 'reasonable' to make a variation. The paragraph below (38) does however say that a Review should take place before an LPS is varied. If this is not practicable or appropriate however the Review must take place as soon as possible afterwards.

The Code of Practice will provide further detail on the scope of this power although it is likely to be limited as any material changes (such as new restrictions) would have an impact on the overall legal criteria for LPS such as the necessary and proportionate criteria.

Reviews

- 38 (1) In this paragraph "the reviewer" means the responsible body unless, in relation to care home arrangements, the responsible body decides the care home manager should be the reviewer for the purposes of this paragraph.
- (2) For any authorisation the responsible body must specify a programme of regular reviews that the reviewer must carry out.
 - (3) The reviewer must also carry out a review—
 - (a) on a variation under paragraph 37;
 - (b) if a reasonable request is made by a person with an interest in the arrangements;
 - (c) if the cared-for person becomes subject to mental health arrangements;
 - (d) if the cared-for person becomes subject to mental health requirements;
 - (e) if sub-paragraph (5) or (7) applies;
 - (f) if (in any other case) the reviewer becomes aware of a significant change in the cared-for person's condition or circumstances.
 - (4) A review under sub-paragraph (3)(a) must be carried out before the authorisation is varied or, if that is not practicable or appropriate, as soon as practicable afterwards.
 - (5) This sub-paragraph applies where—
 - (a) the arrangements provide for the cared-for person to reside in, or to receive care or treatment at, a specified place,
 - (b) the reviewer becomes aware that the cared-for person does not wish to reside in, or to receive care or treatment at, that place, and
 - (c) the pre-authorisation review under paragraph 24—
 - (i) was not by an Approved Mental Capacity Professional, or
 - (ii) was by an Approved Mental Capacity Professional solely because paragraph 24(2)(c) or (d) applied.
 - (6) For the purposes of sub-paragraph (5)(b)—
 - (a) the reviewer must consider all the circumstances so far as they are reasonably ascertainable, including the cared-for person's behaviour, wishes, feelings, views, beliefs and values, but

- (b) circumstances from the past are to be considered only so far as it is still appropriate to consider them.
- (7) This sub-paragraph applies where sub-paragraph (5) does not apply and—
 - (a) the arrangements provide for the cared-for person to reside in, or to receive care or treatment at, a specified place,
 - (b) a relevant person informs the reviewer or (if the reviewer is not the responsible body) the responsible body that they believe that the cared-for person does not wish to reside in, or to receive care or treatment at, that place, and
 - (c) the relevant person makes a reasonable request to the person informed under paragraph (b) for a review to be carried out.
- (8) In sub-paragraph (7) “relevant person” means a person engaged in caring for the cared-for person or a person interested in the cared-for person’s welfare.
- (9) The care home manager must report to the responsible body on any review the manager carries out.
- (10) On any review where sub-paragraph (5) applies, the reviewer must refer the authorisation to an Approved Mental Capacity Professional for a determination as to whether the authorisation conditions are met.
- (11) On any review where sub-paragraph (7) applies, the reviewer or (if the reviewer is not the responsible body) the responsible body may refer the authorisation to an Approved Mental Capacity Professional and, if the Approved Mental Capacity Professional accepts the referral, the Approved Mental Capacity Professional must determine whether the authorisation conditions are met.
- (12) Before making the determination mentioned in sub-paragraph (10) or (11), the Approved Mental Capacity Professional must—
 - (a) review the authorisation,
 - (b) meet with the cared-for person, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so, and
 - (c) consult any other person listed in paragraph 23(2), or take any other action, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so.

Reviews: Every LPS authorisation must contain a programme of regular reviews undertaken by the Responsible Body. In addition to these regular reviews there are a series of triggers for other flexible or reactive reviews. Reactive reviews must be undertaken if any of the following occur –

- a) a variation of the LPS
- b) a person with an interest in the arrangements asks for one
- c) the Mental Health Act applies instead
- d) there is a significant change in the cared-for person’s condition or circumstances
- e) a person who was not considered to be objecting to the placement/care/treatment when the LPS was originally authorised (so an AMCP was not involved in the pre-authorisation review) is now considered to be objecting (this is a simplification of the wording in the Act)
- f) A person providing care for the cared-for person or interested in their welfare requests a reviews because they believe the cared-for person objects to the placement/care/treatment

AMCPs are required to undertake (e) reviews and the Responsible Body can also ask an AMCP to undertake other reviews where a person is considered to be objecting.

