



Liberty Protection Safeguards

Laws for keeping people safe when they cannot make their own decisions

What people said about planned changes to these laws and new rules in Wales



This document was written by the **Welsh Government**. It is an easy read version of ‘**Consultation – Summary of Responses – Draft Regulations for Wales: Liberty Protection Safeguards**’.

May 2023

How to use this document



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Words in **bold blue writing** may be hard to understand. You can check what the words in blue mean on **page 34**.



Llywodraeth Cymru
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Contents

Page

Introduction.....4

More information about the questions we asked.....7

What people said.....9

Next steps.....33

Hard words.....34

Introduction



In March 2022, we asked people for their views on new **Regulations** for keeping people who **lack capacity** safe. **Regulations** are laws in Wales that set out new rules.

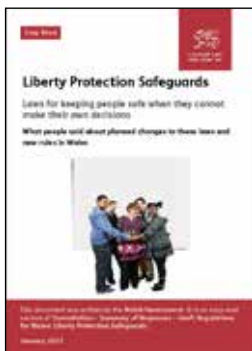


Lack capacity means a person's mind is not working as it should for some reason. And this means they cannot make decisions for themselves about a particular issue at that time.

Someone might **lack capacity** because of things like:

- a disability, illness, or injury
- dementia
- a mental health problem

They might be unable to understand information about a decision. Or they might be unable to communicate their decision.



This document is about what people said about the new **Liberty Protection Safeguards (the LPS)**. The UK Government have now said they will not be doing the work to start the **LPS** until after the next UK Government election.



We have laws that help make sure people who **lack capacity** are kept safe.



Some of these laws need to be updated in England and in Wales.



Under the old laws people who **lack capacity** were protected by a system called the **Deprivation of Liberty Safeguards**. We call it **DoLS** for short.



This was going to be replaced with the **Liberty Protection Safeguards**. We call it the **LPS** for short.



The **LPS** are meant to give better rights and protection to people who **lack capacity** to agree to have care or treatment that takes away their freedom somehow.



For example, for your safety, hospital staff may stop you from walking around or leaving the building. People who have **capacity** can agree to this care and treatment.



Someone who **lacks capacity** may not be able to agree to this care or treatment. The LPS are meant to help protect those people and make sure they are treated fairly.



The **LPS** are meant to make sure the person is put first, has a stronger voice and is listened to.



Unlike the old **DoLS** system, the **LPS** would be used in **all settings** for anyone who is **16 years old and over** who **lacks capacity**.



This would mean everyone must follow the **LPS** rules in people's daily lives and in their own homes, not just in care homes and hospitals.

More information about the questions we asked



We asked people questions about their views on the new **LPS** laws. This is called a **consultation**.

In the **consultation** we asked questions about:



- The 4 sets of new **laws** in Wales. People and services must follow the rules set out by these laws. They help make sure the **LPS** is being followed properly.



- A new **National Minimum Data Set**. This is a list of the information that services must collect when using the **LPS**. This will help us check and understand how the **LPS** is working across Wales.



- A **workforce and training plan**. This will look at things like how many staff are needed with different skills to use the **LPS**.



- **Impact assessments** – these are documents that look at what impacts the **LPS** might have. Like how it will impact people's rights, how much it will cost and how it will be better.



You can find all the information about the consultation here: www.gov.wales/liberty-protection-safeguards



We had 72 responses to the consultation. They were from different people across Wales.



The next section shows the questions we asked and what people said.



There were 22 questions.

What people said

Question 1



Question 1 asked if the changes to the law made it clearer what **Independent Mental Capacity Advocates** or **IMCAs** will do to help people who **lack capacity**.



IMCAs are professionals with special training. They make sure the voices of people who **lack capacity** are heard. They help protect their rights and choices.

What people said:



Most people said yes, the changes to the law made the role clearer.



Some said the changes need to be made clearer.



Some people said the difference between an **IMCA** and an **Appropriate Person** needs to be made clearer.



An **Appropriate Person** is someone who gives support to a person who **lacks capacity**. They may also speak up for them. For example, a family member or friend.



Some people were worried if there would be enough training for staff. And enough funding.



Some people said they wanted to make sure there would be enough **IMCAs** who spoke Welsh.

