EQUALITY IMPACT ASSESSMENT (EIA): LIBERTY PROTECTION SAFEGUARDS

Describe and explain the impact of the proposal on people with protected characteristics as described in the Equality Act 2010

The Liberty Protection Safeguards (the LPS) are a new system introduced by the UK Mental Capacity (Amendment) Act 2019 that will replace the Deprivation of Liberty Safeguards (DoLS). They are necessary procedures in law to safeguard people's Article 5 (right to liberty) Human Rights.

The DoLS/LPS are part of the Mental Capacity Act 2005 which is the legal framework in Wales and England about how decisions are made when a person lacks the mental capacity to make that decision for themselves, for instance due to a learning disability, stroke, brain injury, mental disorder, or dementia.

The LPS system provides safeguards for people aged 16 and over who lack the mental capacity to consent to their care, support or treatment and those arrangements amount to a deprivation of their liberty i.e. they are not free to leave a place permanently and are under continuous supervision and control.

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 (e.g. care homes, nursing homes, hospitals, supported living, people's own homes, day services, sheltered housing, shared lives and post-16 specialist education placements). Crucially – they will also apply to anyone aged 16 and over.

Under the current DoLS system, many people are not receiving Article 5 safeguards for significant periods of time, or in some cases at all, as result of the backlog of cases awaiting authorisation. The measures set out in the Mental Capacity (Amendment) Act 2019 aim to reduce and eliminate the backlogs currently associated with DoLS applications. As set out in the UK Government's Equality Analysis for the Bill (when the legislation was going through Parliament)[1] this will be achieved through a streamlined process that will:

- Eliminate duplication – by embedding the LPS assessments into existing care and treatment planning and removing duplication of existing assessments. The new system has been designed to better integrate with other relevant legal frameworks. The aim is for the LPS practice to become embedded into mainstream health, care and treatment plans.

[1] Department of Health and Social Care (December 2018) Equality Analysis Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

This integration will make the overall process more straightforward for the person and easier for local authorities by reducing duplication.

- Provide an option to extend the period of authorisation for individuals with long term conditions from which they are unlikely to recover, such as dementia, from one year to up to three years (but only after two initial one-year authorisations).

- Reduce bureaucracy by allowing authorisations to apply in more than one setting.

- Require three assessments rather than six.

- Ensure that people are supported and afforded their rights to participate and express their views wishes and feelings throughout the process by an "Appropriate Person" or the Independent Mental Capacity Advocate (IMCA).

- Ensure that unpaid carers and families are listened to and able to play a stronger role in the new model, for example through the duty to consult.

- Add checks and balances throughout the model to ensure that person's wishes and feelings inform any authorisation and where there are objections, that those cases get a swift and independent determination by a new role of the Approved Mental Capacity Professional (AMCP).

- Extend the application beyond hospitals and care homes to a wider range of settings including supported living, shared lives schemes and domestic settings. Currently people who are deprived of their liberty in these settings must apply to the Court of Protection for access to these safeguards.

Although the LPS is a reserved subject matter, the Mental Capacity (Amendment) Act 2019 contains regulation-making powers for the Welsh Ministers to implement the LPS in Wales. To support the implementation of the LPS in Wales, there will be four areas of legal safeguards underpinned by Welsh Regulations, which focus on:

- Creation of a new role of Approved Mental Capacity Professionals – and arrangements for their approval by local authorities, training requirements and a prescribed body for approval of that training (in Wales – this will be Social Care Wales).

- Changes to the role of Independent Mental Capacity Advocates.

- Prescribing public bodies to monitor and report on the LPS.

- Agreeing and setting out which professionals can undertake the LPS related assessments, pre-authorisation reviews and make decisions.

Without these Regulations, the legal frameworks needed to support the implementation of the LPS in Wales will not be in place, resulting in the absence of protections for people lacking capacity.

Monitoring and Reporting:

The LPS includes a specific focus on monitoring and reporting and as part of this, we intend to monitor the LPS applications and authorisations and routinely collect data on protected characteristics. An effective and comprehensive monitoring scheme is essential and recognises that in many situations, the person subject to an authorisation will be in a highly vulnerable situation and oversight of the operation of the system will be vital.

Ethnic minority communities are over-represented in secure mental health services and in detainment by the Mental Health Act. However, minority ethnic groups are under-represented in having an authorisation under the DoLS – with the latest data published on DoLS in Wales showing that the majority of people who have had their care, support or treatment that amount to a deprivation of liberty authorised under DoLS in Wales are white.[2]

It is therefore critical to have ongoing data on LPS applications and authorisations under the LPS.

