



Department
of Health &
Social Care

Liberty Protection Safeguards Implementation

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What are the Liberty Protection Safeguards?

- The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019
- The Liberty Protection Safeguards will replace the Deprivation of Liberty Safeguards system that is currently in place
- The Safeguards will provide protection for people who are deprived of their liberty as part of their care or treatment, and don't have mental capacity to consent to their care arrangements
- Groups who might have a Liberty Protection Safeguards authorisation include those with dementia, autism and learning disabilities



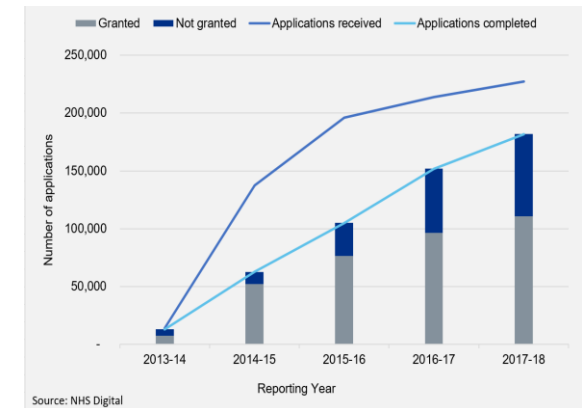
Mental Capacity
(Amendment) Act
2019



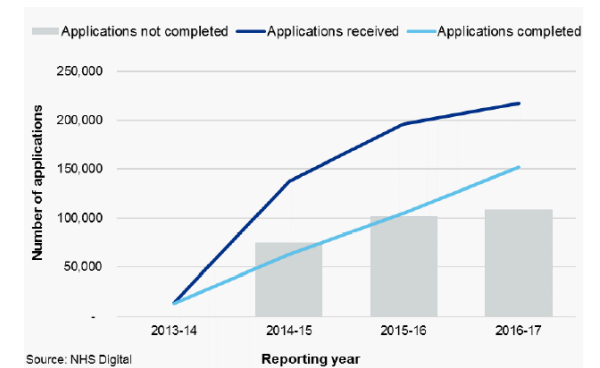
Why are the Liberty Protection Safeguards being introduced?

- In 2014, the House of Lords found that the DoLS system was bureaucratic and too complex
- In the same year, the Supreme Court judgement in *Cheshire West* expanded the definition of deprivation of liberty, increasing the number of cases more than tenfold and overwhelming the system
- This led to a backlog in applications being authorised, with some people waiting more than a year for an authorisation
- The Law Commission found the current system didn't offer necessary protection and was overwhelmed. Their impact assessment estimated the cost of the current DoLS would be £2.2 billion per year, if applications were processed in the timeframes they should be.
- The Law Commission recommended that the DoLS were replaced as a matter of pressing urgency and the Joint Committee on Human Right subsequently agreed that the DoLS should be replaced

DoLS applications in England, 2013-18



Backlog numbers 2013-2017



What has changed?

Key changes include:

- 1) Reducing the number of assessments from six to three: a capacity assessment, a medical assessment, and a 'necessary and proportionate' assessment. The assessment process will be embedded into existing care planning (e.g. under the Care Act) and it will be easier to use existing valid assessments
- 2) Greater involvement for families: there will be an explicit duty to consult with those interested in the person's welfare and an opportunity for family member to support and represent the person through the process as an "appropriate person"
- 3) Role for care home managers: In some cases, care home managers will provide the "statement" to the responsible body, and this may include past valid assessments. Care home staff are explicitly prohibited from completing assessments to prevent conflict of interest
- 4) Targeted approach: Complex cases, and those where an objection has been raised or a person lives in an independent hospital, will be considered by an Approved Mental Capacity Professional. They will take a more in-depth view and will meet with the person and complete consultation with relevant persons
- 5) Extending scheme to domestic settings: This allow deprivations of liberty in these settings to be approved without an authorisation from the Court of Protection, a process which can be burdensome for people and their families
- 6) 16-17 year olds are included under the new system: This means they will have the same access to safeguards afforded to those 18 and over Does the Bill extend the provision of LPS to 16-17year olds, or does it amend the current system in some way, or does it replace the current system for everyone?