Question 2



Question 2 asked for people's views about who can do **assessments** and **reviews** and decide when someone **lacks capacity**.



Assessments are used to check if someone **lacks capacity**. And to check if the care suggested for them is needed to keep them safe when the care takes away some of their freedoms.

Assessments must be done by people with the right skills and experience.



A **pre-authorisation review** is a final check to make sure the **assessments** were done properly, and the best decisions were made for the person.

Reviews must be done by a person with the right skills and experience.

What people said:



Some people said the rules were clear. Some said they were too long and need to be simpler.



Some people were worried because the rules do not clearly say who should do **reviews**.



Some people said there needed to be more guidance around how **assessments** and **reviews** are organised.



Clearer information is needed about who can do **assessments**. People were confused about whether it can be someone who already cares for the person or not. And if it can be people from the same team or not.



There were worries that the changes would mean some professionals who would usually do **assessments** would no longer be able to do them. Other people suggested other professions should be able to undertake **assessments**.



Some people felt that not all GPs are able to do medical **assessments** for different reasons.



People were worried that the time given to do **assessments** was not long enough.



People said it was important that **assessments** are done in Welsh where that is the language that the person prefers to use.

Question 3



Question 3 asked if the new rules would help professionals do **assessments** and make decisions.

What people said:



People were worried that there are not enough staff and time to do **assessments**.



Training is really important for people doing **assessments**, **reviews** and making decisions.

Question 4



Question 4 asked if the new rules would protect people's money and property.

What people said:



Most people felt the new rules would keep people's money and finances protected.



But training for **Approved Mental Capacity Professionals** will be important.



An **Approved Mental Capacity Professional** or **AMCP** is a professional whose job it is to help people with the **Liberty Protection Safeguards**. This would be a new job role.

Questions 5, 6, 7, 8, 9 and 10



Question 5, 6, 7, 8, 9 and 10 asked people for their views on the role of **AMCPs**.

What people said:



Some thought the rules were clear. Others felt they needed more information.



Some thought it needed to be made clearer how **AMCPs** would be managed.



Most people thought the rules for approving **AMCPs** were good.

About working together



People said health boards and local authorities would have to work together to make sure there were enough **AMCPs**.



People agreed the rules should help local authorities work together and with partners to approve **AMCPs**.



People said the rules should be stronger and say that partners must work together to approve **AMCPs**.



Some people thought **AMCPs** should be approved to do the role for a set amount of time.



Some thought it needed to be made clearer how health boards and local authorities would work together.

Working as AMCPs



Most people thought the new rules would allow professionals to manage the role of an **AMCP** well.



Some thought staff from other job roles should be able to become an **AMCP**.



Some worried there would be high demand for **AMCPs**. Which would have an impact on staff time and would cost a lot more.



Some people said that the rules for checking the work of **AMCPs** and deciding whether they should continue in the role should be made clearer.

Training



A lot of people supported the suggested training for **AMCPs**.



But there were worries about how much the training would cost and how long it would take.



People said training for **AMCPs** must be high quality.



There were different views about the need for **AMCPs** to have 18 hours of further training every year.



People were unsure about the idea to have the extra 18 hours of training approved by either Social Care Wales or a local authority in Wales.



If the 18 hours of training is approved by different local authorities, **AMCPs** may start working in different ways.

Question 11



Question 11 asked people if they agreed with how the **LPS** will be checked and the rules on reporting on the **LPS**.

What people said:



People agree with the suggested **Monitoring Bodies**.



The **Monitoring Bodies** are organisations that will speak with people to check people's experiences of the **LPS** and how services are using the **LPS**. The **Monitoring Bodies** in Wales are **Care Inspectorate Wales, Healthcare Inspectorate Wales** and **Estyn**.



People said there should be clearer rules about reporting.



The rules should be stronger about reporting on how the Welsh language is used. And how the **LPS** supports Welsh speakers.

Question 12 and 13



Question 12 asked if people agreed with how to get consent from people who are cared for, before someone speaks to them.



Question 13 asked if people thought the new rules would protect the rights of the cared for person.

What people said:



People had different views on this.



People asked questions about how checking and reporting on the **LPS** rules where people are in their own homes would work in real life.



Some people said we need to be clearer about who is asked for consent when it comes to visiting the cared for person. This is really important when people share their home with others.



