



Local Government &  
Social Care  
**OMBUDSMAN**

**From  
Deprivation  
of Liberty  
Safeguards  
to Liberty  
Protection  
Safeguards:  
April 2022**

October 2021

# Background

The Mental Capacity (Amendment) Act of 2019 introduced Liberty Protection Safeguards (LPS) to replace Deprivation of Liberty Safeguards.

The LPS will:

- > Be a 'streamlined' system with fewer assessments
- > Establish different responsible bodies (RB)
- > Abolish urgent authorisations
- > Be extended to 16 and 17 year olds
- > Be extended to any setting (including transport, and domestic settings)
- > Be subject to independent reviews

Initially the intention was for care home managers to be responsible for gathering the key information to decide whether their residents should be deprived of their liberty, under the Liberty Protection Safeguards. That was controversial - not only because care home managers would face a conflict of interest but also because of the considerable potential burden on care home staff in terms of training and additional workload.

As a result of widespread concern about the proposal, the government decided that while the role of care home managers will be kept under review, it will not be implemented when the new system for authorising deprivations of liberty in care comes into force in April 2022, on the basis that it would "*not be the right time*" to do so. [Government ditches controversial role for care home managers under Liberty Protection Safeguards | Community Care](#)

# Key changes

The key changes from DoLS to LPS are summarised on the tables on the following pages but in essence the 'streamlined system' will involve three **assessments** (not six):

- > Capacity assessment (does person lack capacity to consent to the arrangements?)
- > Medical assessment (is the person of unsound mind?)
- > Necessary and proportionate assessment (is there a risk of harm to self or others?)

as well as consultation with carers and relatives.

The **responsible body** (replacing the supervisory body) will be the local authority unless arrangements are carried out primarily in hospital, when the RB is the hospital manager (eg the NHS Trust) or if arrangements are carried out primarily through the NHS, the RB is the CCG

The application of LPS to **different settings** means they can be applied in different settings or multiple settings, can include arrangements for transport (so avoiding the need for complex arrangement when someone moves from one care home to another, for example) and can include sheltered accommodation or domestic settings (someone's home).

The **duration and cessation** of safeguards will change too:

- > There will be no formal end to authorisation, but an automatic cessation if RB knows conditions are no longer met;
- > They can last for up to 12 months, be renewed for up to 12 months and then for 3 years;
- > There will be a power to renew rather than initiate a fresh application;

- > They will be suspended for short term MHA detentions;
- > There will be no cessation in terms of fluctuating capacity if periods of capacity are short-lived.

There will be a new role of approved mental capacity professionals (**AMCP**), who will be responsible for carrying out "pre-authorisation reviews" – to ensure that the conditions for depriving the person of their liberty have been met – in specified cases. These are in cases where the person objects to the arrangements, the arrangements would take place in an independent hospital or where the responsible body determines that an AMCP – rather than another professional without their status or training – should carry out the pre-authorisation review.

Finally, it will be helpful for care home managers in their conversations with relatives to know about the **review** system: there will be

- > Rights to regular reviews;
- > Rights to advocacy or an 'appropriate person' (formerly the Relevant Person's Representative) from the start of the process
- > Rights of challenge in the CoP.

Each case will be verified by an independent reviewer who is not involved in the day to day treatment of the person, and the reviewer must decide if the conditions are met or (in cases where the placement is contrary to the person's wishes) refer the case to an AMCP.

# Ongoing learning

The DHSC has now published a set of factsheets on its website on the following aspects of the LPS: [Liberty Protection Safeguards factsheets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/liberty-protection-safeguards-factsheets)

- > criteria for authorisation,
- > the appropriate person and independent mental capacity advocates,
- > the approved mental capacity professional role,
- > deprivation of liberty and authorisation of steps necessary for life-sustaining treatment or vital acts,
- > authorisations, renewals and reviews,
- > the right to challenge an authorisation in court.

More factsheets will follow in due course.

# Key changes: summary

Change	DoLS	LPS
Age	18+	16+
Time period	up to 12 months	Up to 12 months on first authorisation Up to 12 months on first renewal Up to three years on any subsequent renewal
Objections	Considered as part of Best Interest Assessments	Must be reviewed by an Approved Mental Capacity Professional (AMCAP)
When can it be granted	Up to 28 days before the start of placement	Up to 28 days before the start of placement
Authorising	An authorising signatory within the council	Considered by a reviewer who must not be involved in care or treatment Can be an AMCP
'Portability'	A specific address	Authorise care arrangements - LPS is a 'passport'
Authorisation applies to	Care homes and hospitals (any other setting must be approved by CoP)	All settings (including transport)

Responsibility for authorisation	Local authority as supervisory body	The responsible body: The Local Authority, Clinical Commissioning Group or NHS Trust
Safeguards	Care homes/ hospitals - Part 8 reviews Court of Protection Section 21A Welfare Application COPDOL11	Right to Information Court of Protection (Section 21ZA application for all settings) AMCPS IMCAS
Role of care home manager	Request standard DoLS/ urgent authorisation	Provide statement and accompanying material to confirm the authorisation conditions are met

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