Record of impacts by protected characteristic:

The following table sets out Welsh Government's initial analysis of the impacts of the four sets of Regulations for Wales that will support the implementation of the new LPS. It draws on the UK Government's Equalities Analysis for the Mental Capacity (Amendment) Bill published in 2018 – and the UK Government's updated Equalities Analysis for the Liberty Protection Safeguards, published alongside their consultation on draft Regulations for England and the Code of Practice for England and Wales.

[2] Health Inspectorate Wales (March 2021) Deprivation of Liberty Safeguards (DoLS) Annual Monitoring Report 2019-2020

Welsh Government will use the consultation to gather further evidence of impacts of the LPS on those with protected characteristics, by publishing the draft EIA alongside the Regulations for Wales – and by including a specific question for stakeholders on the extent to which people agree with our initial assessment of impacts.

We will also use this an opportunity to engage with new groups formed in 2021 – including the Welsh Government / Wales Alliance for Mental Health Task and Finish Group on Mental Health and Ethnic Minority Communities. This was established as a commitment in the Welsh Government's draft Race Equality Action Plan – to support better access to mental health services amongst minority ethnic communities, and includes membership from a range of national and community organisations. The Task and Finish Group will be considering the proposals from Welsh Government regarding the reforms of the Mental Health Act being introduced by the UK Government, recognising the disproportionate impact of existing legislation on Black, Asian and Minority Ethnic communities. It will also be important for the Task and Finish Group to consider the draft EIA and the LPS Regulations for Wales, as well as the UK Government's supporting draft Code of Practice.

Protected characteristic or group	**What are the positive or negative impacts of the proposal?**	**Reasons for your decision (including evidence)**	**How will you mitigate impacts?**
Age	Older people are more likely to feel the greatest impact of the changes being introduced by the LPS. However, the LPS will impact those who lack capacity irrespective of their age. The latest data published on DoLS in Wales[3] show us that the main group of individuals with a DoLS application were older people, with 87% of applications for DoLS to health boards being for someone over the age of 65 in 2019-20. There was a relatively even gender split, with 50% of	The LPS are a new system introduced by the UK Mental Capacity (Amendment) Act 2019 that will replace the DoLS. They are necessary procedures in law to safeguard people's Article 5 (right to liberty) Human Rights. The DoLS/LPS are part of the Mental Capacity Act 2005 which is the legal framework in Wales and England about how	We do not anticipate any negative impacts of the new system on people with protected characteristics. However, this is something we intend to monitor through a new National Minimum Data Set for the LPS – and the implementation of the monitoring and

[3] Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2019-20

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	applications being for females. However, this gender balance shifts over different age groups, with a higher proportion of those aged 85 or older being female. For local authorities: As in previous years, the majority of applications for DoLS authorisations were for older adults, with more than 85% over the age of 65. The demographic trends show that larger numbers of DoLS authorisations were made for males up to the age of 64, but after the age of 65, females had significantly higher numbers of DoLS authorisations. 1. Draft Regulations for Wales setting out the role and responsibilities of the new Approved Mental Capacity Professional (AMCP) The AMCP is a new role which strengthens the safeguards in place for all age groups. 2. Draft amending Regulations for Wales on Independent Mental Capacity Advocates (IMCA) Every person subject to the LPS will have ongoing representation and support from either an	decisions are made when a person lacks the mental capacity to make that decision for themselves, for instance due to a learning disability, stroke, brain injury, mental disorder or dementia. The need for urgent reform of the current law is widely recognised across the system in Wales and England, including from people with lived experience and carers. 1. AMCPs: The nature of DoLS / the LPS means that a disproportionate number of older people are likely to have an authorisation in place. However, part of the role of the AMCP will be to establish the wishes and feelings in terms of care, support or treatment, end of life care etc. This will be particularly important for older people.	reporting Regulations for Wales. As we consult on the draft Regulations: We will also engage with key stakeholders and those with lived experience – as part of our ongoing engagement with Dementia Oversight of Implementation and Impact Group (DOIIG) and the 3 Nations group on Dementia, with Children in Wales (who are developing proposals for engaging with young people as part of the consultation on the draft Regulations for Wales), and with the Ethnic Minority Communities Mental Health Task and Finish Group. The latter is a joint Welsh Government / Wales Alliance for Mental Health Task and Finish Group, established as part of

