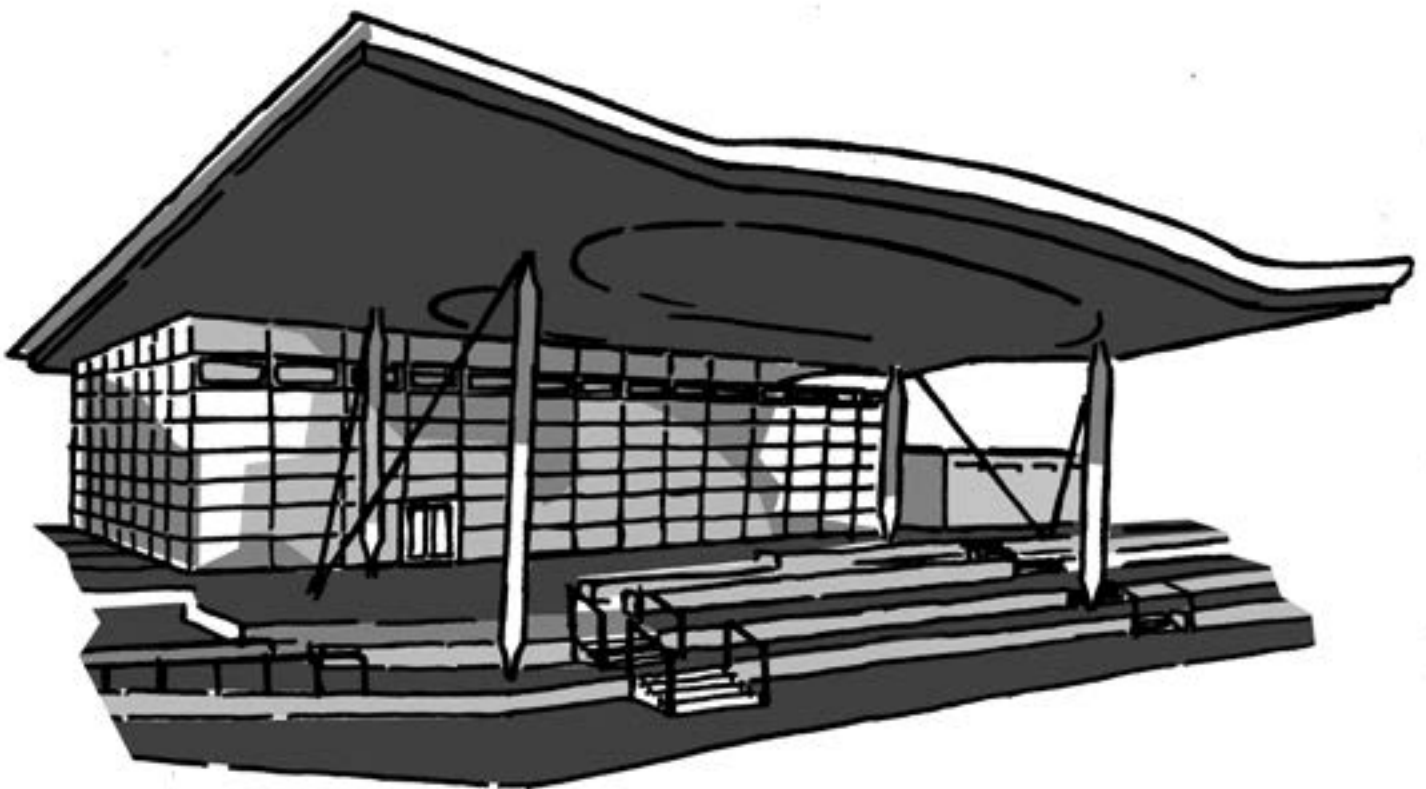




Llywodraeth Cymru
Welsh Government

Getting it right

Regulations and plans for Wales for the Liberty Protection Safeguards



This is an Easy Read document from the Welsh Government

Published 17 March 2022

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Introduction

Welsh Government needs your help and advice.




UK Government are bringing in a new law: the Mental Capacity (Amendment) Act (2019).

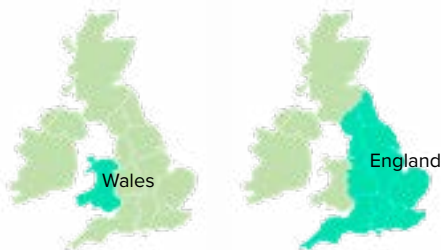
The law will change the Mental Capacity Act (2005).

Deprivation of Liberty Safeguards (DoLS) Scheme 

The Deprivation of Liberty Safeguards (DoLS) scheme will stop.

Liberty Protection Safeguards (LPS) 

A new scheme will start – called: [the Liberty Protection Safeguards \(the LPS\)](#).