The process

Liberty Protection Safeguards flowchart

Information should be provided at appropriate points throughout the process

It is believed that a deprivation of liberty is occurring or required to enable a person's care or treatment.

Liberty Protection Safeguards process triggered

Responsible body identifies if an **Independent Mental Capacity Advocate (IMCA)** is required and if so appoints one, unless there is a suitable **appropriate person** to support the person instead, or if having an IMCA is not in the person's best interests.

Responsible body **arranges assessments** and completes **consultation** – involving care home manager to where appropriate

Consultation with the person and everyone interested in the person's welfare (see list in Schedule AA1 paragraph 23 (2)) is ongoing. Consultation is undertaken by someone on behalf of the responsible body where authorisation is under Schedule AA1 paragraph 18, or by the care home manager where authorisation under paragraph 19.

Assessments needed. Where possible, past valid assessments can be relied on – otherwise assessments should be completed alongside care planning

Medical assessment of mental disorder

Necessary and proportionate assessment (including finding out wishes and feelings). Cannot rely on a previous assessment

Mental capacity assessment

Assessments must be conducted by someone with appropriate experience and knowledge, who will also check that Schedule AA1 applies

Arrangements proposed, and submitted in draft authorisation record, with assessments and results of consultation

Responsible Body

Local authority / CCG / Local Health Board NHS Trust

Independent pre-authorisation review arranged by Responsible Body. Can make further enquiries if required. **Approved Mental Capacity Professional (AMCP)** undertakes the pre-authorisation review if:

- the person does not wish to reside in the proposed place or receive care and treatment at the place
- The place is an independent hospital
- the case would benefit from this

Not authorised

Authorised. Up to one year, can be renewed for up to one year and then up to three years after that. Can include **conditions** in authorised arrangements. Copy of authorisation record given/sent to person and their representatives within 72 hours.

The person does not wish to challenge the authorisation

The person wishes to challenge the authorisation

The person or their representative (Independent Mental Capacity Advocate or Appropriate Person) can challenge the authorisation through the **Court of Protection**

Implementation of the Liberty Protection Safeguards

Objectives



Successfully implement the new system

-Effectively implement the new system, by working jointly across the health and care sectors.



In a way that

-Ensures the right people are getting the right protections at the right time (removal of the backlog alongside implementing LPS and better access to safeguards);

improves quality and experience of care through an improved system;

provides better value for money; and

removes variation to provide a more equitable system.



So that

The sectors are ready to deliver the new system;

people receive better quality care with minimum restrictions;

their views and wishes are part of any LPS authorisations; and

their families and carers are fully involved, and they have access to safeguards which are well supported and swiftly delivered.

This will result in the empowerment and protection of vulnerable groups.

