Liberty Protection Safeguards (the LPS): Implementation in Wales

Frequently Asked Questions

This document has been prepared to support planned engagement events for the Welsh Government's consultation on draft Regulations for Wales. Welsh Government officials will be updating the document on an ongoing basis.

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What are the Liberty Protection Safeguards?

- No-one should be deprived of their liberty unlawfully. The Liberty Protection Safeguards ('LPS' or the 'Safeguards') are there to provide rights and protections to people who lack the mental capacity to agree to their care, support and treatment arrangements, where those arrangements amount to a deprivation of liberty.

- These Safeguards provide the necessary procedures in law that require local authorities and local health boards to seek authorisation if someone lacks mental capacity.

- These Safeguards require local authorities and local health boards to ensure that if someone lacks mental capacity – any deprivation of liberty that arises through the care, support or treatment they (or they intend to) provide is assessed, which will include assessment of whether it is a) necessary and proportionate; b) is in the best interests of the person; and c) reflects that person's wishes and feelings.

- People who might require an LPS authorisation include those with a mental disorder, brain injury, dementia, autism and learning disabilities who lack the relevant capacity to agree to the proposed care.

- The LPS will replace the Deprivation of Liberty Safeguards (DoLS) which is the existing scheme for the assessment and authorisation of deprivations of liberty.

- DoLS were introduced to protect the human rights of those individuals who lack the mental capacity to consent to being deprived of their liberty. Following a Supreme Court judgement in 2014, the UK Government introduced the Mental Capacity (Amendment) Act 2019, with the view to repealing DoLS and replacing 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. For the first time, the LPS will extend to people's homes and will also apply to anyone aged 16 and over.

What are the aims of the Mental Capacity (Amendment) Act 2019?

- The purpose of the Mental Capacity (Amendment) Act 2019 is to reform the process under the Mental Capacity Act 2005 for authorising the care, support and

treatment arrangements for someone who lacks the mental capacity to agree to those arrangements, where they give rise to a deprivation of that person's liberty.

- Although the LPS has the same purpose as the DoLS, the new system is different by design, in a number of ways, for example:

  - The new system will put the person at the centre of the decision-making process and increase participation, voice and control. The LPS will introduce an explicit duty to consult with the person, and those interested in their welfare, to establish their wishes and feelings about proposed arrangements. Those who are close to the person will also be able to provide representation and support to them, via a new 'Appropriate Person' role. Furthermore, the rights of people at the heart of the most complex cases will be considered and upheld by new 'Approved Mental Capacity Professionals' (AMCPs).

  - The LPS will cover a wider range of settings than just hospitals and care homes, providing protections to people receiving care or treatment in their own homes or in private accommodation. This will make access to safeguards more consistent for more people.

  - The new system has been designed to better integrate with other relevant laws and frameworks. The aim is for LPS practice to become embedded into other healthcare and care planning, such as the Social Services and Well-being (Wales) Act 2014 and the Mental Health (Wales) Measure 2010 and the Additional Learning Needs and Education Tribunal (Wales) Act 2018. This integration makes the process more straightforward for the cared-for person (and those that care for them) and easier for relevant professionals across local health boards and local authorities, by reducing duplication.

- The core principles of the MCA 2005 are at the heart of the proposed design for the LPS. This will help to further align mental capacity awareness and practice across different settings and professions.

How will the LPS support people?

- The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The LPS will deliver improved outcomes for people who are or who need to be deprived of their liberty. The LPS have been designed to reinforce the rights, wishes and feelings of those people putting them at the centre of all decision-making on their care, support and treatment including where a deprivation of liberty is being considered.

How does the LPS differ from DoLS?

- The LPS differs from DoLS in a number of ways. Unlike DoLS, the LPS will apply across all settings, including people's own homes. Historically, DoLS have only been required in care homes and hospital settings. For other settings, authorisation must be sought from the Court of Protection, which can be a complex process. The LPS authorisations will cover all settings, including transport arrangements and arrangements carried out in domestic settings. This will help to improve outcomes for the individual and ensure protection of their human rights.

- The LPS will extend safeguards to 16 and 17-year-olds. This will improve safeguards for young people. For example, a decision from the Court of Protection will no longer be needed in every case. Nothing will change for children aged 15 and younger.

- Under DoLS, a Supervisory Body (either a health board or local authority in Wales) organises six assessments which must be undertaken for the purpose of the authorisation request. Under the LPS, a Responsible Body (again either a health board or local authority in Wales) organises three assessments. If appropriate, pre-existing assessments can be used for the medical assessment and the mental capacity assessment, including assessments previously completed in the care planning process. The necessary and proportionate assessment must however be a new assessment. This will streamline the system and support swifter, person-centred decisions for people, reduce duplication and enable better integrated care, support and treatment assessment, planning and delivery.

- Under DoLS, a different authorisation with new assessments is required for different locations. The LPS authorisations are not setting specific. This means one LPS authorisation can cover a range of settings so can be used to better reflect the way people actually live their daily lives, for instance, to cover their accommodation, the community based services they go to and the transport they use to get there.

- DoLS authorisations last up to 12 months. Under the LPS, authorisations for stable conditions can last for up to three years (after the initial authorisation of 12 months and a subsequent renewal of 12 months).

- There is greater involvement for families within the LPS and better protections for people who lack mental capacity. Under DoLs, the duty to consult only applies to care home arrangements. Under the LPS, Responsible Bodies must consult any person interested in the person's welfare at critical times in the person's journey including during the initial assessments, when a variation is being considered and before an authorisation is renewed. There is additional consultation where an AMCP is undertaking a pre-authorisation review.

- The LPS also provides improved access to advice, support and advocacy for both the individual and the new role of Appropriate Person. Under DoLS, an Independent Mental Capacity Advocate (IMCA) is appointed if there is no

independent person to consult about the individual’s best interests, or when an individual wishes to challenge the authorisation.

- Under DoLS, a Best Interest Assessor is required to assess every authorisation. Under the LPS, the role of the Best Interest Assessor will no longer exist however all requests for authorisations will undergo a pre-authorisation review by a person who is not involved in the day-to-day care of the cared-for-person or in providing any treatment to the cared-for person. An existing Best Interest Assessor may be approved to undertake the new role of the AMCP. An AMCP will only be required to undertake the pre-authorisation review in specific cases where their relevant skills are most needed (for example, where the cared-for-person objects or is likely to object to the arrangements). By focussing skills, the system will be more efficient.

What are the LPS Regulations for Wales?

- The LPS are being introduced by the Mental Capacity (Amendment) Act 2019. This is UK Government legislation that applies in England and Wales. The new Act provides the Welsh Ministers with the power to make Regulations for Wales to support the implementation of the Safeguards.