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	"Appropriate Person" or an IMCA, unless this is not in their best interests. It is the duty of the Responsible Body (health boards and local authorities in Wales) to ensure that there is an Appropriate Person or IMCA provided as soon as an application for an authorisation of a person's deprivation of liberty is made. IMCAs must be enabled to act independently of the person or body instructing them. This will strengthen the safeguards in place for people of all age groups. 3. Draft Regulations for Wales on who can undertake assessments, determinations and pre-authorisation reviews These Regulations will specify who can undertake assessments and determinations. This will ensure that anyone making these decisions on behalf of individuals will have the relevant qualifications and experience to do so. This will strengthen the safeguards in place for people of all age groups. Those with a financial interest / connection to	2. Under the new LPS system, if there is no Appropriate Person, there is a presumption that Independent Mental Capacity Advocate is appointed unless it is not in the person's best interests. According to the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill: "Typically, those of this status will be those who are much older, whereas those with a learning disability, for example, are more likely to have existing family to support them. This will be beneficial for older people and as such have the effect of removing or minimising the disadvantages suffered by persons with this protected characteristic, by ensuring that everyone has equal access to advocacy."[4]	the Welsh Government's draft Race Equality Action Plan – and a commitment to improve access to mental health services amongst minority ethnic communities. Welsh Government officials will engage with this group during the consultation on the draft Regulations to further explore impacts on minority ethnic communities.

[4] Page 11: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	the place where the person is subject to care, support or treatment arrangements that amount to a deprivation of liberty will not be able to carry out assessments, determinations and pre-authorisation reviews, further strengthening the protection offered by the safeguards. 4. Draft Regulations for Wales on monitoring and reporting Monitoring and reporting will apply across all age groups and all settings. Without these Regulations, there will be no monitoring of the operation of the LPS, which would be to the detriment of some of the most vulnerable individuals in Wales. HIW, CIW and Estyn are the most appropriate bodies to monitor and report on the operation of the LPS in Wales. The Regulations on monitoring and reporting will give HIW, CIW and Estyn the power to: A. Visit a setting where an authorised deprivation of liberty is being carried out.	The LPS system provides safeguards for people aged 16 and over who lack the mental capacity to consent to their care, support or treatment and those arrangements amount to a deprivation of their liberty i.e. they are not free to leave a place permanently and are under continuous supervision and control. As highlighted in the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill: "This will be beneficial as it is a more streamlined process than having to apply to the Court of Protection."[5] In addition – as stated in the UK Government's Equality Analysis for the LPS (updated for the UK Government consultation on Regulations for England and the draft Code of Practice for the MCA for England and Wales): "Under the	

[5] Page 12: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	B. Meet with cared-for persons (either in the settings where the authorised deprivation is happening or elsewhere). C. Require records relating to the care and treatment / support / additional learning provision of that person, and to inspect those. Specifically, HIW / CIW / Estyn can request these records from a setting where an authorisation is in place before, when or after they visit the setting. D. Issue an annual report on the operation of the LPS. It is anticipated that this will involve the publication of a tri-partite report – developed by CIW, HIW and Estyn. These are important safeguards as they will help to establish how the LPS is working and whether the rights of those people whose care, support or treatment arrangements that amount to a deprivation of liberty are being protected.	current system there is a risk that people who fund their own care may fall into a gap as the local authority does not have oversight of their care, and relies on the care home to notify them when a DoLS authorisation may be required. Under the LPS, the Responsible Body may still need to be notified by someone either within or outside the Responsible Body that an authorisation may be required, and therefore there is still a risk that some people might be missed. The training framework and workforce strategy will set out what training all staff should undergo, which will include training to recognise potential deprivations of liberty and how to begin the LPS process."[6] This will strengthen the	

[6] UK Government (Department of Health and Social Services) Equality Analysis – Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
		safeguards in place for people of all age groups.	
Disability (think about different types of disability)	As set out in the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill: "People with a disability, as defined in the Equality Act 2010, will be disproportionately affected by the LPS in comparison to those without disability. This includes those with learning difficulties and autism. Improving outcomes for people sharing this characteristic is a key aim of the LPS."[7] For example, the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill identifies that: "It is possible that people with certain kinds of disabilities will be less able or less likely to object to their arrangements and it could therefore be more difficult for their case to be reviewed by an AMCP."[8] However: The new LPS authorisation and assessments will be less burdensome than the	Our policy intention and rationale in respect of disability impact mirrors that in the analysis above in relation to older people. We anticipate the benefits of additional protections to be mirrored across all of the protected groups. Additional examples of impacts across people with disabilities are set out below. The UK Government's updated Equality Analysis for the LPS[9] highlights that authorisations could last up to three years where appropriate (after two initial authorisations of up to one year), compared to a maximum of one year under DoLS. However, the LPS requires a scheduled regular programme of	See analysis of impacts on age.

