



**Law
Commission**
Reforming the law

People who cannot make some decisions and have lost their liberty



What we think so far



An EasyRead version of
The Law Commission Mental Capacity and Deprivation
of Liberty: Interim Statement



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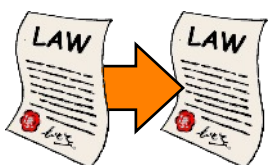
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Some words in this paper can be difficult to understand. They are printed in **bold**, then put into easy English at the back.



Law
Commission
Reforming the law

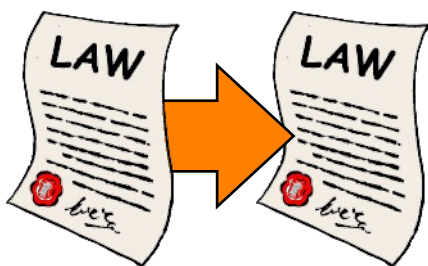


What this paper is about

The Law Commission wrote this report.



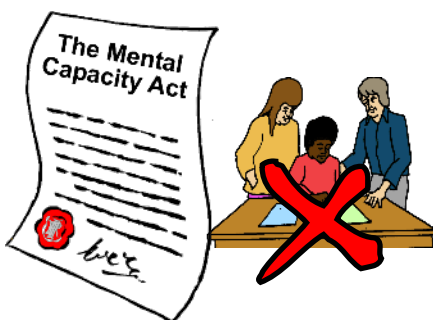
We look at laws and tell the government if we think they need to change.



This paper is about changes to the law for people who cannot make some decisions.



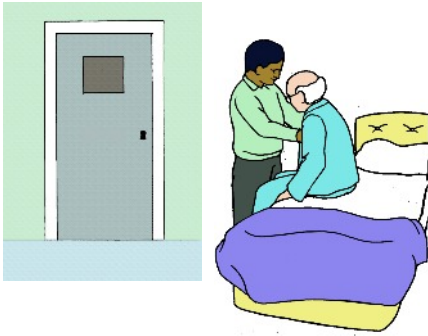
Being able to make a particular decision or choice at a particular time is called having **capacity**.



A law called the **Mental Capacity Act** says what must happen if you do not have capacity.



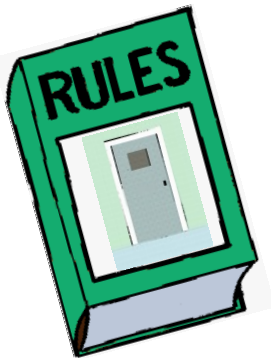
You might have to stay somewhere to get treatment or to keep yourself or other people safe.



If this happens, you lose your **liberty**.

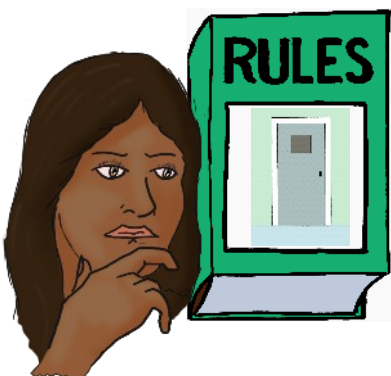


Liberty means being able to go where you want, with the people you want, when you want.



In the Mental Capacity Act there are rules for people who lose their liberty.

The rules protect people who need to stay somewhere because it is the best thing for them.



Last year we asked people what they thought about our ideas for changes to the rules.



This is not our final report. It says what we think so far.

December 2016									
M	T	W	T	F	S	S			
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We will give our final report to the government before the end of 2016. They will look at our ideas and decide what to do.

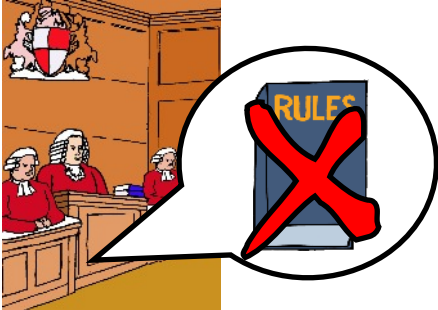
Why we looked at the law



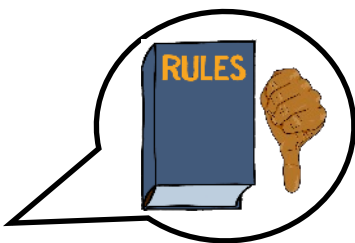
In 1997 a man with learning disabilities and autism was being cared for in hospital.



His carers said he should be allowed to go home but the hospital did not agree.



