

Liberty Protection Safeguards (LPS)

Jargon Buster



- **February 2022:** The Mental Capacity (Amendment) Act 2019 (the Act) which creates the Liberty Protection Safeguards received Royal Assent on 16th May 2019. The start of LPS has been delayed it is unlikely to start before 2023. To download the Act and explanatory notes go to: <https://www.legislation.gov.uk/ukpga/2019/18/enacted>
- Some details not in the Act (qualification for AMCPs, transitional arrangements) will be addressed in statutory regulations. A Code of Practice is-being written, however as Mr Justice Hayden, Vice President of the Court of Protection noted: *'The Code of Practice is not a statute, it is an interpretive aid to the statutory framework, no more and no less.'* (Re: Lawson, Mottram and Hopton (appointment of personal welfare deputies) [2019] EWCOP 22). What is given below is the statutory framework of the Act.
- A series of resources (funding issues + DoLS & LPS comparison table + LPS jargon buster + BIA to AMCP + LPS single page overview chart) and online courses on LPS are available from <http://www.edgetraining.org.uk/>
- This information sheet and a series of others on LPS can be downloaded from: <https://www.bookswise.org.uk/lps>

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