- The new Regulations for Wales will set out how the LPS will operate in Wales. This includes Regulations on who can undertake assessments, determinations and pre-authorisation reviews under the LPS; the appointment and training of the new role of the AMCP; and how the LPS will be monitored and reported on in Wales. There are also amending Regulations to reflect the expansion under the LPS of the existing role of the Independent Mental Capacity Advocate, particularly the functions which they will perform and the skills and the support they will provide under the new system.

Why is Welsh Government consulting on the Regulations for Wales?

- Welsh Government is consulting on draft Regulations for Wales to gather the views of stakeholders on the approach we are proposing to take about the LPS in Wales. We want to make sure that we have got things right and are doing all that we can to protect and support those people who lack the mental capacity to agree to their care, support and treatment arrangements, where those arrangements amount to a deprivation of liberty.

- The UK Government is consulting on draft Regulations for England which will implement the LPS in England. The UK Government is also consulting on a draft LPS Code of Practice that will apply to both England and Wales to ensure consistency in the interpretation and approach to using the LPS, while recognising there will be some operational differences between the two nations.

When will the new Safeguards be implemented?

- The UK Government's targeted date for the implementation of the new Liberty Protection Safeguards and the Mental Capacity (Amendment) Act 2019 has not yet been confirmed by the UK Government. It is intended that UK Government will take the feedback at consultation into consideration in agreeing an implementation date.

What are the current challenges to implementing the LPS in Wales?

- Workforce planning and training for health boards and local authority staff who will be involved in the implementation of the new Safeguards is critical. We need to make sure that we have enough trained AMCPs, sufficient Independent Mental Capacity Advocates, as well as people who are trained to undertake assessments, determinations and pre-authorisation reviews. We have developed a draft Workforce Plan and Training Framework for Wales to support this key priority – and have been gathering views on its content and timeframes for delivery.

- To support monitoring and reporting on the new Safeguards we are developing a new National Minimum Data Set on the LPS.

When will the LPS begin?

- The first year of implementing the LPS will be a transitional year – where the DoLS and the LPS will run alongside each other. During this transitional year, as existing DoLS authorisations come up for review, they will be considered under the new LPS arrangements. New requests will be considered under the LPS. Similar arrangements for transition will apply to 16 and 17 year olds who are currently supported through the Court of Protection and in future will instead be authorised by either the health board or the local authority

How are you engaging with people with lived experience in Wales?

- We have been engaging with people with lived experience through on-line sessions such as the Mental Health Forum for Wales, and the Dementia Oversight of Impact and Implementation Group. Our conversations have helped to frame the questions we are asking as part of the on-line consultation – and have also helped to inform the development of specific engagement events that will take place as part of the consultation itself. We have also spoken with stakeholders and organisations representing people with disabilities, learning disabilities, older people, children and unpaid carers and the WCVA to promote the consultation and to identify opportunities for further conversations.

- Accessible versions of the draft Regulations for Wales, the draft Workforce Plan and Training Framework, and our plans for monitoring and reporting can be accessed on the Welsh Government consultation website on the LPS. We have

also made available an Easy Read document summarising the four sets of Regulations, an Easy Read overview of the LPS and the Mental Capacity Act (2005) and an Easy Read Consultation Response Form.

How will the LPS deliver improved outcomes for those people who lack the mental capacity to agree to their care, support and treatment?

- The new Safeguards provide us with an opportunity to better protect the human rights of those people who lack mental capacity.

- The LPS reinforce that the person being deprived of liberty is at the heart of the decision-making process. It will better integrate the LPS into everyday care, support and treatment assessment, review and planning, listening to people's views wishes and feelings, removing the need to retell their stories about what is important to them and the outcomes they want to achieve. There is increased consultation with the person and those that are important to them enabling them to be better listened to and heard.

- The LPS are consistent with our Welsh our social care, health and education legislation and principles that promote autonomy and the empowerment of individuals, enables their rights, empowers people to make their own decisions whilst striking a balance with to protect them where necessary.

Who will be the Responsible Body authorising the arrangements that amount to a deprivation of liberty?

- In Wales this will be either the health board or the local authority, depending on the primary location of where the care, support or treatment that amounts to a derivation of liberty is being provided. However, the 'no wrong door' principle will apply - and health boards and local authorities will work together to establish which is the correct Responsible Body to authorise the arrangements that amount to a deprivation of liberty – where this is unclear.

What do the new Safeguards mean for health boards in Wales?

- Alongside local authorities, health boards in Wales will be the Responsible Bodies under the LPS. This means they are responsible for authorising the care, support or treatment arrangements where these amount to a deprivation of liberty, where a person lacks the mental capacity to agree to those arrangements. They will not only be responsible for authorising arrangements in NHS settings but in other settings too – where care, support or treatment is being provided. For example: Health boards will authorise arrangements carried out in independent hospitals and where these amount to a deprivation of liberty for those receiving care; additionally where the care is mainly carried out under arrangements made by the health board which are equivalent to Continuing NHS Healthcare Cymru (CHC).

- Key responsibilities of the health board include ensuring that the person is either supported by an Appropriate Person or an IMCA; ensuring that the three LPS assessments and determinations are in place; arranging and carrying out pre-authorisation reviews; and where appropriate arranging for an AMCP to carry out a pre-authorisation review (for example – for more complex cases; where the person is receiving care in an independent hospital; and if the person if objecting to their care, support and treatment). Health boards will also have a duty to notify monitoring bodies (CIW, HIW and Estyn) of LPS applications, authorisations and renewals.

- The new Code of Practice for the LPS further sets out the roles and responsibilities of the Responsible Body. The UK Government is currently consulting on this draft Code of Practice.

What do the new Safeguards mean for local authorities in Wales?

- Local authorities must make arrangements for the approval of AMCPs and make sure there are enough in place to support the implementation of the LPS for its local authority area and the relevant local health board area. This will include ensuring that once approved, an AMCP continues to meet the required eligibility criteria to continue that approval.

- Additionally, in certain circumstances, a local authority in Wales may be the Responsible Body (for example, where a local authority is responsible for a person's individual development plan or is meeting needs under Part 4 of the Social Services and Well-being (Wales) Act 2014). This means, as in the case of health boards, a local authority may be responsible for authorising the care, support or treatment arrangements where these amount to a deprivation of liberty, where a person lacks the mental capacity to agree to those arrangements.