The change from the Deprivation of Liberty Safeguards to the Liberty Protection Safeguards applies to England and Wales. However, Wales will have its own new laws (Regulations) about how to put the change into practice.



Welsh Government is consulting on these new Regulations to support the LPS:

- Regulations about who can do assessments, make decisions and pre-authorisation checks

- Regulations about Approved Mental Capacity Professionals
- Regulations about Independent Mental Capacity Advocates
- Regulations about monitoring and reporting on the use of the Liberty Protection Safeguards.



We have produced some animations to help explain the LPS and the new Regulations – you can see these here www.gov.wales/liberty-protection-safeguards.



We have an Easy Read Consultation Response Form which you can find here www.gov.wales/liberty-protection-safeguards. Please fill in and send to:

MentalHealthandVulnerableGroups@gov.wales

Mental Health and
Vulnerable Groups Team
Welsh Government
4th Floor Cathays Park
Cardiff
CF10 3NQ

At the end of this document there is a list of words or phrases that have a particular meaning.



Regulations about who can do assessments, determinations and pre-authorisation reviews

There are three types of assessments (or checks) under the Liberty Protection Safeguards (the LPS).



- an assessment to see if someone can make all their own decisions
- a medical assessment to see if someone has a mental health problem, autism, dementia or a learning disability
- and an assessment to make sure that any plans to restrict someone's freedom are necessary and only go as far as needed. We want people to be allowed to keep as much of their freedom as possible.



These Regulations explain who can do these assessments, make decisions and carry out checks.



Regulations 1 and 2

These Regulations say when these checks will begin and what special words mean.

Regulation 3: What needs to be in place for someone to do assessments

Before someone can do any of these assessments, the health board or local authority must check that the person:

- has insurance
- has the right skills and knowledge to do the assessment, including keeping good records, writing clear reports, communicating well and acting independently
- has an enhanced criminal record certificate
- is not related to the person
- has no financial relationship with any service connected with the person's support, care or treatment.



Regulations 4 and 5: Who can assess or check an assessment about someone's capacity to make their own decisions?

The person must be registered in the UK as one of these:



- doctor
- nurse
- occupational therapist
- social worker
- practitioner psychologist
- speech and language therapist.

The health board or local authority must check that the person is registered as one of these professions and has not been suspended.



Doctor

Regulations 6 and 7: Who can assess or check an assessment to decide if someone has a mental health problem, autism, dementia or a learning disability?

The person must be registered in the UK as one of these:

- doctor
- practitioner psychologist.



Practitioner Psychologist

The health board or local authority must check that the person is registered as one of these professions and has not been suspended.



Regulations 8 and 9: Who can assess or check that the planned restrictions to freedom are needed and allow the person as much freedom as possible?

The person must be registered in the UK as one of these:

- doctor
- nurse
- occupational therapist
- social worker
- practitioner psychologist
- speech and language therapist.

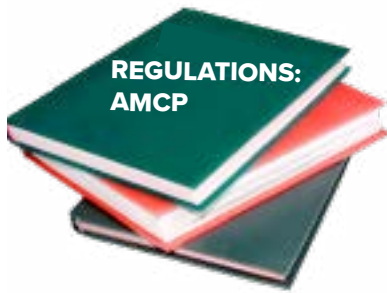
The health board or local authority must check that the person:

- is registered as one of these professions and has not been suspended
- can look at complex evidence and different opinions.



Regulation 10: Who is not allowed to do a pre-authorisation check?

Pre-authorisation checks cannot be carried out by anyone who is connected to a care home.



Regulations about the role of the Approved Mental Capacity Professional (or AMCP)

Before a health board or local authority can authorise someone's freedom being restricted under the Liberty Protection Safeguards (the LPS), they must check that it is the right thing to do.



Sometimes this check must be carried out by an Approved Mental Capacity Professional (or AMCP).

An AMCP will help to protect the rights of someone who lacks the mental capacity to agree to their care, support or treatment where this involves someone having their liberty taken away.



AMCPs will be able to meet the person, and speak to those involved in their support, care or treatment, and to those with an interest in the person's welfare, such as family members.

Each local authority must make arrangements for approving AMCPs and make sure there are enough for its local authority area and local health boards.

These Regulations set out who can become an AMCP and the training needed.

Regulations 1 and 2

What special words mean?

These Regulations say when the role of the AMCP for the LPS will begin and what special words mean

Regulation 3: Who can apply to be approved?

A person can only apply to be approved as an AMCP if they are on a UK register as a:

- nurse
- social worker
- practitioner psychologist
- speech and language therapist
- occupational therapist.





Regulation 4: Approving someone as an AMCP

A local authority must check that the person:

- has the right skills and knowledge
- has done the initial training or, if they are already a best interests assessor, has done a conversion course
- has not been suspended from their professional register
- has at least 2 years of post-registration experience
- has insurance
- has an enhanced criminal records certificate.



