



Gofal Cymdeithasol **Cymru**  
Social Care **Wales**

# The Mental Capacity Act, Deprivation of Liberty Safeguards (DoLS) and Liberty Protection Safeguards (LPS)

What you need to understand about the Mental Capacity Act, Deprivation of Liberty Safeguards (DoLS) and Liberty Protection Safeguards (LPS) and how they apply to you.

First published: 27 June 2022

Last updated: 12 December 2022

This document was downloaded from socialcare.wales and may not be the latest version.

Go to <https://socialcare.wales/resources-guidance/social-care-workers/mental-capacity-act-dols-lps> for the latest version.

What you need to understand about the Mental Capacity Act, Deprivation of Liberty Safeguards (DoLS) and Liberty Protection Safeguards (LPS) and how they apply to you.

## What is the Mental Capacity Act?

[The Mental Capacity Act 2005](#) (MCA) has been in force since 2007 and applies to England and Wales.

The main purpose of the MCA is to promote and safeguard decision-making within a legal framework.

It does this in two ways:

- by empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process
- by allowing people to plan ahead for a time in the future when they might lack the capacity.

It sets five principles in law:

1. Assume a person has capacity unless proved otherwise
2. Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them
3. A person should not be treated as incapable of making a decision because their decision may seem unwise
4. Always do things or take decisions for people without capacity in their best interests
5. Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way

## What does mental capacity mean?

Imagine if your consultant had advised you to have a total knee replacement.

- do you have to have it?
- if not, why not?

The answer is no, you don't have to have the operation, if you have capacity to make that decision.

To demonstrate our mental capacity we must:

- understand information relevant to the decision
- retain that information for the length of time needed to make that decision
- weigh up that information
- communicate the decision.

So, if you explained your reasons for refusing the operation to the doctor, showing that you have understood his advice and used that information to make your decision, he can't force you to have it.

Where there's doubt as to a person's ability to make their own decisions, whether that be around what to wear, or where to live, the Mental Capacity Act (2005) might apply.

## **Best interests decision**

Decisions made on behalf of a person without capacity should be made in their best interests, considering the person's known wishes, beliefs and their general well-being.

To decide what's in the best interests of a person who lacks capacity, consider:

- their likely future capacity
- their past and present wishes and feelings
- beliefs and values likely to influence their decision
- other factors that the person would likely consider

Best interest meetings bring together people to make difficult decisions.

You may be invited to best interest meetings to help in the decision-making process.

It's vital to remember that capacity is not a one-off decision but decision-specific.

For example, a person may be able to make choices about their daily life activities but lack capacity in financial areas.

Capacity is also time specific, as people can have fluctuating capacity meaning that although they may be incapacitated currently, they may not be in the future.

Properly engaging the person in the decision-making process, listening to and taking account of their views, wishes and feelings is central to a best interest assessment.

It's important that someone is present who can represent the person's interests. This could be an [advocate](#), or trusted family member who is able to express the individual's and not their personal view about what is best.

You must be familiar with the Mental Capacity Act and should access appropriate training.

The Mental Capacity Act Code of Practice supports the legal framework provided by the Mental Capacity Act and provides guidance and information about how the Act works in practice:

[Mental Capacity Act 2005 Code of Practice](#)

## **Deprivation of Liberty Safeguards (DoLS)**

There are times when a person's freedom may be restricted to prevent them from coming to harm.

For example, we may prevent someone leaving a care home by locking the front door, for fear they may get injured on a busy road.

The MCA allows us to do this in the person's best interests, but we must be authorised to do so.

Deprivation of Liberty Safeguards (DoLS) are an amendment to the MCA and are the current safeguards which protect a person who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

The Court of Protection may authorise depriving a person of their liberty in their own home, a care home or a hospital.

Applying for authorisation is complex and bureaucratic and in March 2014, a House of Lords Select Committee concluded that the DoLS weren't fit for purpose and recommended replacing them.

In 2019 the Mental Capacity (Amendment) Act 2019 received Royal Assent and introduced the Liberty Protection Safeguards (LPS) which will replace DoLS as the process for authorising deprivations of liberty for persons who lack capacity. LPS were due to be implemented in April 2022 but this was delayed due to the coronavirus pandemic. The UK government hasn't yet set a new date for implementation.

## Liberty Protection Safeguards (LPS)

The Liberty Protection Safeguards (LPS) will soon replace the Deprivation of Liberty Safeguards (DoLS). The Social Care Institute for Excellence (SCIE) has created resources for health and social care staff to explain what will change and how you can get ready for the changes.

Visit [the SCIE website](#) to find out more.