- Like health boards, local authorities will need to ensure that the person is either supported by an appropriate person or an IMCA; ensuring that the three LPS assessments and determinations are in place; arranging and carrying out pre-authorisation reviews; and arranging for an AMCP to carry out a pre-authorisation review under certain situations (for example – for more complex cases; where the person is receiving care in an independent hospital; and if the person if objecting to their care, support and treatment). Local authorities in Wales will also have a duty to notify monitoring bodies (CIW, HIW and Estyn) of LPS applications, authorisations and renewals.

What do the new safeguards mean for education settings in Wales?

- The LPS will apply in all settings. If someone's care, support or treatment amounts to a deprivation (including the support being provided in an education setting) – and the cared-for person lacks the mental capacity to agree to that care, support or treatment – this this must be authorised under the LPS.

- The LPS authorisation can cover multiple settings – and so where any care, support or treatment amounting to a deprivation of liberty is being provided in an

education setting (e.g. in a specialist school / a residential school), then this will included in the LPS authorisation. It is anticipated that these arrangements will be included as part of the young person's care plan. Local authorities will be the Responsible Body for authorising arrangements in education settings (where this is the primary location for where the person is receiving care, support or treatment).

- At present, where a young person (aged 16 or 17) lacks mental capacity and is being deprived of their liberty, this deprivation of liberty is authorised through the Court of Protection. Under the LPS, the LPS will extend to 16 and 17-year-olds, which means that a decision from the Court of Protection on whether to authorise the deprivation of liberty will no longer be needed in every case. Instead, the young person will have their care, support or treatment that amounts to a deprivation of liberty authorised through the LPS.

What do the new Safeguards mean for me as a cared-for person?

- The LPS ensure that your views, wishes and feeling direct and inform your care, support and treatment. If you are unable to give your consent when your liberty has to be deprived the LPS ensures this is reviewed and authorised, in accordance with the law and your human rights.

- The LPS provide a series of checks and balances to ensure that people are supported to maintain their autonomy and independence; that the person, their family and other people who are supporting the person have been consulted appropriately; and that the person's wishes and feelings have been taken into account.

- Health boards and local authorities (known as Responsible Bodies) are responsible for implementing the LPS in Wales and meet the duties in the Regulations and Code of Practice.

- Under the LPS you will receive support from an Appropriate Person or an Independent Mental Capacity Advocate. If you have an Appropriate Person, they can also receive help and support from an Independent Mental Capacity Advocate.

- Three assessments will be carried out: a medical assessment, a mental capacity assessment, and an assessment of whether your proposed care, support and treatment arrangements are necessary and proportionate assessment (and allow you to keep as much of your freedom as possible). In order to proceed, the assessments must formally determine that 1) the arrangements are necessary and proportionate; 2) you lack the capacity to consent to the proposed arrangements; and 3) you have a mental disorder. Unless all three apply, your practitioners will have to consider different arrangements. Before the Responsible Body authorises the arrangements there will be a pre-authorisation review of the evidence by someone who has not been involved in your care or treatment. In certain cases the preauthorisation review will be undertaken by an AMCP.

- If you object to your care, support and treatment arrangements (or it is reasonable to think you object to those arrangements) or the care arrangements are in an independent hospital, in addition to the three assessments, an AMCP will review the evidence (including the three assessments) and confirm to the Responsible Body their view on whether the authorisation conditions have been met. As part of the pre-authorisation review the AMCP will meet and consult with you and / or your Appropriate Person.

- If the assessments, determinations and pre-authorisation review show that the authorisation conditions have been met, the Responsible Body can authorise the arrangements and this will form part of your care, support and treatment plan.

What do the new Safeguards mean for me as a care provider?

- The LPS will replace DoLS. The LPS provide a more streamlined and integrated approach, embedding consideration into care, support and treatment planning from the outset. As a care provider, you will need to understand what the changes mean and the timings of when these will be introduced.

- Unlike DoLS, which only applied to care homes and hospitals, the LPS will apply across all settings including people's own homes. Responsible Bodies (health boards or local authorities in Wales) will continue to be responsible for authorising the arrangements that amount to a deprivation of liberty. Health boards will be responsible for authorising arrangements that amount to a deprivation of liberty for those people being supported by Continuing NHS Healthcare (CHC) under arrangements made by a local health board.

- As a care provider, you will work with the relevant Responsible Body to ensure that people are not deprived of their liberty unlawfully and they receive the highest quality care support and treatment.

- Staff who care for the person every day (and therefore know them very well) will, alongside the person's family and friends, play a vital role throughout the assessment process and during the consultation stages of the LPS process. In particular, they will be able to play an important role in helping to establish the person's wishes and feelings.

- The Welsh Government has been working with Social Care Wales to develop a LPS Workforce Plan and Training Framework which will include a focus on developing training, supporting materials and information for care providers. Alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS, Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework.

What about the new duties for care home accommodation providers in Wales?

- Staff who care for the person every day (and therefore know them very well) will, alongside the person's family and friends, play a vital role throughout the assessment process and during the consultation stages of the LPS process. In particular, they will help decisions makers to establish the person's wishes and feelings.

- Under the Mental Capacity (Amendment) Act 2019 Responsible Bodies could potentially ask care home providers to undertake certain aspects of the LPS process around the assessment and consultation functions. Following discussion with the Welsh Government the UK Government has agreed that now is not the right time to introduce this new role but to keep it under review.

Workforce Planning and Training

What plans are in place to provide training for the existing DoLS workforce as we move to the LPS – as well as training for new roles under the LPS?

- If an organisation provides services to people aged 16+ who may not be able to consent to having their liberty deprived, their staff will need to learn about the Liberty Protection Safeguards. Health boards and local authorities as well as providers of care, support treatment and education will have a range of relevant roles.

- Welsh Government has been working with Social Care Wales to develop a Workforce Plan and Training Framework for the LPS in Wales.

- The Workforce Plan sets out the considerations that Responsible Bodies will need to undertake in order to plan their workforce to deliver the LPS.

- There are two parts to the Training Framework. The first part will support the change to the Liberty Protection Safeguards, and will help staff to be ready to work in their new roles. The second part will help staff to carry on working in these roles in the future.

- The Liberty Protection Safeguards have different roles to Deprivation of Liberty Safeguards. The knowledge and skills staff need will need to reflect this.

- Health boards and local authorities will need to work out how many staff will be needed for different roles and responsibilities under the LPS. This will result in a range of potential outcomes including training, recruitment, or co-operation across local areas.

- All staff will need some training, but they will not all need the same training. Six key groups have been identified.

- **Group A**: These are staff who may come into contact with a cared-for person who may not be able to consent to changes that limit their freedom. They need to know about the Mental Capacity Act 2005 and Liberty Protection Safeguards.

- **Group B**: These are the managers of staff who are in Group A. They need to know when a Liberty Protection Safeguards authorisation is needed and how the LPS works.