**APPROVAL
CHECKED
EVERY
12 MONTHS**

Regulation 5: Keeping an approval

An AMCP must have their approval checked every 12 months.

To carry on working as an AMCP they must show the local authority that:

- they have done at least 18 hours of further training
- they have done their work well.

If someone did their initial training or conversion course in the year before they got approved, they do not need to do 18 hours of further training during their first year of approval.



Regulation 6: Telling the local authority about changes

If an AMCP stops being registered as a nurse, social worker, practitioner psychologist, speech and language therapist or occupational therapist, then they must tell the local authority straight away.

If an AMCP gets suspended from their professional register, then they must tell the local authority straight away.

They must not do any more work as an AMCP.



Regulation 7: What to do if someone is suspended from their professional register

For as long as someone is suspended from their professional register, the local authority must suspend their approval as an AMCP.

Before they can start work as an AMCP again, the local authority must be sure the person can do the job.



Regulation 8: What to do if someone has not done the 18 hours further training

The person cannot continue to work as an AMCP until they have shown the local authority that approved them that they have done the 18 hours of further training.

If someone gives the local authority a good reason why they have not done the further training, the local authority can agree to give them more time to complete the training. However, the person must not work as an AMCP until they have completed the 18 hours of further training.



Regulation 9: Ending someone's approval

The local authority must end someone's approval if:

- the person stops being registered as a nurse, social worker, practitioner psychologist, speech and language therapist or occupational therapist
- there is a problem with their insurance or criminal record certificate
- the person does not do their 18 hours a year of further training (unless they had a good reason and the local authority has accepted that reason)
- they do not think the person has the right skills and knowledge
- the person asks them to end their approval.

The local authority must tell the person that their approval has been ended and explain why.



Regulation 10: Approving training and courses

Initial training for the AMCP must be a higher education course. It must be approved by Social Care Wales.

The conversion course for best interests assessors must be approved by Social Care Wales or the Welsh Ministers.

Further training must be approved by Social Care Wales or a local authority.



Regulations about the Independent Mental Capacity Advocate (or IMCA)

The role of the IMCA is changing under the Liberty Protection Safeguards (the LPS).

IMCAs are not employed by the health board or local authority. They have no links to the care provider or the person or their family.

The new IMCA role for the LPS is similar to the role of the IMCA with the Deprivation of Liberty Safeguards (DoLS). The current role of the IMCA under the DoLS is set out in Regulations made in 2007.

These new Regulations explain what will change under the LPS.



Regulation 1

This Regulation says when the role of the IMCA for the LPS will begin.

Regulation 2: Changes to the 2007 Regulations on IMCAs



Change to Regulation 5 of the 2007 Regulations on IMCAs – appointing Independent Mental Capacity Advocates

IMCAs can be appointed to represent and support a person. Some people already have someone they know who supports them – and under the LPS, this person is known as the 'Appropriate Person'. Under the LPS an IMCA can be appointed to support the Appropriate Person too.

The Mental Capacity Act 2005 sets out:

- if the LPS are being considered, the health board or local authority must do everything they can to appoint an IMCA to represent and support the person
- if the person has capacity to decide they want an IMCA then they need to ask for one
- if the person does not have capacity, then a best interests decision must be made about appointing an IMCA

-
- if the person has an Appropriate Person, that person can represent and support them instead of an IMCA. However, the health board or local authority must take reasonable steps to offer and appoint an IMCA to support the Appropriate Person.



Changes to Regulation 6 of the 2007 Regulations on IMCAs – what an IMCA does

Under the DoLS, their role was to gather information and write a report for the person making the decision. In certain circumstances they may still be asked to do this. Under the LPS, their role will be to represent and support the person. This means that the IMCA role is to:

- help the person take part in the decision
- find out what the person's wishes and feelings are about the plans being made
- find out what alternatives there are, especially ones that mean more freedom
- write a report if appropriate, including any suggested actions
- keep in touch with the person.

The IMCA can support an Appropriate Person to do all of these things for the person.

The IMCA can also support the Appropriate Person to:

- express the wishes and feelings of the person to be included as part of the assessment process and in the pre-authorisation information for an AMCP
- ask for a review of the decision [on the person's behalf]
- explain the person's wishes and feelings to help keep their human rights central to the plans made
- apply to the Court of Protection [on the person's behalf].



Changes to Regulation 7 of the 2007 Regulations on IMCAs – challenging decisions

The role of the IMCA to challenge a decision is being made clearer. They can:

- express the wishes and feelings of the person to be included as part of the assessment process and in the pre-authorisation information for an AMCP
- ask for a review of the decision [on the person's behalf]
- explain the person's wishes and feelings to help keep their human rights central to the plans made
- apply to the Court of Protection [on the person's behalf].