The wording of the Act indicates a review does not require the reviewer to meet the cared-for person or consult others. These requirements are only stated when an AMCP is involved. The Code of Practice is expected to give further guidance on how reviews should be undertaken (it should be noted that the Code cannot create a legal requirement which is not in the Act however). A record of any review will have to be kept as evidence that one was undertaken. As every LPS must contain a programme of regular reviews this will need specific record keeping and the relevant inspection bodies (see later) can be expected to check Responsible Bodies are fulfilling this requirement of the Act during their monitoring visits.

Responsible Bodies can ask care home managers to undertake reviews for people in care homes. The DHSC have indicated that the role of care home managers in LPS is going to be temporarily suspended when LPS starts. It is not clear if this extends to their role in Reviews.

APPROVED MENTAL CAPACITY PROFESSIONALS

- 39 Each local authority must make arrangements—
- (a) for persons to be approved as Approved Mental Capacity Professionals, and
 - (b) to ensure that enough Approved Mental Capacity Professionals are available for its area.
- 40 (1) The appropriate authority may by regulations—
- (a) prescribe the criteria which must be met for a person to be eligible for approval as an Approved Mental Capacity Professional;
 - (b) prescribe matters which a local authority must or may take into account when deciding whether to approve a person as an Approved Mental Capacity Professional;
 - (c) provide for a prescribed body to approve training for persons who are, or who wish to become, Approved Mental Capacity Professionals.
- (2) Regulations under sub-paragraph (1)(a) may include criteria relating to qualifications, training or experience.
- (3) If regulations made by the Secretary of State under sub-paragraph (1)(c) provide for Social Work England to approve training, the regulations may—
- (a) give Social Work England power to charge fees for approval;
 - (b) give Social Work England power to make rules in relation to the charging of fees;
 - (c) make provision in connection with the procedure for making those rules (including provision requiring Social Work England to obtain the Secretary of State’s approval before making rules).
- (4) Section 50(2) to (7) of the Children and Social Work Act 2017 apply for the purposes of sub-paragraph (3) as they apply for the purposes of that section.
- (5) “Prescribed” means prescribed by the regulations.
- (6) The “appropriate authority” means—
- (a) the Secretary of State, in relation to the approval of a person by, or a person approved by, a local authority whose area is in England, and
 - (b) the Welsh Ministers, in relation to the approval of a person by, or a person approved by, a local authority whose area is in Wales.

Approved Mental Capacity Professionals (AMCP): Local authorities (not NHS Trusts, CCGs or Welsh Health Boards) are responsible for approving AMCPs and ensuring there are enough AMCPs for their area. Regulations (see earlier) will be issued stating the qualification and training required to become an AMCP (these are expected to be similar to current BIA qualification and approval).

PART 5 APPOINTMENT OF IMCA

Appointment of Independent Mental Capacity Advocate

- 41 (1) Paragraphs 42 and 43 apply to the responsible body at all times while arrangements are authorised or are being proposed.
- (2) In those paragraphs “IMCA” means an independent mental capacity advocate.
- 42 (1) The responsible body must take all reasonable steps to appoint an IMCA to represent and support the cared-for person if—
- (a) sub-paragraph (2) or (3) provides that an IMCA should be appointed, and
 - (b) sub-paragraphs (4) and (5) do not apply.
- (2) An IMCA should be appointed if the cared-for person—
- (a) has capacity to consent to being represented and supported by an IMCA, and