A court decided the hospital had broken the law and the government made rules to stop this happening again. These rules are the **Deprivation of Liberty Safeguards**.

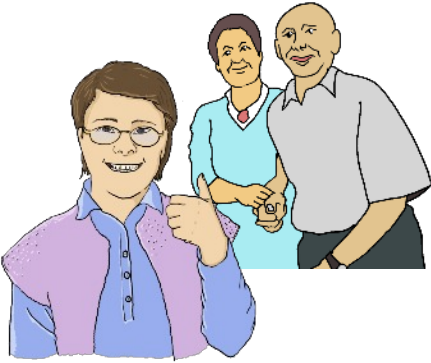


People said the rules are difficult to use.



We thought the law needed to change. We called the new rules **protective care**.

What was protective care?



Protective care must make life better for you. It was not just about keeping you safe.



It would be for people:

- over 16 years old



- with a learning disability



- or who have problems remembering and get confused – like **dementia**.



There were 3 main parts of protective care:

1. Supportive care



2. Restrictive care and treatment



3. Protective care in hospitals.



1. Supportive care

This would protect people who cannot make some decisions about where to live for care or treatment.



It was for when you live in or move into:

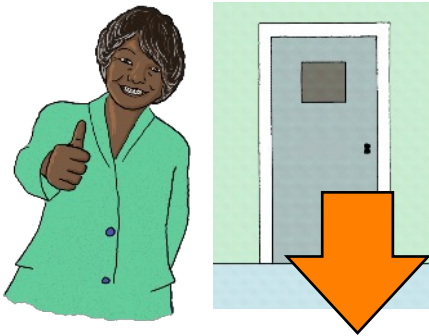
- a care home



- supported living



- a **shared lives** home.



It would protect your rights if you need to live somewhere that takes away your liberty.



The council must do a proper **assessment** to find out what you need. They must check your health and care.



The NHS and council must say how they made decisions for you.



You should have an advocate if you want one to help you be involved in decisions.



2. Restrictive care and treatment

Restrictive care was like the old rules.



It would keep you safe if you lose your liberty when you live in:

- a care home



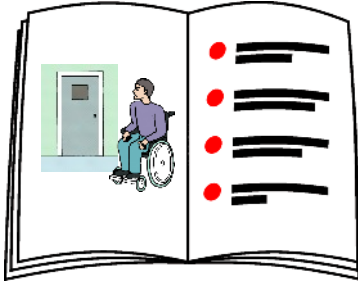
- supported living



- a shared lives home



An **approved professional** (the Approved Mental Capacity Professional) would be in charge of assessments to find out what you need. They would decide what can happen to you and check you are treated well.



If you have to lose your liberty this must be put in your care plan.



The **approved professional** must say this has been done properly.

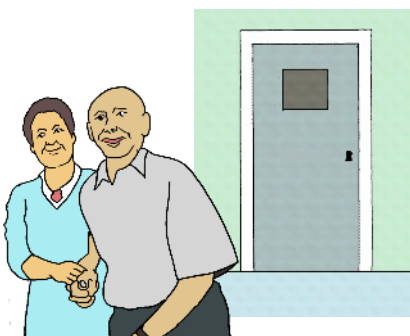


You, your advocate or family can ask a court to decide if you think you should not lose your liberty.



3. Protective care in hospitals

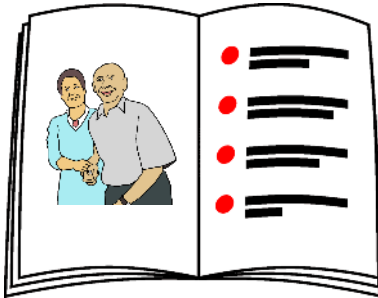
This would protect people who cannot agree to stay in hospital for treatment they need.



If you have to lose your liberty to get the treatment you would have protective care.



You can only lose your liberty for 28 days. Then an **approved professional** must assess you to see what you need.



Protective care must go in your care plan. Everyone in protective care needs an advocate.



Other changes

We thought the **Mental Health Act** needed some changes to deal with mental health patients who lose their liberty.



At the moment **coroners** have to look into things if anyone dies while they have lost their liberty.



A **coroner** looks at why someone died if there are any worries about their death.



We thought this should not happen if someone dies of an illness or something else that is normal.

Finding out what people think



We asked people in England and Wales about these ideas.



We had different meetings and events and spoke to:

- patients



- people who use services



- families



- people who work in health and social care services



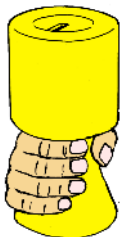
- people who study health and social care



- lawyers



- organisations that check services



- charities



- groups that want to make care better.