Welsh Government does not plan to change the role of the IMCA in reviewing accommodation (Regulation 8) and adult protection (Regulation 9).



Liberty Protection
Safeguards (LPS) ✓

Regulations about monitoring and reporting on the use of the Liberty Protection Safeguards

Monitoring and reporting on the Liberty Protection Safeguards (the LPS) is important. It will help to make sure that:

- health boards and local authorities are protecting people's rights
- no-one's freedom is limited without the right authorisation
- the only reason for limiting the person's freedom is to keep them safe
- any limits to a person's freedom are only the limits written in the authorisation under the LPS.



Regulation 1

This Regulation sets out when the new monitoring and reporting system will begin.



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
Her Majesty's Inspectorate for Education and Training in Wales

Regulation 2: Monitoring bodies

This Regulation says that Care Inspectorate Wales, Health Inspectorate Wales and Estyn will be the organisations that monitor and report on the new safeguards in Wales.

Regulation 3: Reporting to Welsh Ministers

The monitoring bodies must write reports to the Welsh Ministers about how the new safeguards are being used.

Regulation 4: Working together

The Welsh Ministers can ask monitoring bodies to work and write reports together.

Regulation 5: Helping another monitoring body

A monitoring body can ask the other monitoring bodies for help with monitoring the LPS and to do what it says in these Regulations.



If they are asked, a monitoring body must help unless:



- there is another law that says they must not do what they are being asked
- they think helping does not match with doing what these Regulations say they must do
- they think helping means they will not do a good job themselves.

Regulation 6: What a monitoring body can do

A monitoring body can:

- go into any place where the LPS are being used to restrict a person's freedom. If it is someone's home, then the monitoring body must ask for permission first
- meet with the person if they consent
- if the person cannot consent, then it needs to be decided what is best for the person. This is called 'a best interests decision'. The Mental Capacity Act 2005 says how this must be done



-
- see and check any records about the person's care, support or treatment, even if the service provider does not want them to
 - meet with anyone caring-for, or who cares about, the person who is having some freedom taken away.

Regulation 7: Meeting people



Meeting the person can happen where that person is staying, or somewhere else. It can be in person, or if appropriate, over a phone or video call.

If the person can give consent and wants a private meeting, the monitoring body must meet them in private.

Regulation 8: What the local authorities and health boards must tell the monitoring bodies



The local authorities and health boards must contact the monitoring body to provide them with certain key information on the LPS authorisation.

Words and phrases with special meanings

Appropriate Person

This is the person who is chosen to help and speak for someone who lacks capacity.

The Appropriate Person can be an unpaid carer, relative, friend, a person with power of attorney, or a court deputy.

Approved Mental Capacity Professional (AMCP)

A person chosen by the Responsible Body to give extra help with the LPS process. They will decide if the rules have been followed when someone loses some of their rights and freedoms.

Under the Liberty Protection Safeguards checks must be done before plans that may deprive a person of their liberty can be authorised. Sometimes (for example – if the person lives in an independent hospital or who does not agree with the plans being put in place) this check will be carried out by an Approved Mental Capacity Professional.

Assessments (see also Determinations)

Assessments means checks.
Determinations means decisions.

There are 3 assessments in the LPS process and a determination is made for each one.

Assessments are checks by professionals that are needed to indicate if someone may need their freedom restricted as part of their care, support or treatment.

Authorisation	Where the Responsible Body agrees that someone can have their freedom restricted as part of their care, support or treatment.
Best interests assessor	Under the current Deprivation of Liberty Safeguards, the person who writes a report to tell the Supervisory Body if someone needs a Deprivation of Liberty Safeguards Authorisation.
Capacity	Capacity or Mental Capacity is the ability to make certain decisions for yourself.
Determinations (see Assessments)	Assessments means checks. Determinations means decisions. A determination is a decision by a professional about an assessment.
Deprivation of Liberty	Stopping or limiting someone from doing things and restricting their freedom.
Independent Mental Capacity Advocate (IMCA)	A person who helps the person or the Appropriate Person. They support them to be involved, can speak for them and help them challenge decisions.
Liberty Protection Safeguards (LPS)	The Liberty Protection Safeguards give rules that will safeguard the Article 5 rights of a person (aged 16 or more) if they need to be deprived of their liberty.

Monitoring Body

The organisations that check and write reports on how the LPS process is working.

In Wales, Healthcare Inspectorate Wales, Care Inspectorate Wales or Estyn.

Pre-authorisation checks

Checks that must be done to confirm / agree if plans that deprive a person of their liberty can be authorised.

Regulations

A law.

Responsible Body

The organisation in the LPS process that decides about arrangements for someone who lacks capacity.

This is either a health board or local authority in Wales that authorises if someone's freedom can be restricted as part of their care, support or treatment.