
Ymateb i Ymgynghoriad / Consultation Response

Enw / Name:	Owen Evans
Rôl / Role:	Her Majesty's Chief Inspector of Education and Training in Wales
E-bost / Email:	ChiefInspector@estyn.gov.uk
Rhif Ffôn / Tel No:	029 2044 6446
Dyddiad / Date:	07.07.22
Pwnc / Subject:	Liberty protection safeguards

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, we are independent of the Welsh Government.

Our principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, we must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Our remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

We may give advice to the Welsh Parliament on any matter connected to education and training in Wales. To achieve excellence for learners, we have set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Response

Introduction

We welcome the introduction of the Liberty Protection Safeguards with the extension to include 16- and 17-year-olds and the intended positive impact they should have on learners in education in Wales. This means we are also named as a responsible body for the purpose of monitoring LPS in Wales alongside Healthcare Inspectorate Wales (HIW) and Care Inspectorate Wales (CIW). We welcome this strengthened approach to collaborative working with other inspectorates.

The changes within the Liberty Protection Safeguards provide a meaningful opportunity to improve outcomes for those adults and young people subject to deprivations of liberty and ensure that cared-for people have opportunities to contribute meaningfully to decisions made about them through a process of person-centred practice. These changes complement the ALN reforms which are currently being implemented in Wales, by placing the person at the centre of the decision-making process and increasing their participation in this.

The regulations and guidance overall are comprehensive and easy-read versions of key documents are helpful resources to promote a sound understanding of the changes for all. We have identified how the guidance could be further strengthened in our response to the individual questions below.

In summary, we feel the following areas could strengthen the consultation document information:

1. Clarification of the cross-border arrangements where an individual is placed in educational provision in Wales from an English local authority or placed in an English educational provision from a Welsh local authority for the process of making assessments and carrying out determinations.
2. In annex 2, the guidance on capacity eligibility requirements could be strengthened by explicitly stating that for young people in independent special schools who require assessment for LPS, this cannot be carried out by a member of the company's own clinical team. While this is the current practice, we consider this would represent a conflict of interest as the company would have financial interests in the care of the person.
3. From an educational perspective the addition of an easy read list of possible deprivations of liberty (not an exhaustive list) which require authorisation would support providers further to understand what might constitute a deprivation of liberty for learners in education. This should provide consistency for those learners who are subject to deprivations across all provisions as staff in these settings adjust to the new regulations.

Consultation questions

Question 1: Do you agree that the amendments to the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Wales) Regulations 2007 clearly and sufficiently set out the functions of the IMCA under the LPS?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 1, please include this here.

The guidance sets out a clear explanation of the functions of the IMCA under the LPS. Easy read versions in both English and Welsh are helpful in making this information accessible to all.

The Mental Capacity (Deprivation of Liberty: Eligibility to Carry out Assessments, Make Determinations and Carry out Pre-Authorisation Reviews) (Wales) Regulations 2022

Question 2: Do you agree that the draft Regulations on undertaking assessments, determinations and pre-authorisation reviews are clear and sufficient?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 2, please include this here.

The guidance sets out a clear explanation of the process of pre-authorisation, determinations and assessments. Easy read versions in both English and Welsh are helpful in making this information accessible to all.

The guidance could be further strengthened by clarifying the cross-border arrangements where an individual is placed in educational provision in Wales from an English local authority or placed in an English educational provision from a Welsh local authority.

In annex 2, the guidance on capacity eligibility requirements could be strengthened by explicitly stating that for young people in independent special schools who require assessment for LPS, this cannot be carried out by a member of the company's own clinical team. While this is the current practice, we consider this would represent a conflict of interest with potential financial implications.

Question 3: Do you agree the draft Regulations enable the relevant professionals to carry out assessments and make determinations?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 3, please include this here.

We feel that the draft Regulations enable the relevant professionals to carry out assessments and made determinations. However, the guidance could be further strengthened by clarifying the cross-border arrangements where an individual is placed in educational provision in Wales from an English local authority or placed in an English educational provision from a Welsh local authority.

Question 4: Do you agree that the draft Regulations relating to financial interest provide the necessary safeguards for the cared-for person?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 4, please include this here.

Annex 2 provides clear guidance on financial interests. The guidance on capacity eligibility requirements could be further strengthened by explicitly stating that for young people in independent special schools who require assessment for LPS, this cannot be carried out by a member of the company's own clinical team. While this is the current practice, we consider this would represent a conflict of interest with potential financial implications.

The Mental Capacity (Deprivation of Liberty: Training and Criteria for Approval as an Approved Mental Capacity Professional) (Wales) Regulations 2022

Question 5: Do you agree the draft Regulations on the role and appointment of AMCPs are clear and sufficient?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 5, please include this here.

The draft Regulations on the role and appointment of AMCPs are clear and sufficient.

Question 6: Do you agree the draft Regulations enable the relevant professionals to carry out the role of the AMCP?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 6, please include this here.

The draft Regulations enable the relevant professionals to carry out the role of the AMCP. The stipulation of a minimum number of hours of annual training will be

beneficial for ensuring the continuing quality of the workforce and consistency of approach across Wales.

Question 7: Do you agree with the arrangements for the approval of the AMCP?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 7, please include this here.

We believe that the arrangements for the approval of the AMCP are suitable.

Question 8: There are three main types of training that will be provided for AMCPs: conversion training; initial training; and further training. Do you agree with the overall approach being taken to providing training for AMCPs?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 8, please include this here.

