

Mental Capacity Act (MCA) and Liberty Protection Safeguards (LPS) update



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~~1st October 2020~~

1st April 2022

We have finally had the long awaited "go live date" for the Liberty Protection Safeguards which we had originally expected to become statute on 1st October 2020 has now been set as 1st April 2022.

There had already been an inevitable delay to this legislation for a number of reasons which were then compounded by the Corona Virus crisis.

While April 2022 seems a very long way off there are lots of preparations which need to be in place prior to LPS going live including scoping out the numbers of people who will be impacted by this, ensuring that the Hospital and NHS Trusts, and the Clinical Commissioning Group have adequate systems in place to be able to manage the referrals and assessments within those settings and ensuring that there is adequate training in place for local authority staff, care home staff and hospital staff.

One of the challenges which will face all of us is to identify those people who are self funding their care and also people in the community who may need to have authorisations.

We now know that we will continue to work within DoLs until the start date of LPS and they will remain in place for a further year running alongside LPS, so care homes and hospitals, please keep referrals coming in they are more important than ever.

Please watch out for updates and training, as soon as there is a Code of Practice the MCA Team will be providing training as well training provided by the government.

It is very likely that we will not see a draft code of practice until sometime early next year. When its released there will be a period of consultation which will be your opportunity to have your say and influence over the finished legislation.

Please look out for opportunities to become involved in the consultation.



Official Announcement



The Government [announced](#) 16th July that the LPS would not be coming into force on 1 October 2020, but instead in April 2022. It has been clear for some time that 1 October was not just ambitious, but impossible, so this clarification is very welcome. In a written statement, the Care Minister, Helen Whately, told Parliament that, whilst the intention had been to bring them into force on 1 October 2020:

It is now clear that successful implementation is not possible by this October. We now aim for full implementation of LPS by April 2022. Some provisions, covering new roles and training, will come into force ahead of that date. I will continue to update the sector and stakeholders on timings.

The Government will undertake a public consultation on the draft regulations and Code of Practice for LPS. That will run for 12 weeks, allowing sufficient time for those that are affected, including those with learning disabilities, to engage properly.

The sector will need time following the publication of the final Code to prepare for implementation. We will give the sector sufficient time to prepare for the new system to ensure successful implementation. I am considering a period of approximately six months for this.



After we have considered responses to the consultation, the updated Code and regulations will need to be laid in Parliament to allow for proper scrutiny. This needs to happen well in advance of the target implementation date, first to allow for that scrutiny and second because some of the regulations need to come into force earlier.

Health and social care has been at the frontline of the nation's response to COVID-19, with social care providers looking after many of the most vulnerable in society. We have received representations from public and private bodies from across the sector over the last few months, outlining the pressures they face if they were to implement by October 2020.

My overall objective remains to ensure implementation of an effective system in particular for those whose lives will be most affected by this legislation.

The forthcoming draft Code of Practice and regulations will also offer more detailed information about how LPS will operate in practice. I will provide a further update on the progress of implementation in due course. I hope that the additional time announced today provides reassurance to the sector.



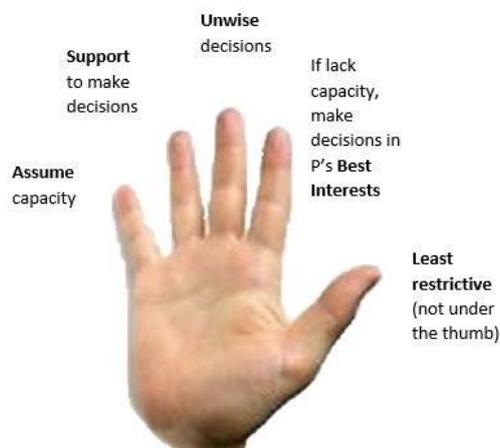
This announcement is very timely: as the CQC has identified in its 3rd "Covid Insight" [published](#) on 15 July: our inspectors have seen that, with providers increasingly looking towards the introduction of the Liberty Protection Safeguards (LPS), providers' focus on DoLS has waned and training in some areas has stagnated. Poor understanding of DoLS has remained a fundamental issue. This together with the delays and uncertainty over the progress of LPS may mean there is an increasing risk of people being deprived of their liberty without the proper authorisation.

TRAINING



It will be very important to make clear that, with nearly 2 years left until LPS comes fully into force, training on DoLS must continue; when the revised timeline promised by the Care Minister is published, thought will need to be given as to how that training can start to move towards LPS implementation. Similarly, DoLS (and also community DoL applications) must continue to be deployed where necessary, and insofar as possible.

It is also important to flag that it is already possible for work required by DoLS and (equally, if not more importantly, community Deprivation of Liberty applications) to be done in such a way as to build towards LPS implementation. By way of example, a community DoL application (on a COPDOL11 form) already contains, in essence, all of the materials that would be required for consideration of the position under LPS.



Liberty Protection Safeguards is an opportunity to embed the Mental Capacity Act in every day practice and protect and empower vulnerable people. So keep the 5 principles in mind and you cannot go far wrong.

Clarification on when to go to the Court of Protection



In the most recent [newsletter](#), I wrote a piece about discharging patients from hospital who may lack capacity and who are objecting to the proposed discharge destination. I emphasised the point that, where restraint is needed to move the patient, an application to the Court of protection must be obtained in order to authorise this move. This may have given the impression that a Court Order is only needed where restraint is going to be used to move a patient. This is not the case. If a patient is clearly objecting to the proposed discharge, then the authorisation of the Court of Protection will be needed to overturn this objection and an application to the court is required.

I am sorry if the way I explained this previously caused any confusion and, should you not be sure about a particular situation, please contact us at the MCA Team.

Paul Greening

Mental Capacity Act Manager

Useful Links



[Alex Ruck Keene's - Shedinars](#)

Edge animation on the [what we know so far about LPS](#).

The [Amendment Bill](#)

[SCIE](#)