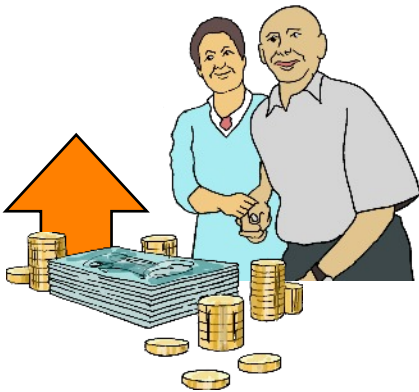
Thank you to everyone who got involved.

The main things people told us



Paying for the changes

A lot of people said the NHS and councils have less money and cannot cope with what they have to do at the moment.



They thought the changes would mean more work and some people might not get the support they need. They thought protective care would cost too much money.



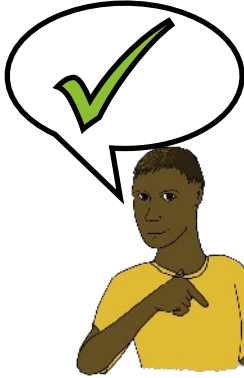
Protective care

People thought protective care would protect people wherever they live or get treatment.



Many people thought protective care would:

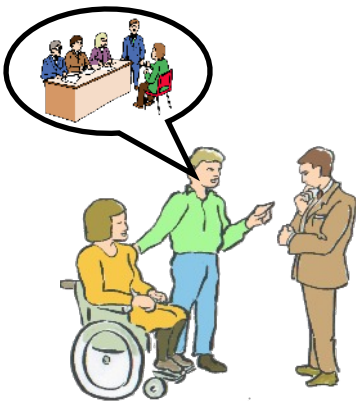
- give people the chance to live good, healthy lives



- make sure everyone understands what is important to the person



- make it quicker and easier for people to get the right treatment



- make it easier for people, their families or carers to ask a court if they think you should not lose your liberty

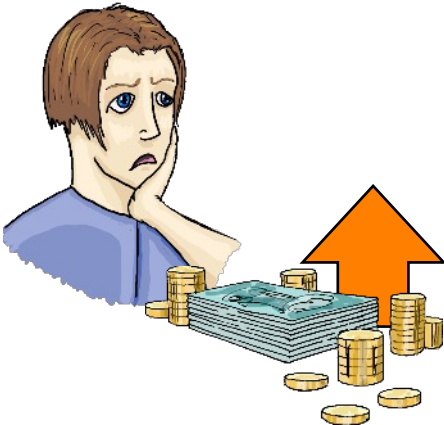


- think about what is important to the person as well as keeping them safe.



Supportive care and restrictive care and treatment

A lot of people liked the different stages to make sure people do not always lose their liberty.



Some people thought this might make things more confusing or expensive.



They felt it was important to involve the courts in everything.



Protective care in hospitals.

Most people thought it was good to have a separate way of working for hospitals.

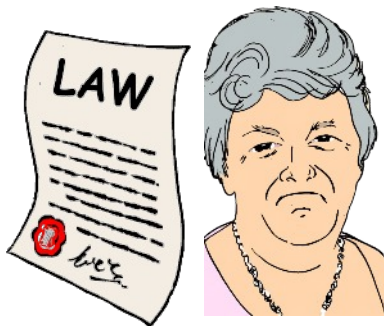


But hospital staff must understand and use the law properly if social workers do not check what they do.



The Mental Health Act

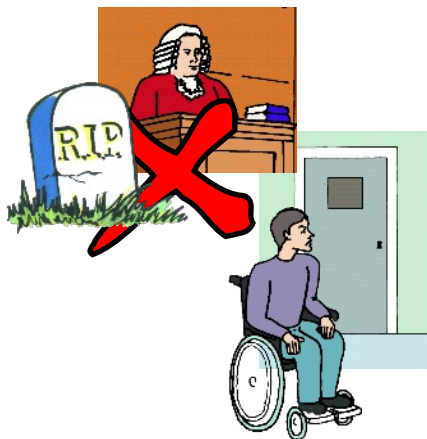
Most people agreed with the changes for mental health patients who lose their liberty.



They said the law is confusing at the moment.



Some people were worried that changes might mean patients lose their right to have care when they leave hospital.



