

Liberty Protection Safeguards: 20 Key Facts



Note: A series of amendments to LPS have been tabled by members of the House of Lords. These will be debated and potentially inserted into the bill on the 5 September. For a list of the amendments go to: <https://services.parliament.uk/Bills/2017-19/mentalcapacityamendment/documents.html>

Information and resources on LPS are available at: www.edgetraining.org.uk/news. For updates on the progress of LPS join our mailing list. A detailed training day on LPS can be booked at: www.edgetraining.org.uk

- 1. Deprivation of liberty:** LPS does not define deprivation of liberty (just as DoLS does not). The Supreme Court's 'acid test' of 'complete supervision and control and not free to leave' will remain the benchmark. The government predicts there will be over 300,000 LPS applications per year.
- 2. Care and treatment:** LPS only authorises deprivation of liberty. It does not authorise care or treatment (just as DoLS does not). Care providers will still have to assess the person's mental capacity to consent to care and treatment and if they lack capacity, make and record best interests decisions under the Mental Capacity Act.
- 3. Detention:** LPS only authorises deprivation of liberty, it does not authorise breaches of private or family life (Article 8 ECHR) such as restricting contact with family or preventing a person living with their family despite serious safeguarding concerns. Court orders would still be required as they are at present.
- 4. Unsound mind:** LPS covers people with an 'unsound mind'. This is legal term taken from the European Convention on Human Rights. It has a wider definition than mental disorder (DoLS) so more people will be affected under LPS. There are no precise figures on how many more people could be affected.
- 5. Risk:** At present, LPS authorises detention of people who present a risk of harm to themselves and/or others. DoLS only covered harm to self so LPS could affect more people. It is not known how many more people this will affect.
- 6. Place:** DoLS was restricted to care homes and hospitals. LPS can be used in any care setting including supported living, extra care accommodation and domestic settings such as a person's own home.
- 7. Responsible body:** Under LPS the commissioner or funder of care will become the Responsible Body. This means NHS Trusts, CCGs, health boards and local authorities will have a far greater list of duties. The responsible body has to organise assessments, reviews, authorisations, renewals and monitoring.
- 8. Conveyance:** LPS includes the power to transport (convey) a person between places.
- 9. Timing:** LPS can be completed before a person moves into a placement or after they have moved (just like DoLS).
- 10. Assessments:** LPS requires 9 separate assessments to be completed and recorded (evidenced) prior to the responsible body carrying out its pre-authorisation review. For people in care homes who are not objecting, these will be arranged/undertaken by the care home manager. A specialist assessor (AMCP) is only required if the person is assessed as objecting to the placement or the care or treatment being given.
- 11. Pre-authorisation review:** After the assessments have been completed for LPS they are reviewed (pre-authorisation review). The reviewer can be any person from the Responsible Body not involved in the day-to-day care or treatment of the person. They do not meet the person but simply read the assessments.
- 12. Assessors:** under LPS the 9 assessments required can be carried out by any member of staff of an NHS Trust, CCG or local authority. In care homes, the assessors will be the care home staff/manager. A specialist assessor (AMCP) is only required if the person is assessed as objecting to the placement or the care or treatment.

- 13. Appeals:** If a person appeals under LPS it goes to the Court of Protection (just like DoLS). The government estimate (funding) is that 0.5% of LPS cases will be appealed however research by Cardiff University - *Welfare cases in the Court of Protection: A statistical overview*, September 2017 - shows the current rate for DoLS is 1% and Ministry of Justice statistics show the rate is growing year on year. The research is available from: <http://sites.cardiff.ac.uk/wccop>
- 14. Reviews:** All authorised LPS must contain a programme of regular reviews over its duration. Reviews are carried out by care home managers or the Responsible Body (this could be any member of staff).
- 15. Duration:** LPS can last for up to 1 year initially and then be renewed for another year and then for 3 year periods. Renewals can, at the discretion of the responsible body, be paper based only with no direct re-assessment of the person.
- 16. Advocacy (IMCA):** Some people, but not all, will have a right to an advocate under LPS. If a person lacks mental capacity to request an advocate a care home manager or a responsible body will decide if one should be appointed in their best interests - depending on where the person is.
- 17. Appropriate Person:** Some people, but not all, will have an Appropriate Person appointed by the responsible body whose role is to support and represent the person. They cannot be engaged in providing care or treatment for the person in a professional capacity. Not everyone will have an Appropriate Person.
- 18. Forms:** LPS will require a form (like DoLS) to be completed to show the 9 required assessments have been completed and indicate the evidence they are based upon. A reviewer will read this for the pre-authorisation review and the Court of Protection (and lawyers) will scrutinise these forms in LPS appeals.
- 19. Inspection:** The Care Quality Commission (or Welsh inspectorate bodies) will monitor and report on LPS as they did under DoLS. It is not clear how this will be done for those under LPS in supported living or domestic settings being cared for by families.
- 20. Funding:** Government estimates for the cost of LPS (funding to be given to care providers and responsible bodies etc) is based on a series of estimates that are questionable including the total number of LPS assessments per year, the rate of appeal under LPS, the extra work involved for care home managers (this has been estimated as costing care homes £0.00). The preceding figure is not a typo!

What is missing?

1. A statutory duty to inform the person of their rights
2. Conditions – the option to put conditions on the care home or hospital ie around covert medication
3. Mental health assessor
4. Professional assessments
5. Independent advocacy support for everyone under LPS
6. AMCP for every person
7. Consulting the person lacking capacity directly – they have not been listed in paragraph 17 of LPS
8. Best interests assessment – LPS does not involve an independent check on the best interests decision taken to place and keep a person in a care home or hospital
9. Independent reviews – under LPS, the reviewer may be the care home manager.