Amendment to the Mental Capacity Act: Update June 2020.

In November 2018, SoR published [Consent: Guidance on mental capacity decisions in diagnostic imaging and radiotherapy](https://www.sor.org/sites/default/files/document-versions/consent_guidance_09110218.pdf) The guidance noted that there would be an update to Deprivation of Liberty Safeguards (DoLS) in the future. The Mental Capacity (Amendment) Act 2019 will result in new Liberty Protection Safeguards (LPS) coming into force from October 2020. The new safeguards will alter who can authorise a deprivation of liberty and will replace Deprivation of Liberty Safeguards (DoLS) (1). The new act will: 1) broaden the scope to treat people and deprive them of their liberty in a medical emergency without gaining prior authorisation and 2) will apply to 16-and 17-year olds alongside adults (2). The Law Commission’s proposed reforms around supported decision-making and best interests were not supported when the Bill went through Parliament, a controversial issue (2).

The new LPS legislation will require responsible bodies to authorise an incapacitated person’s deprivation of liberty. The Responsible body will be determined dependent upon where a person is being cared for. For example, that could be an NHS Trust or Local Health Board if the person is being cared for in the hospital, a CCG or Local Health Board for arrangements under NHS Continuing Health Care, or a Local Authority in other situations, such as care homes, supported living and private hospitals. New roles within the bodies include Best Interest Assessors (BIA), Pre-authorisation review officers (PRO) and Approved Mental Capacity Professionals (AMCPs). Roles and responsibilities of the responsible body will include: Identification of an ‘appropriate person’ to represent and support the cared for person; assessment of the cared for person’s capacity; consultation with the cared for person; pre-authorisation reviews; drafting and signing off authorisation records; regular reviews; and the authorisation of a deprivation of liberty in an emergency situation.

Other than emergency situations, deprivation of liberty will have to be authorised in advance by the responsible body. Before a responsible body authorises any deprivation of liberty, it will be required to ensure that the person lacks the capacity to consent to care, the person has a mental disorder or that the arrangements are necessary to prevent harm to the person, proportionate to the likelihood and seriousness of that harm (1). Further information about how this will work in practice will depend on the Codes of Practice and Regulations which are in draft, prior to October 2020 implementation (1). It is expected that by October 2021 only LPS will be used.

1. Bond Solon. Liberty Protection Safeguards (LPS) [Internet]. 2019. Available from: https://www.bondsolon.com/health-social-care/liberty-protection-safeguards-(lps)/

2. Social Care Institute for Excellence . Liberty Protection Safeguards (LPS): Latest Developments [Internet]. 2019 [cited 2020 June 10]. Available from: https://www.scie.org.uk/mca/dols/practice/lps?gclid=Cj0KCQjwyPbzBRDsARIsAFh15Jbs7QkSkCXXLUlyaT1xYk5gDVy5jXoLnDX-oNMssvU\_AI59K0v76bQaArwAEALw\_wcB