The overall approach being taken to providing training for AMCPs appears positive and should ensure the consistency and quality of those carrying out this important role.

From an educational perspective, the addition of an easy read list of possible deprivations of liberty (not an exhaustive list) which require authorisation would support providers further to understand what might constitute a deprivation of liberty for learners in education. This should provide consistency for those learners who are subject to deprivations across all provisions, as staff in these settings adjust to the new regulations.

Question 9: With specific reference to further training do you agree with:

i. the proposed requirement to carry out 18 hours of further training each year?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

ii. the content of further training being non-accredited and approved by either Social Care Wales or a local authority in Wales?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 9, please include this here.

These training arrangements appear detailed and suitable.

Question 10: Do you agree the draft Regulations should enable local authorities to work together with their partners to put in place regional or national arrangements for the approval of AMCPs?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 10, please include this here.

The draft Regulations should enable local authorities to work together with their partners to put in place suitable regional or national arrangements for the approval of AMPCs.

**The Mental Capacity (Deprivation of Liberty: Monitoring and Reporting)
(Wales) Regulations 2022**

Question 11: Do you agree that the draft Regulations on monitoring and reporting are clear and sufficient?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 11, please include this here.

The draft Regulations on monitoring and reporting are clear and reflect the inspectorates' wider strategic roles in monitoring and reporting on leadership and practice across the social care, health and education sectors in Wales.

From an educational perspective, we welcome this new role and we have been fully involved in the development of the monitoring and reporting process and strategy.

Question 12: Where an authorised arrangement is being carried out in a private dwelling or in a part of a premises used as a private dwelling, a monitoring body must seek permission prior to visiting. Also, a monitoring body will seek consent from the care-for person before meeting with them. If a cared-for person does not have capacity to consent then a best interests decision will need to be taken about such a meeting. This may include the monitoring bodies. Do you agree the consent based approach we are proposing to monitoring and reporting reflect people's rights and provide adequate safeguards?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 12, please include this here.

We consider the consent-based approach to monitoring and reporting reflects people's rights and provides adequate safeguards. There are likely to be a very few instances where we will be involved in this aspect of the process, such as for learners who are electively home educated (EHE).

Broader consultation questions regarding the implementation of the LPS in Wales

Question 13: Do you agree the Regulations protect the rights of the person and service users?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 13, please include this here.

The regulations protect the rights of the person and service users. They reflect a positive change in the rights of the cared-for person.

Question 14: We are also consulting on a draft Explanatory Memorandum and Regulatory Impact Assessment (RIA) which provide estimates of the financial costs and benefits / impacts of the implementation of the LPS Regulations in Wales. Do you agree with our assessment of the financial costs and benefits / impacts of the LPS Regulations set out in the draft RIA?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 14, please include this here.

We agree with the assessment of the financial costs and benefits / impacts of the LPS Regulations set out in the draft RIA.

Question 15: As part of the RIA, we have included proposed data items for the LPS National Minimum Data Set – which is currently being developed. Do you agree with the data items included in the draft LPS National Minimum Data Set for Wales?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 15, please include this here.

We agree with the data items included in the draft LPS National Minimum Data Set for Wales. We have been fully involved in the development of the National Minimum Data Set for Wales to ensure data items reflect the educational perspective.

Question 16: We have issued a draft Children's Rights Impact Assessment (CRIA) for consultation alongside the draft Regulations for Wales and the draft Regulatory Impact Assessment. Do you agree with our assessment of the impacts of the LPS Regulations on children's rights set out in the CRIA?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 16, please include this here.

We agree with the assessment of the impacts of the LPS Regulations on children's rights set out in the CRIA.

Question 17: We have also issued a draft Equalities Impact Assessment for consultation alongside the draft Regulations for Wales and the draft Regulatory

Impact Assessment. Do you agree with our assessment of the impacts of the LPS Regulations on those with protected characteristics?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 17, please include this here.

We agree with the assessment of the impacts of the LPS Regulations on those with protected characteristics subject to robust reviews of the data as detailed above.

Question 18: Welsh Government is currently engaging separately on a Workforce Plan and Training Framework – and a summary of this is included in the RIA. Do you agree that the LPS Workforce Plan and Training Framework will promote and embed person centred planning?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 18, please include this here.

The LPS Workforce Plan and Training Framework appears to be a beneficial tool to promote and embed person centred planning in settings.

We welcome the planned competency groups and professional learning opportunities identified within the Workforce and Training Triangle. We agree these will be critical in the successful management of LPS in educational settings.

There may be opportunities to build on training taking place for the education workforce on person-centred practice as part of the implementation of the ALN reforms.

Question 19: We have also issued a draft Welsh Language Impact Assessment for consultation alongside the draft Regulations for Wales and the draft Regulatory Impact Assessment. Do you agree with our assessment of the impacts of the LPS Regulations on Welsh Language?

Strongly Agree

Somewhat Agree

Neither Agree nor Disagree

Somewhat Disagree

Strongly Disagree

If there is information you would like to provide that supports your response to question 19, please include this here.

The assessment of the impact of the LPS regulations on Welsh language appears to be accurate.

Question 20: We would like to know your views on the effects that the draft Regulations for Wales supporting the implementation of LPS would have on the Welsh language, specifically on opportunities for people to use Welsh and on

treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The effects on the Welsh language have the potential to be positive as outlined in the Welsh Language Impact Assessment.

Question 21: Please also explain how you believe the proposed draft Regulations could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We agree that the current regulations ensure that Welsh and English languages are both treated equally favorably.

Question 22: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: