

READING BOROUGH COUNCIL

EXECUTIVE DIRECTOR OF SOCIAL CARE & HEALTH

TO:	ADULT SOCIAL CARE, CHILDREN'S SERVICES AND EDUCATION COMMITTEE		
DATE:	13 JULY 2022		
TITLE:	ADULT SOCIAL CARE LIBERTY PROTECTION SAFEGUARDS		
LEAD COUNCILLOR:	COUNCILLOR ENNIS	PORTFOLIO:	ADULT SOCIAL CARE HEALTH, WELLBEING & SPORT
SERVICE:	ADULT SOCIAL CARE	WARDS:	BOROUGHWIDE
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report outlines the legislative changes which are due to be implemented in relation to people who lack capacity to consent to their care needs being met.
- 1.2 The current arrangements under the Deprivation of Liberty Safeguards (Mental Capacity Act 2005) are due to be replaced by new legislation in the form of Liberty Protection Safeguards (LPS). The implementation date is yet to be confirmed but the Code of Practice and Regulations have been laid before Parliament and are currently subject to consultation.
- 1.3 This will be one of the most significant legislative changes affecting social care services since the introduction of the Care Act in 2014.

2. RECOMMENDED ACTION

- 2.1 That the Adult Social Care, Children's Services and Education Committee:
 - 2.2 a) Note the legislative changes proposed.
 - b) Endorse the planning and preparation in the Council to ensure compliance with the new legal framework.

3. BACKGROUND

- 3.1 The Deprivation of Liberty Safeguards (DoLS) were introduced to provide a legal framework to prevent breaches of the European Convention on Human Rights (ECHR). In line with the ECHR any deprivation of liberty must be in accordance with a 'procedure prescribed by law'. The DoLS arrangements therefore provide legal protection for those vulnerable people who are, or who may become, deprived of their liberty within the meaning of Article 5 of the ECHR, in a hospital or care home, whether placed under private or public arrangements.
- 3.2 The safeguards apply to adults 18 and over and exist to provide a proper legal process and suitable protection in those circumstances where a deprivation of liberty appears to be unavoidable, in a person's best interests.

- 3.3 The safeguards provide for deprivation of liberty to be made lawful through ‘standard’ and ‘urgent’ authorisation processes, designed to prevent arbitrary decisions to deprive a person of their liberty and a right to challenge authorisation decisions.
- 3.4 The current process is that a managing authority (a hospital or care home) must seek authorisation from a supervisory body (local authority) in order to be able to lawfully deprive someone of their liberty. Before giving such an authorisation, the supervisory body must be satisfied that the person has a mental disorder and lacks capacity to decide about their care and treatment.
- 3.5 In 2014 a judgement in the Supreme Court known as the ‘Cheshire West’ judgement set a new ‘acid test’ which led to many more people being found to be deprived of their liberty. To be deprived of their liberty an adult lacking capacity to consent to their care needs being met must be subject to both continuous supervision and control and not being able to leave.
- 3.6 As a result, tens of thousands more care home residents and people in hospitals fall within this definition.
- 3.7 This has had a significant impact on resources across the sector, particularly for local authorities in their role as Supervisory Body.

4. KEY CHANGES

- 4.1 The intention of LPS is to provide a simplified process which is based more around usual care and support planning processes and only involves specialist assessment in particular circumstances.
- 4.2 The following table provides a summary of the key changes:

Deprivation of Liberty Safeguards (present arrangements)	Liberty Protection Safeguards (new arrangements)
<ul style="list-style-type: none"> • Applies in care homes and hospitals 	<ul style="list-style-type: none"> • Applies in any setting
<ul style="list-style-type: none"> • Applies from age 18 	<ul style="list-style-type: none"> • Applies from age 16
<ul style="list-style-type: none"> • Applies to one specific setting only 	<ul style="list-style-type: none"> • Can include several settings
<ul style="list-style-type: none"> • Care home or hospital identify the acid test is met 	<ul style="list-style-type: none"> • Frontline staff / anyone involved where the acid test is met
<ul style="list-style-type: none"> • 6 assessments 	<ul style="list-style-type: none"> • 3 assessments
<ul style="list-style-type: none"> • Assessments only valid for up to 12 months 	<ul style="list-style-type: none"> • Some assessments can be reused
<ul style="list-style-type: none"> • Specialist assessors 	<ul style="list-style-type: none"> • Front line staff
<ul style="list-style-type: none"> • Lasts for up to 12 months 	<ul style="list-style-type: none"> • Lasts for up to 12 months x 2 then up to 3 years
<ul style="list-style-type: none"> • Does not include transport 	<ul style="list-style-type: none"> • Includes transport

- 4.3 There will be 3 Responsible Bodies who will act as decision makers, these will be extended to NHS Commissioners and Hospital Managers.

5. PLANNING AND PREPARATION

- 5.1 Reading Borough Council have been preparing for the legislative changes through engagement with national and regional events, in collaboration with neighbouring local authorities and partner agencies. There is an existing regional DoLS forum, which has held several sessions for practitioners and managers.
- 5.2 Sessions have been arranged with expert barristers and solicitors, who have provided presentations and training materials.
- 5.3 An extensive training programme has been rolled out across Adult Social Care to ensure all staff have a substantial knowledge of the application of the Mental Capacity Act, which is the foundation for the Liberty Protection Safeguards.
- 5.4 Reading will be submitting a response to the national consultation, together with colleagues from the Legal Team. Feedback on the consultation is being encouraged and promoted widely across all staff groups.
- 5.5 An implementation plan will be overseen by the Council's Adults, Care and Quality Board. This will include a revision to pathways, processes and documentation, once the final Code of Practice is published and an implementation date confirmed.
- 5.6 Co-ordination will be overseen by the DoLS Team and the incumbent Principal Social Worker (to commence in her role in June 2022).

6. CONTRIBUTION TO STRATEGIC AIMS

- 6.1 This report contributes to the Corporate Plan Priority 3: To protect and enhance the lives of vulnerable adults and children, by ensuring appropriate oversight of Adult Social Care performance.

6. ENVIRONMENTAL AND CLIMATE IMPLICATIONS

- 6.1 There are no expected environmental or climate issues.

7 COMMUNITY ENGAGEMENT AND INFORMATION

- 7.1 Th Council will take the opportunity to make partners aware of the new changes, at forums involving the voluntary and community sector.

8. EQUALITY IMPACT ASSESSMENT

The contents of this report are for information only at this stage, an equality impact assessment will be completed on confirmation of the final details.

9. LEGAL IMPLICATIONS

- 9.1 There are legal implications in respect of core statutory duties, as RBC will need to comply with the new legal responsibilities.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no specific financial implications at this time, from the information available to date costs are expected to be absorbed within existing budgets.

11. BACKGROUND INFORMATION

- 11.1 [Mental Capacity \(Amendment\) Act 2019: Liberty Protection Safeguards \(LPS\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/mental-capacity-amendment-act-2019-liberty-protection-safeguards)