



Department
of Health &
Social Care

Guidance

Liberty Protection Safeguards: overview of the process

Updated 3 August 2021

Applies to England and Wales

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The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.

People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The LPS are planned to come into force in April 2022.

Making a referral

In most cases, a local authority or an NHS body will be the 'Responsible Body' that will authorise arrangements for care or treatment under the LPS. Where it's felt that an authorisation may be needed, the Responsible Body must be informed so the LPS process can be triggered. Anyone can make a referral. The process could be very informal, for example a simple email, or official forms can be used. The 'no wrong door' principle will apply, and Responsible Bodies will be expected to work together to identify who is the correct body in cases where this is not clear.

Representation and support

As soon as a referral is made to the Responsible Body, it must in relevant cases take reasonable steps to appoint an Independent Mental Capacity Advocate (IMCA), unless there is someone else (such as a family member or someone else close to the person) who could act as the appropriate person. The appropriate person and the IMCA's role will be to represent and support the person through the process. When arrangements are proposed, the Responsible Body must take practicable steps, such as providing information, to ensure that the person, and the appropriate person understand the process.

Assessments and authorisation

The Responsible Body will arrange the assessments needed for an authorisation. The Responsible Body will also consult the person and other individuals such as a family member or someone else close to the person.

Following this, a pre-authorisation review will be completed by someone not involved in the person's day to day care or treatment or with a prescribed connection to a care home. The review must determine whether the authorisation conditions are met, or whether it is reasonable for the Responsible Body to reach this conclusion.

The authorisation conditions are that:

1. the person lacks capacity to consent to the arrangements
2. the person has a mental disorder, as defined by the Mental Health Act 1983
3. the arrangements are necessary and proportionate; that is, the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of the risk of harm to the person

When the arrangements that amount to a deprivation of liberty provide for care or treatment mainly in an independent hospital, or the person does not wish to reside or receive care or treatment at the place, the pre-authorisation review must be completed by an Approved Mental Capacity Professional (AMCP).

In other cases, an AMCP must consider the case only if it has been referred to them by the Responsible Body and they have accepted that referral. The LPS code of practice will provide detail about which types of cases should be accepted by the AMCP. The AMCP must meet with the person (unless it is not appropriate or practicable to do so) and complete further consultation.

Once the pre-authorisation review has been completed and the appropriate determinations made, the Responsible Body may give an authorisation. The arrangements can be authorised for an initial authorisation period of up to 12 months, after which the authorisation can then be renewed for a further 12 months. Thereafter, an authorisation can be renewed for a period of up to 36 months, if appropriate. The code of practice will provide further detail on when this might be appropriate. Once an authorisation has been granted, the Responsible Body must arrange for the person, and the IMCA or the appropriate person to be provided with a copy of their authorisation record within 72 hours.

Reviews

The Responsible Body will be required to specify, and carry out, a programme of ongoing and regular reviews to assess whether the authorisation is still needed. In some circumstances, it may also be necessary for the Responsible Body to carry out an unscheduled review if,

for example, there is a significant change in the person's condition or circumstances.

The review could result in the authorisation being terminated by the Responsible Body because, for example, the person does not need to be deprived of their liberty or the authorisation conditions are no longer met. If the person or anyone else, such as their family or IMCA or appropriate person, wishes to challenge the authorised arrangements, they can apply to the Court of Protection.



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