- (b) makes a request to the responsible body for an IMCA to be appointed.
 - (3) An IMCA should be appointed if—
 - (a) the cared-for person lacks capacity to consent to being represented and supported by an IMCA, unless
 - (b) the responsible body is satisfied that being represented and supported by an IMCA would not be in the cared-for person's best interests.
 - (4) This paragraph does not apply if an IMCA has been appointed under this paragraph and the appointment has not ceased to have effect.
 - (5) This paragraph does not apply if the responsible body is satisfied that there is a person (an "appropriate person") who—
 - (a) would be a suitable person to represent and support the cared-for person,
 - (b) consents to representing and supporting the cared-for person, and
 - (c) is not engaged in providing care or treatment for the cared-for person in a professional capacity.
 - (6) A person is not to be regarded as a suitable person unless—
 - (a) where the cared-for person has capacity to consent to being represented and supported by that person, the cared-for person does consent, or
 - (b) where the cared-for person lacks capacity to consent to being represented and supported by that person, the responsible body is satisfied that being represented and supported by that person would be in the cared-for person's best interests.
- 43 (1) If the cared-for person has an appropriate person, the responsible body must take all reasonable steps to appoint an IMCA to support the appropriate person if—
- (a) sub-paragraph (2) or (3) provides that an IMCA should be appointed, and
 - (b) sub-paragraph (4) does not apply.
- (2) An IMCA should be appointed if the appropriate person—
- (a) has capacity to consent to being supported by an IMCA, and
 - (b) makes a request to the responsible body for an IMCA to be appointed.
- (3) An IMCA should be appointed if—
- (a) the appropriate person lacks capacity to consent to being supported by an IMCA, and
 - (b) the responsible body is satisfied the appropriate person's being supported by an IMCA would be in the cared-for person's best interests.
- (4) This paragraph does not apply if an IMCA has been appointed under this paragraph and the appointment has not ceased to have effect.

IMCA and the Appropriate Person: Every person for whom an LPS is proposed (being assessed) or under LPS (authorised) should have either an Appropriate Person (family, friend) or IMCA appointed for them by the Responsible Body. The Responsible Body should appoint an advocate if:

1. the cared-for person has mental capacity (decision specific) and asks for an IMCA
2. the cared-for person lacks mental capacity and does not have an Appropriate Person appointed and the Responsible Body believes an IMCA would be in the persons best interests
3. an Appropriate Person has mental capacity (decision specific) and asks for an IMCA
4. an Appropriate Person lacks mental capacity (decision specific) and the Responsible Body is satisfied that an IMCA for the appropriate person would be in the in the cared-for persons best interests

The Responsible Body can appoint an Appropriate Person for the cared-for person instead of an IMCA (similar to the Representative under DoLS). An appropriate person must not be engaged in providing care or treatment in a professional capacity to the cared-for person. They must consent to being appointed as an appropriate person and the Responsible Body must be satisfied they will represent and support the cared-for person. If the cared-for person has mental capacity they must consent to being represented and supported by the appropriate person. If they lack mental capacity, the Responsible Body must be satisfied the appropriate person would be in the person's best interests. The role and powers of IMCAs under LPS (for example the power of access to health and social care records) will be detailed in a forthcoming statutory regulation.

PART 6 MONITORING AND REPORTING

- 44 (1) The appropriate authority may by regulations make provision for, and in connection with, requiring one or more bodies prescribed by the regulations to monitor, and report on, the operation of this Schedule.
- (2) The regulations may include provision giving a prescribed body authority—
- (a) to visit any place where arrangements authorised under this Schedule are carried out;
 - (b) to meet with cared-for persons;
 - (c) to require the production of, and to inspect, records relating to the care or treatment of persons.
- (3) The “appropriate authority” means—
- (a) in relation to the operation of this Schedule in relation to England, the Secretary of State, and
 - (b) in relation to the operation of this Schedule in relation to Wales, the Welsh Ministers.

Monitoring: LPS (like DoLS) will be monitored by statutory inspection bodies. Regulations due later this year will provide details but it is already known that in England, the bodies will be the Care Quality Commission (CQC) and Ofsted (for 16-17 years under LPS). In Wales, it will be Health Inspectorate Wales (HIW), Care Inspectorate Wales (CIW) and Estyn (for 16-17 years under LPS).

The Act states regulations will provide the right to visit any place where LPS is being carried out. This could include visits to domestic home settings, residential schools, extra care, shared lives etc as LPS can be in any place. In addition, the inspection bodies will have the power to require access to care records for people under LPS and this will include records held by social services (age 16 upwards), CCGs, NHS Trusts and Health Boards plus local care records such as domiciliary care where a person is under LPS in a domestic setting for example.

