# WRITTEN STATEMENT

# BY

# THE WELSH GOVERNMENT

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| **TITLE**  | **Welsh Government consultation on Regulations for Wales to support the implementation of the Liberty Protection Safeguards** |
| **DATE**  | **17 March 2022** |
| **BY** | **Eluned Morgan, Minister for Health and Social Services** |

Today the Welsh Government launches its consultation on Regulations for Wales which will support the implementation of the new Liberty Protection Safeguards (the LPS).

The right to liberty is one of our most fundamental human rights. The Deprivation of Liberty Safeguards (DoLS) is the existing scheme under the Mental Capacity Act 2005 to protect those who lack the mental capacity to consent to their care and treatment where that involves being deprived of their liberty. In 2019, the UK Government passed the Mental Capacity (Amendment) Act which will repeal DoLS and replace it with the LPS.

Unlike DoLS (which only applied to arrangements in care homes and hospitals and to people aged 18 and above), the LPS will apply in all settings and to anyone aged 16 and over. For the first time, the LPS will also extend to people’s homes providing equivalent safeguards for individuals whilst respecting their private spaces. The new safeguards will embed and promote into practice Article 5 (right to liberty) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

Although the Mental Capacity Act 2005 is predominantly reserved to the UK Government, the Welsh Government is supportive of the reforms as part of a structured and timely approach to implementation, underpinned by a comprehensive workforce planning and training framework.

The Mental Capacity (Amendment) Act 2019 provides the regulation-making powers for the Welsh Ministers to address the widely recognised challenges associated with the current DoLS system. In our Regulations for Wales, we have aligned the LPS with our Welsh rights-based legislation which puts the person at the heart of the decision-making process. This will better integrate consideration of the LPS and the principles of the Mental Capacity Act into everyday care, support or treatment arrangements – minimising duplication and repetition for individuals, their families and those that support them.

The draft Regulations for Wales focus on four key elements of the LPS: the appointment and role of Independent Mental Capacity Advocates; specifying who can undertake assessments, make determinations and carry out pre-authorisation reviews as part of the LPS process; the role and appointment of the new Approved Mental Capacity Professional; and monitoring and reporting on the LPS. We are publishing a number of draft Impact Assessments and we will use the consultation period to gather further evidence of impacts regarding the Regulations. We will also continue our engagement with stakeholders on our proposals for monitoring and reporting on the LPS (including a new National Minimum Data Set), as well as our draft Workforce Plan and Training Framework for the LPS.

Each of the consultation products has been developed in partnership with stakeholder representatives from across Wales through the LPS Implementation Steering Group for Wales and supporting work streams and sub-groups on workforce and training; monitoring and reporting; 16 and 17 year olds; and the transition from DoLS to the LPS. The consultation provides us with the opportunity to review and engage more widely. We will also use the consultation to inform our planning for the transitional arrangements from DoLS to the LPS.

The consultation on draft Regulations for Wales is aligned with the UK Government’s [consultation on draft Regulations for England and a new Code of Practice](https://www.gov.uk/government/consultations/changes-to-the-mca-code-of-practice-and-implementation-of-the-lps) for the Mental Capacity Act and the LPS for England and Wales. The Regulations for Wales and the Code of Practice go hand in hand and so we would encourage all stakeholders in Wales to also consider and respond to the UK Government consultation on the draft Code of Practice.

A long term funding strategy for the LPS in Wales must be developed. This will be informed by the consultation and will be dependent on the final regulations and Code of Practice. Ahead of this, a Welsh Government funding strategy has been agreed which includes £8million transitional costs for the LPS in 2022/23.  This will facilitate the rollout of training, development of workforce plans, plans for monitoring and reporting, and improved provision of certain key roles, such as Independent Mental Capacity Advocates, ahead of the implementation of the LPS. The Welsh Government indicative funding strategy is for this funding to continue in 2023/24 and 2024/25 to support implementation in the transitional year and beyond. Dependent on the outcome of the consultation, early intentions are for funding in years two and three to increase to up to £17million per year, in line with the expected costs identified within the draft Regulatory Impact Assessment.

If we are to address the existing challenges within DoLS and secure the anticipated benefits from the LPS, it is critical that practitioners are in a position of strength to transition from one system to another. We will continue to work with UK Government colleagues to reinforce these messages as we analyse the consultation responses and plan for implementation.

Ultimately, introducing the new safeguards provides us with an opportunity to strengthen our position in Wales in terms of protecting the human rights of those people who lack mental capacity. Your views and those of your constituents on the draft Regulations for Wales are therefore paramount.

[https://gov.wales/liberty-protection-safeguards](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgov.wales%2Fliberty-protection-safeguards&data=04%7C01%7CEdward.Silva%40gov.wales%7C6287b4296b2e40a966e808d958160198%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637637673795482113%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=V7Euxqm2l%2BGrx43H2lsR2x5X1JpavD4i1SphoaHSxcc%3D&reserved=0)

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