- **Group C**: These are staff who carry out assessments and write statutory plans involving care, support and treatment. They will need to know how to carry out the assessments required under the LPS, including who to consult and how to consult with them. They will also need to know when to involve the AMCP.

- **Group D**: These are the managers of staff in Group C. They will review the assessments and then authorise what has been decided. They will need to know how to assess the LPS evidence presented and how to monitor and report on the LPS.

- **Group E:** These are Independent Mental Capacity Advocates. Current staff will need training on how their new role differs from their old role. New staff will need a new training course.

- **Group F**: These are the AMCPs. Current Best Interest Assessors will need training on the new role of the AMCP. New staff who are not currently Best Interest Assessors will need training

- The Welsh Government has been working with Social Care Wales to develop an LPS Workforce Plan and Training Framework which will include a focus on developing training, supporting materials and information for care providers. Alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS, Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework.

- Welsh Government has asked Social Care Wales to lead on commissioning the training needed for the groups identified above. This training will be provided for local authorities and health boards to deliver to their staff.

Monitoring and Reporting Regulations:

Why is monitoring and reporting on the LPS so important?

- The deprivation of a person's liberty is an interference with a person's human rights. The LPS are designed to ensure that people are only deprived of their liberty if this is necessary and proportionate, and are provided with safeguards to protect their rights. In order to provide reassurance that the LPS are being

operated correctly, it is important for there to be an effective mechanism for monitoring the use of the safeguards.

How are you planning to monitor the LPS?

- We are developing a new National Minimum Data Set on the LPS to support future monitoring and reporting. Welsh Government officials and colleagues in Digital Health and Care Wales are working with the health boards and local authorities to agree the individual data items. There is an expectation that health boards and local authorities will report on the National Minimum Data Set in the future.

- The draft Regulations for Wales on monitoring and reporting specify Care Inspectorate Wales, Health Inspectorate Wales and Estyn as the monitoring bodies for Wales and require the Responsible Bodies to notify CIW, HIW and Estyn of LPS applications, authorisations and renewals. The proposed items in the National Minimum Data Set includes this information.

- An LPS Monitoring and Reporting Strategy is also being developed. The aim of the Strategy is ensure that health boards and local authorities are protecting people's rights; that no-one's freedom is deprived without the lawful authorisation; and that any derivation to a person's liberty are only the strict limits written in the authorisation. As part of the Regulations on Monitoring and Reporting, Responsible Bodies will need to provide information to CIW, HIW and Estyn on the LPS applications, authorisations and renewals – and will need to have appropriate systems in place to support this process.

- There is agreement on the part of CIW, HIW and Estyn as the specified monitoring bodies that they will publish a tri-partite annual report on the LPS. Further information on this will be set out in the LPS Monitoring and Reporting Strategy for Wales.

Who is developing the Monitoring and Reporting Strategy for Wales and when will this be published?

- CIW, HIW and Estyn are working together to develop the national LPS Monitoring and Reporting Strategy. They will be engaging with stakeholders over the coming weeks to share a draft of the strategy – with the view to further developing the approach for monitoring and reporting on the LPS for Wales.

Why do the Regulations name CIW, HIW and Estyn as the Monitoring Bodies?

- CIW and HIW currently monitor the existing system for authorising arrangements that amount to a deprivation of liberty when the person lacks capacity to agree to these arrangements, under DoLS. The LPS will apply across all settings and

also to 16 and 17 year olds – and therefore to reflect this wider scope Estyn have also been named as a monitoring body for the purposes of monitoring and reporting on the LPS in Wales. This reflects the wider strategic role in monitoring and reporting on leadership and practice across the social care, health and education sectors in Wales.

Why have you included provision in the Regulations on seeking consent to visit people in private dwellings?

- The Mental Capacity (Amendment) Act 2019 states that monitoring bodies can visit any place where arrangements are authorised under the LPS. As arrangements may be authorised in a wide range of settings this means monitoring bodies will be able to visit a broad range of settings where care, support or treatment is provided – including private dwellings. The Act does not however define what is meant by visit and therefore does not specifically include any power to inspect or a power to enter. The Inspectorates in Wales can use their existing powers to visit and enter regulated settings under their existing inspection frameworks.

- In Wales there is specific provision so that where an authorised arrangement is being carried out in someone's own home (a private dwelling or in a part of a premises used as a private dwelling) a monitoring body must seek permission prior to visiting. This then protects people's rights.

- Additionally, a monitoring body may meet with a cared-for person if they consent to meeting with the monitoring body. If they do not have capacity to consent then a best interest decision needs to be taken by either an attorney under a Lasting Power of Attorney or deputy appointed by the Court of Protection, who has the relevant authority. If there is no such person, anyone involved in caring or interested in the person's welfare. This may include the monitoring bodies, as well as the cared-for person's IMCA or Appropriate Person.

There is a balance that's needed – in terms of how monitoring the LPS can offer safeguards to those people who lack mental capacity and who are deprived of their liberty, but that the same time, protect against the State intruding on people's right to privacy. To what extent do the Regulations provide that balance?

- Monitoring and reporting on the new LPS is a safeguard in itself. It is critical that we know how the safeguards are operating in order to understand how they are protecting the rights of those people who lack the mental capacity to agree to their care, support and treatment arrangements, where those arrangements amount to a deprivation of liberty.

- Welsh Government, via the statutory monitoring bodies (HIW, CIW and Estyn), will be monitoring the Responsible Bodies in Wales in order to understand how the safeguards are being upheld.

- The Safeguards apply across all settings – including people's own homes. We absolutely recognise the need for balance between needing to protect people's rights to ensure they are not being unlawfully deprived of the liberty – whilst at the same time ensuring that their right to privacy is also protected. We think the Regulations for Wales provide that balance.

- As part of the LPS – there are safeguards in place to protect the individual and ensure that the person and their Appropriate Person is consulted at every opportunity, and that their wishes and feelings are reflected in the decisions made about their care, support and treatment. The AMCP provides additional safeguards to protect those who are most vulnerable – as AMCPs will be considering the most complex cases and also where the person is objecting to their care, support and treatment.

AMCP Regulations:

What is an AMCP and what do they do?

- The AMCP is a new role within the Liberty Protection Safeguards and the health and social care workforce. The AMCP replaces and develops the role of the Best Interest Assessor under the DoLS and is draws on key duties of the existing Approved Mental Health Professional role.