Planned Milestones

Autumn 2019

Code of Practice engagement including with people with lived experience

Winter 2019

LPS training strategy and transitional guidance published

Winter/Spring 2020

Consultation and engagement on Code of Practice and regulations

Spring 2020

Code of Practice and Regulations finalised

Spring/Summer 2020

Training on the LPS scheme

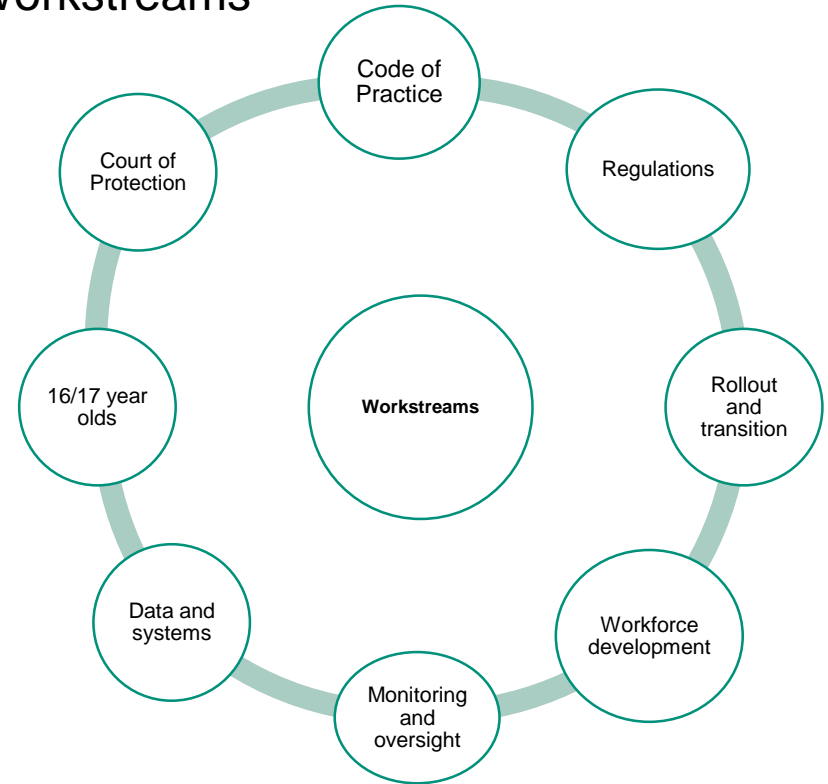
October 2020

LPS go-live

October 2020-2021

Transition year

Workstreams



The implementation work is being delivered by a range partners and stakeholders, including: *ADASS/ADCS/LGA, The NHS, Regulators, Other Government Departments, Representatives of Care Providers, Charities and People with Lived Experience*



Regulations

Criteria of who can complete assessments and determinations for the purposes of a Liberty Protection Safeguards authorisation (England)

- All assessors must be insured for liabilities associated with completing the assessment, must have an applied knowledge of the Mental Capacity Act and Code of Practice, must be able to keep good records and provide clear and reasoned reports, and must have undergone a criminal record check
- The assessor must not be suspended from their profession, must have two years post registration experience and have the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately
- Doctors, psychologists, occupational therapists, first tier nurses, speech and language therapists and social workers will be able to complete the capacity assessment and the necessary and proportionate assessment/determination
- Doctors and psychologists will be able to complete the medical assessment for mental disorder
- Those who can complete the medical and capacity assessments can also complete the medical and capacity determinations. Additionally, a care home manager can complete these determinations

Meaning of a prescribed connection to a care home (England)

- The following will be considered as have a prescribed connection:
 - All care home managers registered with CQC or in Wales
 - Any employee employed directly by a care home in any capacity
 - Staff contracted to work in care home such as agency and temporary staff
 - Individuals who provide care and treatment within a care home on a voluntary basis
 - Those with a financial interest in a care hom
- We are exploring further which other individuals might have a prescribed connection with a care home manager

Transitional Provisions (England and Wales)

- No new DoLS authorisations can be granted after the implementation date
- A standard DoLS authorisation which is already in force prior to the implementation of the Liberty Protection Safeguards will remain in place until it expires
- If there has been a request for a standard DoLS authorisation and it has yet to be granted ahead of implementation, then the request can only be authorised under the Liberty Protection Safeguards system
- An urgent authorisation which is already in force prior to the implementation of the Liberty Protection Safeguards will remain in place until it expires.

Reporting and Monitoring the Liberty Protection Safeguards scheme (England)

- Ofsted and CQC will be responsible for monitoring and reporting on the Liberty Protection Safeguards scheme
- With regards to hospitals, care homes, children's homes and family centres, residential schools and colleges. The CQC or Ofsted will have the power to:
 - Visit the location
 - Interview persons
 - Inspect records
- We are considering further how CQC will monitor other services registered with them
- Ofsted and CQC will be required to report on the scheme, this is likely to be through the State of Care and State of the Nation reports

Criteria and training for Approved Mental Capacity Professionals (England)

- Only registered professionals will be able to fulfil the role of Approved Mental Capacity Professionals. We are still developing the exact criteria, but our starting point is those who can currently become best interest assessor can also become Approved Mental Capacity Professionals.
- Social Work England will be responsible for approving training courses for Approved Mental Capacity Professionals and we will be working with them on the detail of this
- We envisage there will be a different level of training required between those who are best interests assessors currently and others who want to be Approved Mental Capacity Professionals