People felt the **IMCA** was really important here to help protect people's rights.



People were worried about the **Monitoring Body** being involved in making a decision for a cared for person about whether that **Monitoring Body** should visit and speak with them.



People want us to better explain how the rights of cared for people will be protected by the **LPS** when it comes to checking and reporting. Especially when the cared for person lives in their own home.

Question 14



Question 14 asked if people agreed with how much we thought the new **LPS** rules will cost. And what the benefits and impact will be.

What people said:



People disagreed with how much we thought the **LPS** will cost. They thought it would cost more.



People talked about issues about local authorities and health boards having enough time, money, and staff. And there would need to be a lot of training for staff across health and social care.



Some people said that more **assessments** would be needed than we planned for. And **assessments** would take longer and cost more. It would be hard for GPs to take on more **assessments** because they are already so busy.



People said we didn't know how much money we would need for **advocacy**.



People thought the **AMCPs** would need to do more than what we planned for. So we will probably need more money for **AMCPs**.

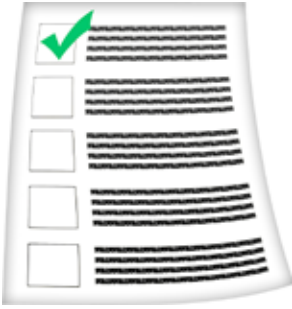


People disagreed with the cost of **AMCP** training. They think it will cost more.



We need to think more about the cost of creating information and resources. People asked us to create information in different ways so everyone could read and use it to understand the **LPS**.

Question 15



Question 15 asked if people agreed with the list of information needed in the **National Minimum Data Set for Wales**.

What people said:



Overall people agreed with the list of information needed.



People supported using a national system to report on the **LPS** across Wales.



Some people were worried that the list of information needed on the **LPS** was too much. And that it would be hard for health boards and local authorities to collect. Other people suggested other information should also be collected.



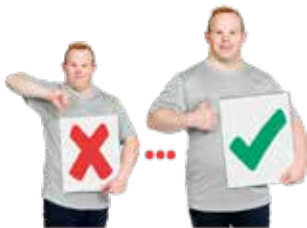
Some people were worried that the list of information focused on the **LPS** process. And not on the outcomes for the person.

Question 16



Question 16 asked about our **impact assessment** on children's rights.

What people said:



People mostly agreed with the **impact assessment** on children's rights. But there were some suggestions about how we can improve it.



People want information made about the **LPS** for young people and their families.

Question 17



Question 17 asked about our **impact assessment** on people with **protected characteristics**.

Protected characteristics are things about you that sometimes lead to you being treated unfairly. Like a disability, your age, or your sexuality. The law protects people from being treated unfairly because of these things.

What people said:



People mostly agreed with the **impact assessment** on people with **protected characteristics**. But there were some suggestions about how we can improve it.



Some people said we need to look more closely at all **protected characteristics**. And said we only wrote about age and race.



Some people felt we need to think more about human rights laws.

Question 18



Question 18 asked if people agreed that our **workforce and training plan** will help our staff work in a way that makes sure that the needs of the cared for person are being remembered all the time.

What people said:



Yes, people thought the plan would help us work in a way that puts the cared for person first.



People liked how we split staff into 6 key groups.

Question 19



Question 19 asked about our **impact assessment** on the Welsh language.

What people said:



People said it is really important to use the **Active Offer** in the **LPS**. **Active Offer** means providing services in Welsh without people needing to ask for them first.



Some worried that the rules were not strong enough, about having enough staff who can provide the **LPS** in Welsh. Some said we needed to improve the information we are planning to collect on the **Active Offer**. And whether **assessments** are being offered and done in Welsh. Or in the person's language of choice.

Question 20



Question 20 asked people what effect they thought the **LPS** would have on the Welsh language.

What people said:



The rules could be good for the Welsh language. As long as there is enough time, money, staff, and training to make sure services can be provided in Welsh.



The cared for person should be supported in the language of their choice.



Employers need to make sure there are enough Welsh speaking staff. Employers need to plan for this.

Question 21



Question 21 asked people how we could change the rules to make sure they have a good effect on the Welsh language.

What people said:



It would be better if training for staff on the **LPS** is provided in Welsh.