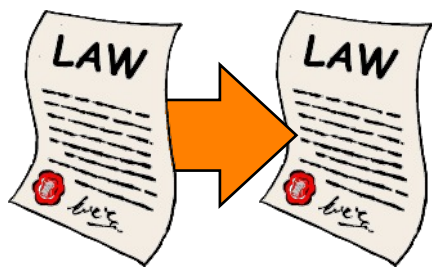
Coroners

Most people agreed that **coroners** should not be involved for everyone who dies while they have lost their liberty.



People said this can upset families and make lots of extra work for the police and coroners.

What we think so far



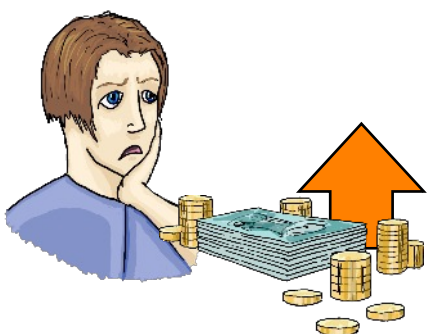
People agree the law needs to change to support people better when they cannot make some decisions.



We know the system is not working well.



Services cannot cope with everyone who loses their liberty.



Some people were worried that it will cost too much money to make the changes.

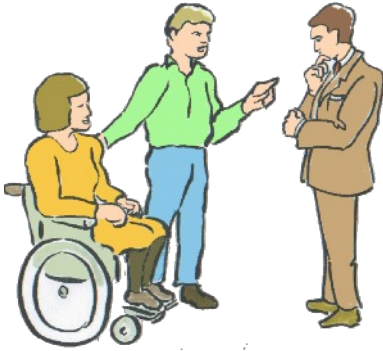


We understand that services have less money but we think it is important to:

- keep people safe



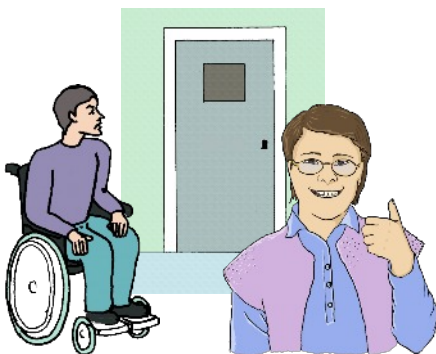
- make sure the person and their family have all their rights protected



- have the right to an advocate.

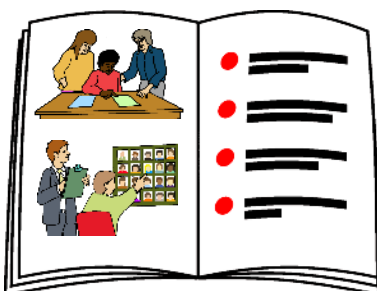


Because of this, we think the government should not carry out all our ideas for protective care.



We think the changes should:

- keep people safe when they lose their liberty



- use care plans to make sure people get the right care and treatment



- mean the NHS or council must say why the person should lose their liberty



- say the person should have an advocate or someone to help them speak up



- use **assessments** that have already been done to find out what the person needs, not do lots of new **assessments**



- think about whether some people need extra support from a **approved professional** when they lose their liberty



- not have a different way to work for hospitals



- not make as many changes to the Mental Health Act



- make changes so **coroners** do not look into every death when a person has lost their liberty.



We are still thinking about the best way to make it easy for people, their families or carers to ask a court or **tribunal** if they think you should not lose your liberty.



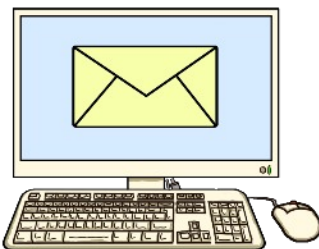
People said we need a better name for the new way of working.



The favourite name was 'Liberty Safeguards' and people also liked 'Capacity Safeguards'. But we have not decided on a new name.



Please tell us if you have an idea for a new name.



Email your idea to:
Olivia.bird@lawcommission.gsi.gov.uk

Hard words

Approved Mental Capacity Professional (or approved professional) – the person in charge of assessments for people who lose their liberty.

Assessment – when a person finds out if the protective care rules apply to you.

Capacity – being able to make a particular decision or choice at a particular time.

Coroner – a person who looks at why someone died if there are any worries about their death.

Liberty – means being able to go where you want, with the people you want, when you want.

Protective care - our ideas for new way of caring for people who have lost their liberty.

Shared lives - when a person who needs support lives with a family and pays them rent.

Tribunal – a group of legal and non-legal experts who help to stop people being treated unfairly.



The **Making it Easier Group**,
making it easy with **Leading
Lives**.



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