



Liberty Protection Safeguards – what are they?

The Liberty Protection Safeguards 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 a Liberty Protection Safeguards authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards system.

The Liberty Protection Safeguards are planned to come into force in April 2022.

The key changes introduced by the Liberty Protection Safeguards

1. Three assessments will form the basis of the authorisation of Liberty Protection Safeguards:

- ❖ a capacity assessment;
- ❖ a 'medical assessment' to determine whether the person has a mental disorder and;
- ❖ a 'necessary and proportionate' assessment to determine if the arrangements are necessary to prevent harm to the person and proportionate to the likelihood and seriousness of that harm.

The assessment process will be embedded into existing care planning (e.g. under the Care Act 2014) and it will be easier to use existing valid assessments, where reasonable and appropriate.

Local authorities and NHS bodies will be 'Responsible Bodies' under the Liberty Protection Safeguards. Responsible bodies will organise the assessments needed under the scheme and ensure that there is sufficient evidence to justify a case for deprivation of liberty. Ultimately, the responsible body is responsible for authorising any deprivation of liberty in certain settings.



2. Greater involvement for families:

There will be an explicit duty to consult those caring for the person and with those interested in the person's welfare. There will be an opportunity for a family member or someone else close to the person, if they are willing and able, to represent and support the person through the process as an "Appropriate Person". Family members or others close to the person will also be able to raise concerns throughout the process and in response to any authorisation.

3. Targeted approach:

Where it is reasonable to believe that a person would not wish to reside or receive care or treatment at the specified place, or the arrangements provide for the person to receive care or treatment apply mainly in an independent hospital, the case must be considered by an Approved Mental Capacity Professional (AMCP). This provides an additional protection.

The Responsible Body may also refer other cases to the AMCP. The AMCP can accept those referrals and consider those cases too.

The AMCP will review the information on which the Responsible Body relies, meet with the person if appropriate and practicable, and complete consultation if appropriate and practicable with:

- ❖ the person;
- ❖ anyone named by the person as someone who should be consulted;
- ❖ anyone engaged in caring for the person;
- ❖ anyone interested in the person's welfare;
- ❖ any attorney of a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA);
- ❖ any deputy appointed by the Court of Protection;
- ❖ any Appropriate Person; and
- ❖ any Independent Mental Capacity Advocate (IMCA).



4. Extending the scheme to and 16 and 17-year olds:

Currently, when a 16 or 17-year old needs to be deprived of their liberty, an application must be made to Court of Protection. Under the Liberty Protection Safeguards scheme, Responsible Bodies will be able to authorise a deprivation of liberty without needing to go to court.

5. Extending the scheme to domestic settings

The Liberty Protection Safeguards will apply to individuals residing in domestic settings who need to be deprived of their liberty. Domestic settings include:

- ❖ the person's own home and family home;
- ❖ shared lives; and
- ❖ supported living.

This change ensures that all individuals who need to be deprived of their liberty will be protected under the Liberty Protection Safeguards, regardless of where they reside, without the need to go to court.

6. Clinical Commissioning Groups (CCGs), NHS Trusts and Local Health Boards as Responsible Bodies

The Liberty Protection Safeguards creates a new role for CCGs and NHS Trusts in authorising arrangements. In England, if the arrangements are mainly taking place in an NHS hospital, in most cases the Responsible Body will be the 'hospital manager' (which in most cases will be the NHS Trust responsible for that hospital). In Wales, in most hospital cases the Responsible Body will be the Local Health Board. If the arrangements that result in a deprivation of liberty are being carried out mainly through NHS continuing healthcare (CHC), or the equivalent in Wales, the Responsible Body will be the relevant CCG in England or the Local Health Board in Wales.