Employers should plan to make there are enough Welsh speakers. There needs to be more Welsh speaking **IMCAs** and **AMCPs**.

Question 22



Question 22 asked people if they had anything else they wanted to say, that had not been asked already.

What people said:



The rules are good, but everyone must make sure they are followed properly in real life.



The **LPS** was supposed to be simpler than the **Deprivation of Liberty Safeguards**. Some people said it is not.



There are still challenges to overcome to change over to the LPS. Staff need enough time to get used to the new rules. Everyone needs time to train **IMCAs** and find **AMCPs**.



Some people were worried that the cared for person is not at the centre of the **LPS** process.



People want written information about the **LPS** to be easier to find, read and understand for everyone.



We need to work with UK Government to make some things clearer. Like the definition of a **deprivation of liberty**. This means clearly saying what taking away someone's freedoms is. The definition of a **deprivation of liberty** is really important because it will affect who will be protected by the **LPS**.

Next steps



The UK Government have now said that they will not be doing the work to start the LPS until after the next UK Government election.



We have checked to see what changes we might need to make to the new laws and rules planned for Wales. And the **impact assessments** based on the things people told us.



The Welsh Government cannot ask the Senedd to pass the new rules for Wales until the UK Government decides when the LPS will apply in England and Wales.



We are looking to see what work we can do on the National Minimum Data Set and the workforce plan while we wait for the UK Government decision.



We would like to thank everyone who responded to this consultation. Your views have been very helpful in understanding what changes are needed. We will use what we have learned to see how we can improve the current DoLS system.

Hard words

AMCP

An Approved Mental Capacity Professional or AMCP is a professional whose job it is to help people with the Liberty Protection Safeguards. This would be a new job role and professionals must be approved after completing special training. The new rules say the AMCP role can only be a nurse, or a social worker, or an occupational therapist, or a speech and language therapist or a practitioner psychologist.

Appropriate Person

An Appropriate Person is someone who gives support to a cared for person who lacks capacity. They may also speak up for them. For example, the cared for person may choose a family member or friend.

Approved Mental Capacity Professional

An Approved Mental Capacity Professional or AMCP is a professional whose job it is to help people with the Liberty Protection Safeguards. This would be a new job role.

Assessment

Assessments are used to check if someone lacks capacity or has a mental health condition. And to check if the care suggested for them is needed to keep them safe when the care takes away some of their freedoms.

Assessments must be done by people with the right skills and experience.

Authorisation

This is when the health board or local authority confirms that someone can have their freedoms taken away, to support their care and treatment.

Deprivation of Liberty

Stopping someone from doing things and restricting their freedom.

IMCA

An Independent Mental Capacity Advocate or IMCA is a professional with special training. They make sure people who lack capacity are heard. They help protect their rights and choices.

Lack capacity

Lack capacity means a person's mind is not working as it should for some reason. And this means they cannot make decisions for themselves at that time.

Someone might lack capacity because of things like:

- a disability, illness, or injury
- dementia
- a mental health problem

They might be unable to understand information about a decision. Or they might be unable to communicate their decision.

Liberty Protection Safeguards or LPS

A new law that gives rules to protect the rights of people aged 16 and over, if they need care and support that takes some of their freedoms away.

Monitoring and Reporting Body

The Monitoring Bodies are organisations that will check and report how services are using the LPS. They will also speak to the cared for person to listen to their experiences of the LPS. The Monitoring Bodies in Wales are Care Inspectorate Wales, Healthcare Inspectorate Wales and Estyn.

Protected characteristics

Protected characteristics are things about you that sometimes lead to you being treated unfairly. Like a disability, your age, or your sexuality. The law protects people from being treated unfairly because of these things.

Pre-authorisation Review

A pre-authorisation review is a final check to make sure the assessments were done properly, and the best decisions were made for the person.

Reviews must be done after the assessments have been completed by a person with the right skills and experience to confirm professionals have followed the right steps. They then advise the Responsible Body if they can agree to the care, support and treatment where this means restricting the person's liberty.

The pre-authorisation review is separate to the normal regular review about the person's care and support plan.

Regulations

A law.

Responsible Body

This is either a health board or local authority in Wales that approves care and treatment under the LPS that takes a person's freedoms away.