



Llywodraeth Cymru
Welsh Government

Overview of the Mental Capacity (Amendment) Act 2019 and the new Liberty Protection Safeguards



This is an Easy Read document from the Welsh Government

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Mental Capacity (Amendment) Act 2019




The 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) 

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

Mental Capacity



When a person cannot make a decision because they don't understand what decision they need to make, or they have difficulty understanding information, or cannot communicate the decision to people around them, this is called lacking [capacity](#).

Safeguarding the rights of people aged 16 and above



Under the European Convention on Human Rights, people have a right to **Liberty** (called the **Article 5** rights under the Convention).



Sometimes a person who lacks **capacity** to decide about their care, support or treatment needs to live somewhere and be under continuous supervision and control so that they can have **care, support or treatment**. This can take away their liberty.



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**.



Authorisation cannot be given for other things under the LPS, such as restriction of family contact (that would be dealt with under the MCA).

Responsible Bodies



Health boards and local authorities will be responsible for the new Liberty Protection Safeguards in Wales.

Right to support from an **Appropriate Person** or **IMCA**



The **Responsible Body** will check if the person has somebody who can act as an **Appropriate Person** to represent them. An **Appropriate Person** can be someone the person chooses to help tell their story and what they want.

If a person does not have anyone who can act as an **Appropriate Person** the **Responsible Body** should take all reasonable steps to appoint an **Independent Mental Capacity Advocate (IMCA)** to support them through the process.



An **Appropriate Person** can also request support from an **IMCA**.

Local health boards must ensure there are enough **IMCAs** for the health board area.

Assessments (and Determinations)



There must be an **assessment** to determine if the person lacks **capacity**. There must also be a medical **assessment** to determine if the person has a mental disorder. These **assessments** can be existing assessment or re-used if still valid / correct / suitable.



Staff must think about how much freedom they take away from someone and if they **really** need to do this. This is called the **necessary and proportionate assessment**. This **assessment** cannot be re-used.



We want the Liberty Protection Safeguards to be thought about at the same time as other **assessments** and planning for the person. Staff must make sure the care, support or treatment that requires a **deprivation of liberty** is **right** for the person.

Consultation



Staff must consult the person and their family and others, including people chosen by the person, about the **wishes and feelings** of the person.

Pre-authorisation Review



Before the **Responsible Body** authorises the **Deprivation of Liberty**, a **Pre-authorisation Review** is undertaken to check all the evidence and the paperwork to see if the conditions are met for **authorisation**.

When a person does not wish to live in the place or receive care, support or treatment in the place, the **Pre-authorisation Review** is done by an **Approved Mental Capacity Professional** (an AMCP), who must meet the person. An AMCP also does this for independent hospitals, and when the **Responsible Body** refers the case to an AMCP.



The local authority must approve all AMCPs for all the **Responsible Bodies** in the area.

Life-sustaining Treatment or Vital Act



In an emergency, or while awaiting a decision from the **Responsible Body** or Court of Protection (in the case of a challenge or objection), a **deprivation of liberty** is authorised if:

- there is reasonable belief the person lacks **capacity** to consent
- and steps are necessary to deliver life-sustaining treatment or carry out a **vital act**.

There is no process, as such, for emergency situations.

New Regulations for Wales



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Welsh Government has developed draft Regulations (new laws) to support how we deliver the new Liberty Protection Safeguards in Wales. We are now consulting on these draft Regulations and want to hear your views on whether you think we have got things right.

The Regulations for Wales will focus on:



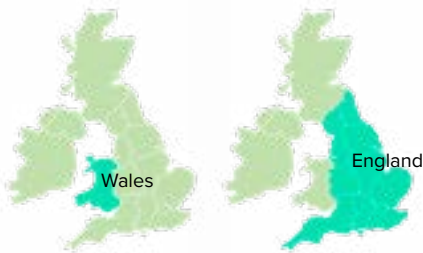
- Who can carry out **assessments, determinations** and pre-authorisation reviews as part of the new safeguards.
- Training for the new **Approved Mental Capacity Professional** role.
- The role of the **Independent Mental Capacity Advocate**.
- Monitoring and reporting on the new safeguards.

Draft UK Government Code of Practice for England and Wales



UK Government are also changing the **Code of Practice**. This explains the regulations and what staff must do in more detail.

It will include guidance on the Liberty Protection Safeguards and will be subject to consultation at the same time as our Regulations.



This Code of Practice will cover England and Wales.

UK Government are also consulting on draft Regulations for England.

Words and phrases with special meanings

Appropriate person

A relative, friend, person with power of attorney or a court deputy. It is someone the person knows who supports them.

Approved Mental Capacity Professional

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

Assessments

These are checks by professionals that are needed to agree if someone may need their freedom restricted to support their care and treatment.

Authorisation

Where the Responsible Body agrees that someone can have their freedom restricted to support their care and treatment.

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| Best interests assessor | Under the 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. |
| Determination | A decision by a professional about an assessment. |
| Deprivation of Liberty | Stopping someone from doing things and restricting their freedom. |
| Independent Mental Capacity Advocate | A person who gets to know the person or the appropriate person. They support them to be involved, can speak for them and can challenge the decision. |
| 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 | In Wales, Healthcare Inspectorate Wales, Care Inspectorate Wales or Estyn. |
| Pre-authorisation Review | Checks that must be done before plans that deprive a person of their liberty are authorised. |
| Regulations | A law. |
| Responsible Body | This is either the health board or local authority in Wales that authorises if someone's freedom can be restricted to support their care and treatment. |