- Before a Responsible Body (a local authority or a health board in Wales) can decide whether to authorise arrangements amounting to a deprivation of liberty, a pre-authorisation review of the person's case must be carried out and the appropriate determination made. An AMCP will carry out the pre-authorisation review of the person's case if:

  - it is reasonable to believe that the person does not wish to reside in the place proposed in the arrangements;
  - it is reasonable to believe that the person does not wish to receive care or treatment at the place proposed in the arrangements;
  - the proposed arrangements are for the person to receive care or treatment mainly in an independent hospital;
  - the Responsible Body refers the case to an AMCP and the AMCP accepts the referral.

- AMCPs are required, if appropriate and practicable, to meet the person, and consult with those involved in their care or treatment, and those with an interest in the person's welfare such as family members, or take any further action. In many cases, AMCPs will be expected to consider whether alternative arrangements can be put in place which minimises the restrictions placed on the person and/or prevents a deprivation of liberty.

Why is the AMCP role so important?

- The role of the AMCP will be fundamental to supporting the rights of many of those who lack mental capacity and in promoting the key principles of the Mental Capacity Act 2005 and the rights of duties owed under parallel health, social care and education legislation.

Why are the AMCP Regulations needed for Wales?

- The Regulations for Wales set out arrangements for the approval of AMCPs by local authorities, the training requirements for this key role, and also set out the prescribed body that will approve the training developed in Wales (which will be Social Care Wales).

- The AMPC Regulations will need to come into force ahead of the planned implementation date for the LPS, as local authorities will need to ensure BIAs have undertaken the necessary training to convert to the new AMCP role. Local authorities will also need to ensure sufficient numbers of AMCPs are in place to support the LPS.

Best Interest Assessors will be able to train and convert to become an AMCP. Who will develop this conversion training and when will it be rolled out?

- Welsh Government has asked Social Care Wales to lead on commissioning the new training course for the conversion of Best Interest Assessors (BIAs) to the new AMCP role, under the LPS. This training will be commissioned alongside the consultation period, and it is intended that training will be made available following analysis of consultation responses.

- We intend DoLS and the LPS will operate alongside each other during an initial year of transition. A BIA who has undertaken conversion training must complete their training and apply for approval within this transition period. The intention of providing for conversion training is to ensure there is a streamlined mechanism of allowing professionals who are currently working as BIAs to become AMCPs and to allow them to start work as soon as possible. This training takes into account the fact they are active BIAs, so training and approval would need to be undertaken early – before time has lapsed from active BIA work.

How will local authorities ensure that Wales has enough AMCPs to support the implementation of the LPS?

- Welsh Government has been working with Social Care Wales to develop a Workforce Plan and Training Framework which will include a focus on developing training, supporting materials and information.

- One of the key aims of the Workforce Plan is to support health boards and local authorities to carry out baseline assessments of the LPS workforce requirements – and to ensure that plans are in place to train and recruit AMCPs.

- The Training Framework sets out the learning outcomes that staff engaging with the LPS at each competency level, including AMCPs, will need to achieve in training.

- Alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS, Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework.

What training will new AMCPs need to undertake?

- Conversion training will be available for those individuals currently working as BIAs. Training resources will be commissioned by Social Care Wales.

- For those who are not completing conversion training, they will need to undertake new AMCP training. This is also being commissioned by Social Care Wales.

- Following their approval (but not in their first year of working as an AMCP), all AMCPs will be required to undertake 18 hours of further training every year.

Regulations on who can undertake assessments, make determinations and undertake pre-authorisation reviews:

What assessments will be carried out as part of the LPS?

- There are three assessments carried out under the LPS. A medical assessment, a mental capacity assessment and a necessary and proportionate assessment.

Why are these assessments needed?

- The three assessments are needed in order to establish whether three authorisation conditions are met. These conditions are:

  - The person lacks capacity to consent to the arrangements (care, support or treatment), known as the mental capacity assessment.
  - The person has a mental disorder, known as the medical/diagnostic assessment.

- The arrangements are necessary to prevent harm to the cared-for person and proportionate in relation to the likelihood and seriousness of harm to the cared-for persons, known as the “necessary and proportionate” assessment.

What is a pre-authorisation review?

- Before an LPS authorisation can be given, a pre-authorisation review must be carried out by someone independent from those providing the day-to-day care, support or treatment.

- The purpose of the pre-authorisation review is to confirm that it is reasonable for the responsible body to conclude that the conditions for an authorisation are met. That is – that the three assessments have reached the appropriate conclusion and that the required consultation has been undertaken before the initial authorisation, when a variation to the agreed arrangements is recommended or ahead of any renewal of the authorised arrangements. The person undertaking the pre-authorisation review will be expected to scrutinise all three assessments undertaken for the LPS.

- Only once the pre-authorisation review has been concluded can the Responsible Body give an authorisation of the deprivation of liberty. The Responsible Body must send a copy of the Authorisation Record to relevant people within 72 hours.

The Regulations identify which individuals will be able to undertake assessments and determinations and who can carry out pre-authorisation reviews. Why have these individuals been chosen and not others?

- The individuals identified must have the skills necessary to carry out the three different assessments. Doctors and practitioner psychologists have been identified to carry out the medical assessment. A wider group of professionals have been identified to carry out the mental capacity assessment, and the necessary and proportionate assessments. These include social workers, speech and language therapists, occupational therapists, nurses, medical practitioners and psychologists and the Responsible Body must ensure they are registered with the relevant professional body.

- We are using the consultation on the draft Regulations to confirm we have identified the right groups of people to carry out the three assessments. If the consultation identifies additional professionals which may be suitable to be added to carry out this role we can consider whether to expand the group.

Given that the LPS will apply in educational settings, what role will teachers play?

- The views of teachers and other people supporting the person to achieve their outcomes will be needed to help build a clear understanding of the person’s view,

wishes and feelings – because of their experiences of communicating with and supporting that person. Staff working in education settings will have significant experience in supporting children to express their views, wishes and feelings – and their thoughts on any arrangements for their care, support or treatment.

- The draft Regulations do not identify teachers as one of the professions required to undertake the assessments. However, we will be able to use the consultation period to gather views on whether other professions should also be included in the professions listed to undertake necessary and proportionate assessments.

Why are only doctors and practitioner psychologists identified as being able to undertake medical assessments?

- Under the LPS, medical assessments can be undertaken by doctors and practitioner psychologist. This is a broader range of medical professionals than previously under DoLS. This is because in a large number of cases, it will not be necessary to undertake a new assessment, and therefore experience in the diagnosis and treatment of mental disorder is not necessary. For a new diagnosis it is likely that only registered medical practitioners with experience in the diagnosis and treatment of mental disorder would be appropriate to provide that diagnosis.

- Where such a diagnosis already exists, the medical practitioner or psychologist will confirm that the existing diagnosis is still relevant to the medical assessment.