PART 7 EXCLUDED ARRANGEMENTS: MENTAL HEALTH*Excluded arrangements*

- 45 This Schedule does not apply to arrangements if—
- (a) they are mental health arrangements (see paragraphs 46 to 56), or
 - (b) they are not in accordance with mental health requirements (see paragraph 57).

Kinds of mental health arrangements

46 For the purposes of this Schedule arrangements in relation to a person (“P”) are “mental health arrangements” if paragraph 47, 48, 49, 50 or 51 applies.

- 47 This paragraph applies if—
- (a) P is subject to the hospital treatment regime, and
 - (b) P is detained in a hospital under that regime.
- 48 This paragraph applies if—
- (a) P is subject to the hospital treatment regime,
 - (b) P is not detained in a hospital under that regime, and
 - (c) the arrangements are for enabling medical treatment for mental disorder in a hospital.
- 49 This paragraph applies if P is subject to—
- (a) a community treatment order under section 17A of the Mental Health Act, or
 - (b) anything which has the same effect, under another England and Wales enactment,
- and the arrangements are for enabling medical treatment for mental disorder in a hospital.
- 50 (1) This paragraph applies if the following conditions are met.
- (2) Condition 1 is that P is subject to—
- (a) a guardianship application under section 7 of the Mental Health Act,
 - (b) a guardianship order under section 37 of that Act, or
 - (c) anything which has the same effect as something within paragraph (a) or (b), under another England and Wales enactment.

- (3) Condition 2 is that the arrangements are or include arrangements for P to be accommodated in a hospital for the purpose of being given medical treatment for mental disorder.
- (4) Condition 3 is that P objects—
- to being accommodated in a hospital for that purpose, or
 - to being given some or all of that treatment.
- (5) Condition 4 is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (6) For provision about determining whether P objects see paragraph 52.
- 51 (1) This paragraph applies if the following conditions are met.
- (2) Condition 1 is that—
- an application in respect of P could be made under section 2 or 3 of the Mental Health Act, and
 - P could be detained in a hospital in pursuance of such an application, were one made.
- (3) Condition 2 is that P is not subject to any of these—
- the hospital treatment regime;
 - a community treatment order under section 17A of the Mental Health Act;
 - a guardianship application under section 7 of the Mental Health Act;
 - a guardianship order under section 37 of the Mental Health Act;
 - anything which has the same effect as something within paragraph (b), (c) or (d), under another England and Wales enactment.
- (4) Condition 3 is that the arrangements are or include arrangements for P to be accommodated in a hospital for the purpose of being given medical treatment for mental disorder.
- (5) Condition 4 is that P objects—
- to being accommodated in a hospital for that purpose, or
 - to being given some or all of that treatment.
- (6) Condition 5 is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (7) For provision about determining whether P objects see paragraph 52.
- 52 (1) In determining whether P objects, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- P's behaviour;
 - P's wishes and feelings;
 - P's views, beliefs and values.
- (2) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

Mental health arrangements: the hospital treatment regime

- 53 (1) P is subject to the hospital treatment regime if P is subject to—
- an application, order or direction listed in column 1 of the Table, under the section of the Mental Health Act listed in column 2, or
 - anything that has the same effect as any of those, under another England and Wales enactment,
- subject to sub-paragraph (2).
- (2) P is not subject to the hospital treatment regime during any period for which P is subject to—
- a community treatment order under section 17A of the Mental Health Act, or
 - anything which has the same effect, under another England and Wales enactment.

<i>Obligation</i>	<i>Mental Health Act section</i>
Application for admission for assessment	Section 2
Application for admission for assessment	Section 4
Application for admission for treatment	Section 3
Order for remand to hospital	Section 35
Order for remand to hospital	Section 36
Hospital order	Section 37
Interim hospital order	Section 38
Order for detention in hospital	Section 44
Hospital direction	Section 45A
Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