## Liberty Protection Safeguards - Looking forwards

We have worked with SCIE to produce this short video explaining the Liberty Protection Safeguards.

[View transcript](#)

0:08

Liberty Protection Safeguards (LPS) - Looking Forwards

0:15

Eleanor Roosevelt, the diplomat and activist who oversaw the

0:17

drafting of the Universal Declaration of Human Rights, is quoted as saying:

0:22

Where, after all, do human rights begin ? In small places, close to home - so close and so small that

0:30

they cannot be seen on any map of the world. Yet they are the world of the individual person.

0:38

The philosophy embodied in this statement underpins an amendment

0:41

to the Mental Capacity Act, due to come into force soon.

0:46

Known as LPS, the Liberty Protection Safeguards, the amendment shifts the focus

0:51

from the deprivation of liberty - as, until now, has been the case -to the protection of liberty.

0:56

Following a series of landmark cases which highlighted shortcomings in both the MCA and DoLS,

1:02

LPS builds on the founding principle of wellbeing that underpins the Social

1:07

services and Wellbeing(Wales) Act 2014 and the Mental Health(Wales) Measure 2010,

1:12

which set in legislation that the core purpose of care and support

1:16

is to help people to achieve the outcomes that matter to them in their life.

1:23

LPS is about making sure that the care and health sectors have done what we can

1:27

to protect the person's liberty and rights to family life.

1:32

The Social Services and Wellbeing Act, the Mental Health Measure and the Mental Capacity

1:37

Act have built a solid foundation for the way we work in health and social care. The

1:42

safeguards will help us to develop the processes we already employ.

1:48

Further to the principle of wellbeing, there are eight other significant principles woven through

1:53

the tapestry of both the Social Services and Wellbeing Act(1:59) and the Mental Health Measure,

1:58

each guiding us to ensure that we keep the person at the centre of any intervention,

2:03

including any that could result in a deprivation of their liberty.

2:07

Strengths - based approach

2:10

We should practice using a strengths-based approach,

2:13

to establish a quality relationship with the individual needing support.

2:17

We should look first at what the individual can do rather than just focusing on their difficulties.

2:24

We should be practicing this way continuously, as promoting individual wellbeing - looking at

2:29

the little things which mean the world to that person - is central to Adult Social Care support.

2:37

Under LPS, the sectors are reminded of the necessity,



2:40

right at the outset, to consider a person's mental capacity to make decisions

2:45

and to work to promote liberty thus maximising the person's gifts, skills and capabilities

2:51

to enable them to exercise their right to make decisions about their own life.

2:59

If during care and support planning or care and treatment planning, arrangements are needed to

3:03

enable that person's care or treatment which may amount to a deprivation of liberty, this,

3:09

regardless of the setting within which it will be provided, should be considered under LPS.

3:16

Our conversations with individuals, regardless of the reason for the contact should be working

3:21

towards supporting the individual to have as much voice and control as possible. We must

3:28

be taking into account the person's values, their beliefs, what is important to them and why: often,

3:35

things so small that they cannot be seen on any map of the world, to enable this to be achieved.

3:43

LPS places a duty on the sectors to consult with the person to ascertain their wishes and feelings,

3:49

and it is explicit that prior to putting any arrangements in place,

3:53

we have actively encouraged and supported participation, ascertained the person's view

3:58

as part of the best interest process, ensuring that it is the least restrictive option.

4:08

Under LPS, the Responsible Body - typically the Health Board or local authority - must ensure that

4:13

support is in place prior to any pre-authorisation assessments and that an Independent Mental

4:19

Capacity Advocate, IMCA, will provide this if an Appropriate Person is not available.

4:25

However, if the person is identified to have at least substantial difficulty at the point

4:30

that an assessment of need begins, then this support mechanism must already be in place. It

4:36

may be from an Appropriate Person, an Independent Advocate or an Independent

4:40

Mental Capacity Advocate, if decisions are to be made in the person's best interest.

4:46

LPS further reinforces the necessity to have a framework through which we can work together to

4:52

maximise the person's involvement, enabling them to retain as much voice and control as possible.

4:59

Transparency is about being clear to the individual

5:02

and those representing them as to why a decision is being made, when it may be necessary to deprive

5:08

an individual of the things which often may seem small, but which mean the world to them.

5:15

LPS builds the protection of liberty into the existing care and support and care and

5:20

treatment planning processes. The conversations around potential deprivations of liberty will

5:25

take place sooner; and if we are working using strengths-based approaches, seeking to support

5:30

the individual to have as much voice and control as possible, maximising their involvement in the

5:35

discussions and the decision-making process, it should be easy to make our practice transparent.

