

Liberty Protection Safeguards (LPS) – Overview



January 2022: The Liberty Protection Safeguards (the new DoLS) are unlikely to come into force until 2023.

Information and resources on LPS are available at: <https://www.bookswise.org.uk/lps>

Detailed training courses on LPS are available from: <http://www.edgetraining.org.uk/>

Who: aged 16 and over +
mental disorder + lacks mental capacity
+ they are deprived of their liberty as
defined by current case law such as
Cheshire West (the acid test).

Where: anywhere in England and Wales.
This could include hospitals, care homes,
supported living, residential schools, extra
care provision, shared lives, transport and
domestic settings ie a person's own home.

Duration: up to one year initially,
renewed for a up to a further year and
then renewals of up to three years.

Rights for the person detained:

1. *Appeal to the Court of Protection*
The person, their appropriate
person or IMCA can appeal.
2. *Appropriate Person (AP)*
Some people will have an
appropriate person (not involved in
providing care or treatment)
appointed for them. Their role is to
support and represent the person.
3. *Advocate (IMCA)*
If a person does not have an AP,
they may have an IMCA instead
unless they lack capacity and it is
not considered in their best
interests. An AP may also be
supported by an IMCA
4. *Review*
A review of the person's case to
check the legal criteria are still met.

Assessors:

the responsible body decides who will
undertake the assessments. Registered
professionals (nurse, social worker, OT
etc) are likely to complete the mental
capacity assessment and a doctor is
likely to complete the medical (mental
disorder) assessment. Other
assessments could (at the time of
writing) be completed by anyone
(instructed by) the Responsible Body.

Responsible Body:

If the arrangements are mainly in an NHS hospital, the NHS Trust will be the Responsible Body. If the arrangements are through NHS continuing healthcare the CCG in England or local health board in Wales will be the responsible body. Local authorities will be the Responsible Body in all other cases, including private hospitals in England (in Wales local health boards are responsible for private hospital cases).

The Responsible Body organises the LPS assessments + undertakes the pre-authorisation review + authorises the LPS + monitors it + renews it + attends the Court of Protection for appeals

Procedure:

1. *Assessments*
Any person considered by the Responsible Body to have the experience and knowledge needed to complete the assessments (see below).
Mental Capacity and Mental Disorder are likely to require professionals.
2. *Pre-authorisation review*
The Responsible Body identifies a person not involved in the 'day to day' care or treatment of the person to read the completed assessments below and decide if the criteria for LPS are met (there is no requirement to meet the person). If, however, the person is objects, are in a private hospital or otherwise, at the Responsible Body's discretion, an Approved Mental Capacity Professional (AMCP) will undertake the pre-authorisation review. An AMCP must meet the person and consult others (unless not practicable/appropriate to do so).
3. *Authorisation*
The Responsible Body authorises the LPS. No specific process is set out for this in the Act.

What needs to be assessed and recorded?

Everything on the list below needs to be assessed and completed *before* an LPS authorisation can be given (Para 17 (and 18 or 19) MC(A) Act 2019).

1. Does the person *lack mental capacity* to consent to the arrangements?
2. Does the person have a *mental disorder*?
3. Are the arrangements *necessary and proportionate* to prevent harm to the person?
4. Are the arrangements (restrictions) a *deprivation of their liberty*?
5. Is the person *aged 16 or over*?
6. Could or should the *Mental Health Act* be used instead or is there any conflict with the Mental Health Act?
7. Have the person and those interested in the person's welfare/caring for them + others been *consulted* + what did they say?
8. Do they meet the legal criteria for an *AMCP* pre-authorisation review?
9. Is there an *Appropriate Person* who will 'represent and support' the person and/or does the case meet the criteria for an IMCA?

A pre authorisation review must be carried out in all cases AND a draft authorisation record prepared. The government have stated the arrangements under LPS must also be in the person's best interests and an attorney/deputy (personal welfare) can object to the arrangements.