

Consultation response
Draft Regulations for Wales: Liberty Protection Safeguards
Welsh Government

July 2022

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to Welsh Government's consultation on the Draft Regulations for Wales: Liberty Protection Safeguards. Age UK is responding to Changes to the Mental Capacity Act 2005 Code of Practice which is relevant to both England and Wales. This is an area that disproportionately impacts older people as 87% of DoLS are for those aged 65+ in Wales.¹

We recognise and welcome how the Liberty Protection Safeguards (LPS) are designed to improve outcomes for older people and others subject to the safeguards. In particular, we welcome:

- the emphasis on the person being the centre of the decision-making process and increasing participation, voice and control.
- the application of the framework to all settings where an older person may receive care or treatment, which we hope will provide better access to safeguards for those receiving care or treatment outside of a care home or hospital than is the case under the current framework. For example, those in receipt of 'hospital at home' services.
- the expectation that the LPS should be integrated with other care or treatment processes the older person may be subject to, such as the Social Services and Well-being (Wales) Act 2014.

However, we do have concerns regarding the proposed processes around the implementation of the LPS in Wales.

Current delays in DoLS processes need to be considered

In particular, current delays in the DoLS system may prevent the new system from achieving improvements in the short term. The CIW and HIW report on Deprivation

¹ [equality-impact-assessment-eia-liberty-protection-safeguards.pdf \(gov.wales\)](https://gov.wales/equality-impact-assessment-eia-liberty-protection-safeguards.pdf)

of Liberty Safeguards for 20/21² shows that 55% of standard applications and 51% of urgent applications from health boards took more than 28 days to process. For local authorities the figures were 85% and 64% respectively. At year end, 32% of assessments were still in progress.

The current backlog in DoLS applications will still be there once LPS are introduced, unless steps are taken in advance to address this issue. Unless the backlog is addressed, the new system will be behind from the moment it is implemented.

It's vital that the new framework will bring about a significant improvement in processing applications, as the CIW and HIW report found that the length of time taken to process DoLS applications was poor, suggesting that supervisory bodies were unable to assure themselves that people's human rights were not being breached by being deprived of their liberty unlawfully.³ A plan is needed on how the backlog can be addressed, which should take into account the number of Approved Mental Capacity Professionals (AMCPs).

Timeframe is needed for appointment of an IMCA for Section 4B

We have concerns that no specific timeframe is given when an IMCA is appointed following an emergency decision being taken. We suggest that this should be within 24 hours. To ensure that use of Section 4B is not excessive, we suggest that this forms part of monitoring information.

Importance of ensuring sustainable levels of IMCA provision

The changes with Liberty Protection Safeguards (LPS) puts increased responsibility on the Independent Mental Capacity Advocate (IMCA), which would suggest that there is a need for increasing the amount of practising IMCAs in Wales. Discussions with partner agencies suggest it could be an estimated 25% increase in work to accommodate the Draft Regulations. It is therefore vital that consideration is given to how the expected level of need can be met.

We have heard through advocacy networks and discussions with partners of concerns with the volume of work the current IMCAs are struggling to keep up with. Whilst the new system is intended to improve administration and so reduce unnecessary work, our perception is that there will be an increased need in professionals actively working in LPS roles at least in the short term. Consideration should be given on how increased demand can be accommodated for the short to medium term.

We understand from partner agencies that currently IMCA contracts are mainly provided on a yearly basis. Short-term contracts inevitably mean that people leave their roles for more stability elsewhere. With the level of training and experience required to be a IMCA or AMCP, it is vital that longer term funding is available for

² <https://hiw.org.uk/sites/default/files/2022-03/20220304%20-%20DoLS%20-%20FINAL%20ENGLISH.pdf>

³ <https://hiw.org.uk/sites/default/files/2022-03/20220304%20-%20DoLS%20-%20FINAL%20ENGLISH.pdf>

contracts so that agencies working in this area can focus more on service improvement rather than service stability.

Changes needed to implement the new system will take time to achieve and it is important that full consideration is given on how long is needed to successfully change to the new system.

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