Mental health arrangements: other definitions

- 54 In this Part—
- “donee” means a donee of a lasting power of attorney granted by P;
 - “England and Wales enactment” means an enactment, in the Mental Health Act or elsewhere, which extends to England and Wales (whether or not it also extends elsewhere);
 - “hospital” has the same meaning as in Part 2 of the Mental Health Act;
 - “learning disability” has the meaning given by section 1(4) of the Mental Health Act;
 - “medical treatment” is to be read in accordance with paragraph 55.
- 55 In “medical treatment for mental disorder”—
- (a) “medical treatment” has the same meaning as in the Mental Health Act (see section 145(1) and (4)), but
 - (b) in the case of a person with learning disability, the medical treatment is not to be considered by reason of that disability to be for mental disorder unless the disability is associated with abnormally aggressive or seriously irresponsible conduct by that person.
- 56 A decision of a donee or deputy is valid if it is made—
- (a) within the scope of the person’s authority as donee or deputy, and
 - (b) in accordance with Part 1 of this Act.

Mental health requirements

- 57 (1) In this Schedule “mental health requirements” means any of the following—
- (a) a requirement imposed in respect of a person by a guardian exercising the power under section 8 of the Mental Health Act;
 - (b) a condition or direction imposed or given in respect of a person by a responsible clinician exercising the power under section 17 of the Mental Health Act (leave of absence from hospital);
 - (c) a condition specified by a responsible clinician in a community treatment order made in respect of a person under section 17A of the Mental Health Act (for the imposition of conditions, see section 17B of that Act);
 - (d) a requirement imposed by a guardian in respect of a person who is the subject of a guardianship order under section 37 of the Mental Health Act.

- Act (see section 40 of and Part 1 of Schedule 1 to that Act);
- (e) a condition imposed by the Secretary of State on the discharge from hospital of a person subject to a restriction order under section 42 of the Mental Health Act;
 - (f) a condition imposed by any of the persons or bodies listed in sub-paragraph (3) when a person is conditionally discharged under section 73 of the Mental Health Act;
 - (g) anything which has the same effect as something within any of paragraphs (a) to (f), under another England and Wales enactment.
- (2) And, for the purposes of this Schedule, arrangements which relate to a person are “not in accordance with mental health requirements” if the person is subject to mental health requirements and the arrangements are not in accordance with them.
- (3) The persons or bodies for the purpose of sub-paragraph (1)(f) are—
- (a) the First-tier Tribunal;
 - (b) the Mental Health Review Tribunal for Wales;
 - (c) the Secretary of State;
 - (d) the Welsh Ministers.

Mental Health Act (excluded arrangements): As with DoLS, the interface with the Mental Health Act is the most complex part of the Act. Essentially the same rules that apply under DoLS are copied for LPS but the name is changed from Eligibility to Excluded Arrangements. In certain cases, the use of LPS will be ‘excluded’ because of the MHA. The role of the DoLS Mental Health Assessor is removed from LPS so Responsible Bodies will need to decide which front line staff are able to complete this assessment.

LPS can be used as follows:

- (a) a cared-for person on leave of absence (section 17 MHA) can be put on LPS if the treatment is not for mental disorder (a physical treatment not associated with their mental disorder) in a hospital.
- (b) a cared-for person under a Community Treatment Order (CTO) can be detained in hospital under LPS if the treatment is not for mental disorder (a physical treatment not associated with their mental disorder)
- (c) Under 4, 5 and 6 above if any part is not met then an LPS can be used with Guardianship, CTO, Conditional discharge.
- (d) A person who lacks mental capacity can be admitted to a hospital for treatment of mental disorder and detained under LPS if they are NOT objecting to admission or to some or all of the treatment (and if they have a health and welfare attorney or Deputy they are not objecting either).

PART 8 TRANSITORY PROVISION

Schedule 2: Minor and consequential amendments

Summary: the text of Part 8, Schedule 2 above has been deleted as it of only specialist interest and not essential reading.

The following information sheets are available from www.bookswise.org.uk/lps

LPS and DoLS comparison table

LPS Responsible Bodies tasks and assessments

LPS overview chart

LPS key facts

LPS jargon buster

LPS legal criteria

BIA to Approved Mental Capacity Professional (AMCP)

Film – a five minute animated film on LPS

Available soon: LPS for childrens social services and Community deprivation of liberty cases

Training on LPS

A detailed guide on training options for LPS is available from: admin@edgetraining.org.uk