5:43

The Social services and Wellbeing Act and the Mental Health Measure

5:46

recognise that a person's needs may impact on their families and support networks too.

5:51

Under LPS, as consideration to the impact of a care and support

5:56

plan or care and treatment plan on the person's liberty will be taking place

6:00

prior to the deprivation, it will be done in the context of this principle. As such,

6:06

discussions and potential for support of those impacted by the deprivation can take place.

6:14

Being holistic is about ensuring that decisions consider all the individual's circumstances,

6:20

their needs in the context of their skills, ambitions and priorities

6:24

and recognising that it is not possible to support the person with needs,

6:27

without seeing how the person fits into their wider social network.

6:33

To ensure that all the individuals' circumstances are considered, LPS makes it a requirement to

6:38

consult others, for example, anyone interested in the person's welfare.

6:46

Under the Social services and Wellbeing Act and the Mental Health Measure,

6:50

any intervention has to be of benefit to the person concerned - and it needs to be appropriate.

6:56

What is appropriate will be determined by the level of needs of the individual -

7:01

and, as each individual's world is different - our response must be appropriate to that.

7:08

Under LPS, previously determined assessments may be used,

7:11

such as those recorded in care and support plans and Care and Treatment plans,

7:16

capacity to consent to arrangements and medical assessment of a mental disorder, if they remain

7:21

appropriate. This enables an appropriate level of intrusion in the person's world.

7:28

Whilst there is flexibility under DoLS regarding the time frame for authorisation, LPS will offer

7:34

greater flexibility appropriate to the person's needs and not subjecting them to annual renewals.

7:41

For example, for someone with end stage dementia, it may not be necessary to

7:46

renew on an annual basis as, on the balance of probability, their capacity will not return.

7:53

However, the opportunity exists to request unscheduled reviews, should an individual's

7:59

circumstances change. Furthermore reviews of LPS, Care and Support plans

8:05

or care and treatment plans can be aligned thus reducing unnecessary bureaucracy.

8:13

The principle of proportionality ensures that the level of support provided

8:18

corresponds with the level of need - and no more. We should protect human rights - which

8:23

begin in small places - and we should not be intruding in these unnecessarily.

8:29

Currently, the Best Interest Assessment for a DoL authorisation seeks to ensure that the

8:35

deprivation is a proportionate response to the likelihood of the person suffering harm - taking

8:40

into account the seriousness of that harm - and that the placement is necessary to prevent this.

8:46

LPS considers how a care and support plan or care and treatment plan in any

8:50

setting could jeopardise the person's liberty, and that the deprivation is

8:54

proportionate to the perceived level of harm and subsequent impact of it.

8:59

The Social services and Wellbeing Act and the Mental Health Measure recognise that contact

9:04

with a person at a single point in time will not necessarily provide a full picture of their needs.

9:10

As there is the expectation under LPS that the sectors will be working to protect a person's

9:15

liberty, there will be more scope to ensure that a fuller understanding

9:19

of not only what is important for the person, but important to them and why,

9:24

those things so small that "they cannot be seen on any map of the

9:29

world ... the world of the individual person."

9:33



LPS reinforces the necessity of the Social services and Wellbeing Act and the Mental

9:38

Health Measure to ensure that the person is fully involved, ensuring that their voice is heard,

9:43

and that they are - to the best of their ability - making decisions for themselves.

9:50

As with DoLS, under LPS, there is a specific duty for the Responsible Body to make sure

9:55

support is in place. What is different under LPS is that

10:00

it explicitly introduces a Duty to Consult and consider a person's wishes and feelings

10:09

LPS involves the legal responsibility to protect liberty and places a duty

10:13

on Responsible Bodies to assess for and authorise proposed deprivations of liberty, in any setting,

10:19

rather than authorising once liberty has been deprived.

10:25

Building on the successes of the MCA, DoLS and the principles of both the Social services

10:30

and Wellbeing Act and the Mental Health Measure, LPS may be seen as a recognition

10:35

of the truth which lies behind Eleanor Roosevelt's statement regarding the origin of human rights.

10:42

Where, after all, do human rights begin? In small places, close to home - so close and so small

10:49

that they cannot be seen on any map of the world. Yet they are the world of the individual person.

## **LPS overview and key facts, produced by Edge Consultancy and Training**

### [Liberty Protection Safeguards \(LPS\) overview](#)

Liberty Protection Safeguards in Wales overview, produced by Edge Training and Consultancy  
Link

### [Liberty Protection Safeguards \(Wales\) - key facts](#)

Key facts about the LPS produced by Edge Training and Consultancy  
Link