- The Code of Practice for the LPS provides greater detail on the criteria that must be met by a medical assessment. Integrating and embedding the most up-to-date information about the person, for example a diagnosis letter, in an individual's statutory plan will ensure that decisions relating to them are consistently informed and appropriate.

Will training will be provided to those professions identified as being able to undertake assessments and make determinations?

- Yes. Professions undertaking assessments, determinations and pre-authorisation reviews as part of the LPS are one of the key groups identified in the Workforce Plan and Training Framework which will include a focus on developing training, supporting materials and information.

- Welsh Government is working with Social Care Wales to commission training. Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS.

Who will be responsible for undertaking pre-authorisation reviews?

- A wider range of people working in health and social care settings will be able to undertake pre-authorisation reviews. This includes doctor, nurses, occupational therapists, social workers, practitioner psychologists and speech and language therapists. This could include a person who is employed by the Responsible Body or equally someone employed by another organisation.

- There are however certain restrictions on who can carry out a pre-authorisation review. A pre-authorisation review cannot be carried out by a person involved in the cared-for person's day-to-day care or treatment.

- The restrictions on who may undertake a pre-authorisation review ensure operational independence, particularly as in many cases the relevant assessments (capacity, medical and necessary and proportionate) will be undertaken by members of the team responsible for the person's care, support or treatment.

- This therefore adds an additional safeguard – and provides independence between the person who will authorise the arrangements that amount to a deprivation of liberty, and those providing the care, support and treatment.

- Due to the complex nature of this role, a Responsible Body must be assured that the pre-authorisation reviewer has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them in decision making. The new Workforce Plan and Training Framework includes specific learning outcomes for those people who will be undertaking pre-authorisation reviews. These are prescribed requirements for other assessments.

- AMCPs will carry out the role of the pre-authorisation reviewer for complex cases, and where the care for person is objecting to the proposed care, support or treatment arrangements.

Will there be training available for those people who will be undertaking the pre-authorisation reviews under the LPS?

- Yes. People undertaking pre-authorisation reviews are one of the key groups identified in the Workforce Plan and Training Framework which will include a focus on developing training, supporting materials and information.

- Welsh Government is working with Social Care Wales to commission training. Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS.

Independent Mental Capacity Advocate (IMCA) Regulations:

How will the IMCA support people as part of the LPS?

- The IMCA will support the person and those acting on their behalf to ensure that their views, wishes and feelings inform their care, support or treatment arrangements.

- The IMCA will also be able to make representations to the individual undertaking a pre-authorisation review under the LPs. This is a vital safeguard which ensures that the voice of the person is considered at this stage of the process.

- The role and functions of the IMCA in Wales are broadly aligned with the Regulations on IMCAs developed by the UK Government for England. However, the Regulations for Wales also include a requirement for the IMCA to maintain such contact with the Appropriate Person (in addition to the cared-for person) throughout the period of the appointment as both the IMCA and the Responsible Body consider is practicable and appropriate.

- The Wales Regulations additionally specify the level of contact will be "as the IMCA and the Responsible Body consider is practicable and appropriate". This is in recognition that there will be varying levels of support required/requested by a cared-for person or an Appropriate Person which will need to be balanced with the IMCA's capacity.

How will we make sure we have enough IMCAs for Wales?

- This is being considered as part of engagement on the Workforce Plan and Training Framework for Wales which will include a focus on developing training, supporting materials and information.

- Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS.

- Funding for IMCAs is being considered within the funding strategy for the LPS in Wales.

What training and or qualifications will new IMCAs need to undertake?

- IMCAs are one of the key groups identified in the Workforce Plan and Training Framework. IMCA training providers will need to adjust their training to take into account the new responsibilities under the LPS. The learning outcomes required in training for IMCAs are set out in the Training Framework.

- Welsh Government will also be engaging with stakeholders on the draft LPS Workforce Plan and Training Framework alongside the consultation on the draft Regulations for Wales to support the implementation of the LPS.

Will there be funding for the implementation of the LPS in Wales?

- 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.

Questions received during the consultation period so far:

Are there plans for Disability Equality Training, developed and run by disabled people, to also be required at all levels, especially staff working directly with disabled people?

There will be set training requirements for AMCPs in respect of the LPS. For all other competency groups set out within the LPS workforce triangle, Welsh Government will be making training resources available for Responsible Bodies to deliver locally. These resources for Responsible Bodies will not be compulsory training. In reviewing training need locally, Responsible Bodies will have opportunity to consider their current training offer and to integrate key training that is needed more broadly than the LPS, including working with people with protected characteristics. This is highlighted in the workforce and training plan, and Welsh Government would encourage local areas to give consideration to additional training that would support LPS training.

Will anything change for young people aged 15 and under?

There will be no changes for young people aged 15 and under. LPS will apply to young people from the age of 16. However, Welsh Government is giving consideration to the development of once for Wales materials (supporting materials developed on an all Wales basis) for young people under the age of 16, to prepare them for the changes they may experience when they turn 16.

Will the additional settings included in the LPS mean that backlogs for authorisations will be larger than they currently are under DoLS?

The changes to the safeguarding system are in part being made to address the backlogs which make the current DoLS system unmanageable and to offer better protections for people who lack mental capacity. It is hoped that backlogs will be reduced as a result of the changes, due to decisions being made at the most appropriate level and embedding decision making into existing care, support and treatment planning, and reducing the burden on those undertaking assessments. AMCPs will consider the most complex cases, but many cases will be able to be considered by a much wider range of staff than under the DoLS.

Will AMCPs be perceived differently based on how they have qualified to be an AMCP?

Staff who are currently working as BIAs will be able to undertake a streamlined conversion course to enable them to work as AMCPs. This training will take into account the knowledge and experience they already possess from their work as a BIA. For staff who have not previously worked as BIAs there will be a requirement to undertake a higher education level course to ensure training is of the appropriate level.

The regulations for Wales are clear that there is no difference in status between AMCPs who have qualified via these two routes. Both groups will be able to work as an AMCP on an ongoing basis, subject to them meeting the conditions for continuing approval. The higher education course would be available to AMCPs who have qualified via the conversion course should they wish to do this as part of their annual further training.

Questions raised on monitoring and reporting

Consent based approaching to monitoring and reporting:

The consultation documents reference taking a consent-based approach to monitoring and reporting. Is there a crossover here with the use and application of Adult Protection and Support Orders (APSOs)? How will the monitoring regime planned for the LPS ensure that there's clear insight where those orders are being used?

Adult Protection and Support Orders (APSOs) are introduced under Part 7 of the Social Services and Well-being (Wales) Act 2014. The monitoring bodies would not be monitoring the use of APSOs as part of LPS monitoring, although they may as part of wider performance review work. Also – as monitoring bodies, they would not be seeking APSOs: if there were safeguarding concerns, these would be reported to the Local Authority for it to determine appropriate action.

