

# 01 Background:

The Deprivation of Liberty Safeguards were introduced in 2009, following the decision of the European Court of Human Rights in *HL v United Kingdom*. They enable adults to be deprived of their liberty in hospitals and care homes when the person lacks the relevant capacity. However, the DoLS have been heavily criticised since their inception. In 2014 a House of Lords select Committee concluded that DoLS legislation was 'not fit for purpose'. This was swiftly followed by a decision of the Supreme Court, (known as *Cheshire West*).

In 2015 the Law Commission was asked to review DoLS legislation. After public consultation, a final report was issued in March 2017, and set out a new scheme called LPS.

The Mental Capacity (Amendment) Bill, after many changes and amendments received Royal Assent on 16 May 2019.

# National Implementation:

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- The expected start date of the new scheme is now **April 2022**. This has been delayed because of the Coronavirus pandemic.
- **Statutory regulations** giving further details on some parts of the legislation and **The Code of Practice** are currently being written. When published the Government will undertake a public consultation, which will run for 12 weeks.
- **Training** – the DHSC will define training for AMCPs and decide on commissioning of training for other staff in preparation for LPS

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## Changes:

**Age:** 16+ (18+ in care homes)  
**Care Environments:** this is being extended from just Hospitals and Care Homes to **Anywhere**, including Supported Accommodation and own home.  
**Transport:** the arrangements to convey the cared for person are included.  
**Urgent LPS** is now only for life-sustaining treatment or a **Vital Act**

## More Changes:

The **NHS Trust, CCG, Health Board or Local Authority** – whoever is providing or mainly commissioning care becomes the **Responsible Body**. They arrange assessments, authorise the detention, monitor it and are responsible for Reviews and appeals to the Court of Protection.  
**LPS** are initially for a maximum of 1 year. They can be **Renewable** for a further year, and then 3 years.  
**LPS** will no longer have conditions.

# 07 Useful Info

Edge Training and Consultancy

<http://www.edgetraining.org.uk>

How the Law on Authorising deprivation of liberty will change, by Tim Spencer Lane

<https://www.communitycare.co.uk/2019/04/26/law-authorising-deprivation-liberty-will-change/>

## People

**Mental Capacity** and **Mental Disorder** assessments are likely to require **professionals**. **Other** assessments could be completed by anyone instructed by the responsible body. The responsible body decides who will undertake the assessments.

For the **Pre-authorisation Review** the Responsible Body identifies a person not Involved in the 'day to day' care or treatment of the person, to read the completed assessments and decide if the criteria for LPS are met .

If the person is objecting the AMCP – Approved Mental Capacity Practitioner Will undertake the pre-authorisation Review.

## Assessments

**These assessments will be needed.**

- Age
- Mental Capacity
- Mental Disorder
- Deprivation of liberty
- Necessary and Proportionate
- Consultation
- Excluded arrangements (Mental Health act)
- Is the person objecting (AMCP required)
- Is there an Appropriate Person? (If not, need IMCA)

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