

Y Grŵp Iechyd a Gwasanaethau Cymdeithasol
Health and Social Services Group



Llywodraeth Cymru
Welsh Government

11 March 2021

Dear colleagues,

Summary

To set out Welsh Government governance arrangements to implement the Mental Capacity (Amendment) Act 2019 and to seek partner organisations' assurances that equivalent executive level engagement, planning and scrutiny is in place to deliver LPS implementation within your organisation.

To request that organisations complete and return a baseline data request by April 12.

Context

As you may be aware, the Liberty Protection Safeguards (LPS) are planned to come into force in April 2022. These safeguards will provide protection for people aged 16 and above whose care and treatment requires a deprivation of their liberty and who lack the mental capacity to consent to their arrangements. The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the existing Deprivation of Liberty Safeguards (DoLS) system.

These important safeguards will help to protect the rights of some of our most vulnerable populations in Wales, help to improve their outcomes and ensure that the Mental Capacity Act is working as intended – where the individual is at the heart of all decision making.

LPS will introduce a number of changes to DoLS, including extending the scope of the scheme to 16 & 17 years olds and individuals in domestic settings. More information is available within the UK Government fact sheets;

<https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets>

You will be aware of the substantial interest during the passage of this legislation in the UK Parliament. There are both devolved and non-devolved functions within the legislation.



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Implementation of these safeguards will require significant planning and workforce development to implement within your organisation, and it is important that this work is prioritised in the lead in to April 2022. Welsh Government has established a National Steering Implementation Group for LPS, informed by dedicated work streams that relate to the development of a national minimum data set, LPS monitoring and reporting arrangements, introduction of 16 and 17 year olds, workforce and training requirements and transitioning from DoLS to LPS. Each includes representation from local authorities and local health boards across Wales and other key stakeholders with an interest.

Welsh Government is developing draft regulations for consultation that set out the roles Independent Mental Capacity Advocates and Approved Mental Capacity Professionals who can undertake assessments and determinations, and monitoring and reporting arrangements.

These draft regulations will be published for consultation later this Spring, alongside a workforce and training strategy and a national Minimum Data set on LPS. This consultation is being planned to align with a UK Government consultation on regulations for England in relation to LPS, and a Code of Practice for England and Wales.

Given the limited time before implementation in April 2022, it is imperative that your organisation ensures that internal structures to deliver implementation are in place ahead of the consultation, when the draft regulations, draft Code of Practice and draft workforce strategy will be made available. You will then need to start the implementation process on the basis of those draft documents.

We are very conscious that these changes are taking place in a period where we are all focussed on keeping people safe and protecting them from the pandemic. However, we also know that vulnerable individuals in our communities are not able to access the full protections owed to them under the current DoLS arrangements. The case for change is well-evidenced and we need to progress transition to LPS. In order to achieve this, we would like to seek assurances that there is executive level engagement with the implementation of LPS, and that there is already planning in place for structures to deliver LPS implementation within your organisation. It is imperative that responsibility for the implementation of LPS does not rest solely with existing DoLS teams. For instance, you will need to take into account settings for 16 and 17 year olds.

In addition, we are attaching a questionnaire to develop a better evidence base for baseline information relating to workforce and training. This questionnaire seeks vital information that will inform the workforce strategy and impact assessments. Social Care Wales previously issued a request for updates from local authorities, and this questionnaire seeks to build on the accuracy and scope of that exercise. This letter has also been copied to key staff involved in the DoLS process in your organisation. Could you please ensure that a lead respondent is identified within your organisation who will be able to collate responses across the organisation. We are asking for full responses to this request by 12 April, to ensure there is sufficient time to consider responses and build them into planning assumptions.

Responses to this request should be sent to mentalhealthandvulnerablegroups@gov.wales by 12 April.

I am grateful for your support in this matter. Full engagement with services will be vital to ensure that LPS implementation is effective and delivers the necessary protection for those who need to be deprived of their liberty.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tracey Breheny'.

Tracey Breheny

Dirprwy Gyfarwyddwr, Iechyd Meddwl, Camddefnyddio Sylweddau a Grwpiau Bregus
Deputy Director, Mental Health, Substance Misuse and Vulnerable Groups

A handwritten signature in black ink, appearing to read 'Alistair Davey'.

Alistair Davey

Deputy Director, Social Services and Integration Directorate
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