APSOs can be used to enable an authorised officer, and any other person specified in the order, to speak to an adult suspected of being at risk of abuse or neglect in private, to establish whether the adult can make decisions freely, to assess whether the person is an adult at risk and to establish if any action should be taken.

APSOs are Orders of last resort. Applications will only be made when other less intrusive approaches have failed or are highly likely to fail. Each local authority has a nominated authorised officer who can provide specialist advice and guidance where an APSO may be required. It is advice to professional colleagues and only an authorised officer may make the application.

The principles of the MCA underpin APSOs. Further information can be found in the statutory guidance: https://gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-4-adult-protection-and-support-orders.pdf.

The Regional Safeguarding Board Annual Reports are required to include details of the number of adult protection and support orders which were applied for in the Safeguarding Board area, how many were made, and how effective they were.

In terms of the monitoring bodies visiting people (for example – in their own homes) how will this be determined and where will this be set out? For example, will there be a quota based approach where the monitoring bodies undertake a certain number of visits – or will there be specific triggers for undertaking a visits? Where will information on this be set out?

Consideration is currently being given to the approach that will be taken to monitoring the LPS where the cared for person is in their own home. CIW have existing arrangements for visiting some people in their own home who are in receipt of a regulated service – and so they would be looking to include a focus on the LPS as part of the inspection of these services. For people living in their own home who do not receive a regulated service, CIW is planning to meet with people in line with the Monitoring and Reporting Strategy for Wales.

To support transparency, information on the approach that will be taken (including any specific triggers that may prompt CIW, HIW or Estyn to undertake visits) will be set out as part of the Monitoring and Reporting Strategy for Wales.

How will the monitoring bodies use the National Minimum Data Set to inform their approach to monitoring and reporting?

The proposed National Minimum Data Set includes important data items on the use of the LPS. CIW, HIW and Estyn will use this information to monitor trends at a local, regional and national level. Responsible Bodies will be required to regularly notify the monitoring bodies of LPS applications, authorisations, renewals, and of authorisations that come to an end. Data will be collected quarterly through the National Minimum Data Set coproduced by Welsh Government. This ensures consistency on how the LPS is being monitored across Health Boards and Local Authorities in Wales. The data will provide intelligence to inform ongoing inspection activity as well as the annual monitoring and reporting of the LPS. Alongside the National Minimum Data Set – the monitoring bodies will also consider:

- Information gathered from any reports prepared by Responsible Bodies on the implementation of LPS at a local or regional level.

- Information captured during ongoing engagement with senior leaders in local authorities and health boards on local processes and practices and the strengths and the challenges in how they manage, monitor and report on LPS.

- Information from providers of care and treatment / support and education.

- Monitoring of the LPS as part of routine inspections of social care providers, local authorities/health boards in settings where individuals receive care, support, treatment and education. Guidance on the approach to inspection will be published by the relevant monitoring body.

- It is important to note currently under DOLS providers registered with CIW provide real time notification of applications for DOLS authorisations and this will stop.

What will be the monitoring bodies' approach when either the cared for person or their family do not wish for a monitoring visit to take place? Will there be engagement with Responsible Bodies?

The monitoring bodies will be working closely with Responsible Bodies as they monitor and report on the LPS in Wales. There will be direct contact with the relevant Responsible Body regarding any proposed monitoring arrangements for people living in their own home who do not receive a regulated service, recognising wider sensitivities and the need to protect people's right to privacy.

There are considerable sensitivities when it comes to monitoring and reporting on the LPS where the cared for person is in their own home. How will this be managed?

CIW, HIW and Estyn already have existing protocols on engaging with families. Visits will be carefully planned by the monitoring bodies – in direct collaboration with the cared for person, their Appropriate Person, their IMCA and the Responsible Body. Where the person receives a regulated service and monitoring is being carried out alongside the inspection of the service, the current arrangements for visits will apply. Further detail on the approach to be taken will be set out in the Monitoring and Reporting Strategy for Wales – and to reflect stakeholders views and the Welsh Government consultation on the draft Regulations on monitoring and reporting.

How does the Regulatory Impact Assessment take account of the need to monitor and report on the LPS where the cared for person is in their own home?

The draft RIA published as part of the consultation on the draft Regulations for Wales does not specifically include costs regarding monitoring and reporting on the LPS in people's own homes. Consideration will be given to consultation responses, and the RIA can be amended to reflect evidence of impacts in relation to ongoing costs to support the Monitoring and Reporting Strategy for Wales.

National Minimum Data Set:

In the recent funding letter issued by Welsh Government for the implementation of the Liberty Protection Safeguards, there is reference to the WCCIS and how DHCW is leading on work to ensure this can be used to report on the LPS National Minimum Data Set. How will reporting work for those health boards and local authorities not currently using WCCIS?

In developing the National Minimum Data Set, Welsh Government has been "system agnostic" when it comes to supporting systems that will be used for ongoing monitoring and reporting. However, the WCCIS will be amended to include the relevant workflows / templates / reports in the WCCIS. For non WCCIS

organisations, the expectation is they will lead on building the data capture in their systems. Welsh Government is planning to fund two posts in DHCW – one of which will be a data engineer – who will collaborate with health boards and local authorities to extract the data required.

The data items included in the National Minimum Data Set are very process orientated. What plans are in place to monitor the outcomes of the LPS for the cared for person and others?

Alongside the use of the National Minimum Data Set – as part of their monitoring and reporting role (and as set out in the draft Monitoring and Reporting Strategy) CIW, HIW and Estyn will include a focus on ensuring:

- Responsible Bodies are upholding people's rights by implementing the LPS effectively, proportionately and efficiently.
- People are not being deprived of their liberty without authorisation.
- Any authorised deprivation is carried out proportionately and in line with authorisation.
- Authorisations are requested where appropriate.
- People's rights are protected and care, support and treatment arrangements amounting to a deprivation of liberty are appropriately assessed, authorised and reviewed.
- The person and certain others have been consulted as far as is practicable and appropriate about the person's wishes and feelings about the arrangement for their care.
- An "Appropriate Person" is identified and appointed to represent and support the cared for person. When there is no one suitable, an Independent Mental Capacity Advocate (IMCA) has been instructed. (Under the LPS, the Appropriate Person is also able to be supported by an IMCA.)
- People are treated with dignity and respect and are being given the care they need that is in their best interest and in line with their own wishes and offers the least restrictive approach.
- Responsible Bodies and care providers consistently consider whether alternative arrangements could be implemented to prevent a deprivation of liberty.
- Authorisations are being carried out properly and working to a wrong no door approach with any disputes to determine relevant Responsible Body resolved swiftly
- Information is shared where relevant about any transition between care arrangements.
- People receive timely information about the authorisation including their right to challenge the authorisation at the Court of Protection.
- Staff have appropriate training and understanding to carry out their roles, and a culturally competent workforce is in place.
- Compliance with legal framework and CIW/HIW/Estyn's monitoring requirements.

Some stakeholders in Wales have raised concerns that monitoring and reporting on 30 data items will be "labour intensive" and that there will be impacts on the health boards and local authorities. How is Welsh Government ensuring that all of the data items are essential – and will be used by the monitoring bodies?

The National Minimum Data Set predominantly comprises data items that local authorities and local health boards would be required to collect as part of their existing responsibilities to assess and meet that person's needs for care, support and treatment. It includes the specific data items that enable Monitoring Bodies to look at and report on key trends in relation to the number of applications, authorisations and renewals – as well as information on how the LPS process is working. The data will be used to inform ongoing inspection activity (see question 10 below).

Questions on Assessments and determinations

Can a professional who works in a setting where an individual is receiving care support and treatment undertake an assessment of that individual?

The draft regulations for Wales set out eligibility requirements to carry out capacity assessments, medical assessments and necessary and proportionate assessments. One of the general eligibility requirements is that the assessor must have the ability to act independently of any person who appoints them to carry out an assessment and of any person who is providing care or treatment to P. It is not the policy intent that this requirement for independence within the regulations for Wales would preclude an individual involved in the care or treatment of P from undertaking assessments. This is also reflected in the draft Code of Practice which states by way of example, at paragraph 16.8, that a social worker involved in the person's care could undertake the capacity and necessary and proportionate assessments and determinations, and a doctor could provide the medical assessment and determination. It is important to note, however, that any person undertaking a pre-authorisation review must not be involved in the day-to-day care of P nor involved in providing any treatment to P (paragraph 24 of Schedule AA1 of the Mental Capacity Act 2005).

Can two members of the same team each undertake an assessment of an individual (answer to reflect on 16.9 of code of practice)

The draft Code of Practice for England and Wales states at paragraph 16.9 that:

"*The professionals carrying out the assessments and determinations should have a degree of independence from each other. It will be a matter for Responsible Bodies to decide the precise arrangements to ensure independence based on the individual circumstances of the case, but the following principles should be considered:*

• *an individual carrying out an assessment and determination should not be involved in the same business venture as another carrying out an assessment and*

determination, including being a partner, director, other office holder or major shareholder; and

• *an individual carrying out an assessment and determination should not direct the work or employ another carrying out an assessment and determination; and*

• *those carrying out an assessment and determination should not be members of the same team who work together for clinical purposes on a routine basis. For example, they could work in the same hospital, but should not routinely work on the same ward."*

The regulations for Wales set out that any professional undertaking an assessment must have the ability to act independently of any person who appoints them to carry out an assessment and of any person who is providing care or treatment to P. These regulations do not necessarily preclude individuals working within the same team from undertaking separate assessments for an individual, provided that the Responsible Body is satisfied that such individuals have the ability to act independently as required by the regulations.

Stakeholders in Wales should respond to the UK Government consultation on the draft Code of Practice for England and Wales should they consider that practice suggested within the document would not be practicable in Wales.

Can one person undertake all three assessments?

The three assessments and determinations should be carried about by no fewer than two professionals before a Responsible Body can consider an authorisation to deprive someone of their liberty. This is reflected at paragraph 16.8 of the Code of Practice.

Would Welsh Government consider any other professions being included on the list? (teachers, physios, art therapists etc have been raised)

Welsh Government would encourage those who consider there should be additional professions including in the list of those who may carry out any of the three assessments to respond to the written consultation setting out the rationale and any evidence supporting their inclusion.

Would a professional listed in the regulations have to undertake assessments?

These are enabling regulations which set out the range of professions who would be eligible to undertake assessments. Individual Responsible Bodies and professionals will need to make a judgement as to which individuals are best placed to undertake assessments in that area, taking into account staffing, training, and experience and the requirements in the regulations. Individuals should exercise professional judgement as to whether they are competent to undertake assessments.

Could there be a more specific definition of medical practitioner?

These are enabling regulations which set out the range of professions who would be eligible to undertake assessments. Individual registered medical practitioners will be expected to exercise professional judgement as to whether they are competent to undertake assessments.

Would being related to someone with a financial interest in a care home preclude them from undertaking assessments?

Any professional carrying out an assessment must not be a relative of a person who is financially interested in the care of the person being assessed. The terms "relative" and "financial interest" are defined in the regulations.

Would an individual without a diagnosis be required to receive one for the purposes of LPS?

Under Schedule AA1 to the Mental Capacity Act 2005, three conditions must be met before the arrangements can be authorised. One of these conditions is that the person must have a mental disorder. Accordingly, under the LPS, a medical assessment and determination is required to establish whether the person has a mental disorder before an authorisation can be given.

Paragraphs 16.49 and 16.50 of the Code of Practice states as follows:

16.49 In most cases this will be simply established by obtaining a diagnosis of a specific condition. A diagnosis letter, signed by a registered medical practitioner (including GPs and psychiatrists) or a registered psychologist who meets the conditions of the regulations, will normally meet the required evidence for the assessment and determination. Where the person has a diagnosis, or it is possible to obtain a diagnosis in the relevant timeframes for LPS, then the Responsible Body should request a letter confirming the diagnosis. If the Responsible Body is not aware that a previous diagnosis has been made, the Responsible Body should contact a clinician with oversight of the person's care in the first instance to seek this information (this may be for example a GP, registered psychologist or psychiatrist). If the person does not already have a diagnosis, the Responsible Body should seek a diagnosis of the person's condition through the clinician overseeing the person's care.

16.50 In some cases, where a diagnosis has not already been made, diagnosing a precise condition may not be straightforward and may take a significant amount of time. If it is not possible to reach a final diagnosis before an authorisation needs to be given, either within the 21 day timeframe for completing LPS authorisations, or within a shorter timeframe for urgent cases, an authorisation may need to be given before a final diagnosis has been made. In such cases an authorisation can still be given as long as the medical assessment and determination has concluded that the person has a mental disorder, but that the precise diagnosis cannot currently be confirmed. In such cases a preliminary diagnosis may be appropriate. The Responsible Body should, where appropriate, seek a precise diagnosis of the

person’s condition as soon as possible and update its records accordingly. In some cases, the Responsible Body should consider whether a shorter authorisation or regular reviews would be appropriate if the precise diagnosis is not yet confirmed.