[7] Page 8: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

[8] Page 9: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

[9] UK Government (Department of Health and Social Care) Equality Analysis – Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	current process which will mean those with disabilities, including learning difficulties, will be able to access the safeguards more easily. This is because the potential for the LPS can be considered when planning a person's care, before the safeguards are strictly needed and by considering the least restrictive option. This can help to make the process more person-centred and less stressful for the individual. The explicit duty to consult with the cared-for person reinforces the Person's rights to participate and ensure their views, wishes and feelings inform their preferred outcome. As the LPS is implemented, the needs of individuals with sensory loss will also be factored in (e.g. building in sign language interpretation – and delivering the Sensory Loss Standards which will cover the NHS workforce). 1. The AMCP Role The AMCP is a new role which strengthens the safeguards in place for all individuals, including those with disabilities. To support the implementation of the LPS in	reviews in place during this period. A change in the person's condition or circumstances will trigger a review. In addition, anyone may contact the relevant Responsible Body to explain why they think a review is required. This proportionate approach will have the effect of reducing the burden of potentially invasive assessments upon people with long term and stable conditions and their families whilst retaining clear and unambiguous rights to challenge. The LPS requires the least restrictive option at all times. 1. For people who are objecting to arrangements, especially complex cases, the legislation provides for an AMCP to carry out reviews. It is possible that people with certain kinds of disabilities will	

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	Wales, the draft AMCP Regulations will: • Set out the criteria which must be met by a person to be eligible for approval by a local authority in Wales as an Approved Mental Capacity Professional. • Specify the matters that a local authority may take into account before approving a person as an AMCP. • Provide for Social Care Wales to approve training for AMCPs in Wales. • Provide for Welsh Ministers to approve courses which will enable people who are currently Best Interests Assessors under the existing DoLS scheme to become AMCPs under the LPS. • Set out training requirements for the AMCPs. • Include provision for the circumstances when a person's approval as an AMCP will be suspended and specify when approval will end. • Enable a local authority to approve Best Interests Assessors as AMCPs, who successfully complete a conversion course, if the local authority is satisfied they	be less able or less likely to object to their arrangements and it could therefore be more difficult for their case to be reviewed by an AMCP. In response to this, the legislation allows for objections to be raised on a person's behalf.	

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	meet other criteria set out in the Regulations. 2. The IMCA Role Every person subject to the LPS will have ongoing representation and support from either an 'Appropriate Person' or an IMCA, unless this is not in their best interests. IMCAs must be enabled to act independently of the person or body instructing them. An IMCA would therefore need to consider all of the needs of the individual, including those associated with their disability. 3. Assessments, determinations and pre-authorisation reviews These Regulations will specify who can undertake assessments and determinations. This will ensure that anyone making these decisions on behalf of individuals will have the relevant qualifications and experience to do so. This will strengthen the safeguards in place for people including those with disabilities – and also ensure that their views, wishes and feelings are taken into account across all decision		

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	making, and care, support or treatment planning. 4. Monitoring and reporting CIW, HIW and Estyn are the named monitoring bodies in Wales, in the draft Regulations on monitoring and reporting. The National Minimum Data Set on the LPS includes data items on the protected characteristics, which includes a specific data item on disabilities. The NMDS will be used to monitor the implementation of the LPS.		
Gender Reassignment (the act of transitioning and Transgender people)	All people subject to the LPS will experience an equivalent process for assessment and authorisation of a deprivation of liberty regardless of the protected characteristic of gender reassignment whilst recognising their individual circumstances and rights. CIW, HIW and Estyn are the named monitoring bodies in Wales, in the draft Regulations on monitoring and reporting. The National Minimum Data Set on the LPS includes data items on the protected characteristics.		See analysis of impacts on age.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	We will use the consultation period to request additional evidence of the impacts on this specific group – to ensure they will not be differentially or adversely effected by their implementation.		
Pregnancy and maternity	All people subject to the LPS will experience an equivalent process for assessment and authorisation of a deprivation of liberty regardless of the protected characteristic of pregnancy or maternity whilst recognising their individual circumstances and rights. We will use the consultation period to request additional evidence of the impacts on these specific groups to ensure they are not differentially or adversely effected by their implementation. CIW, HIW and Estyn are the named monitoring bodies in Wales, in the draft Regulations on monitoring and reporting. The National Minimum Data Set on the LPS includes data items on the protected characteristics.		See analysis of impacts on age.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
Race (including different ethnic minorities, Gypsies and Travellers and Migrants, Asylum Seekers and Refugees)	All people will be subject to the LPS will experience an equivalent process for assessment and authorisation of a deprivation of liberty regardless of ethnicity whilst recognising their individual circumstances and rights. The majority of people who have had their care, support or treatment that amount to a deprivation of liberty authorised under DoLS in Wales are white.[10] As part of the National Minimum Data Set for Wales – we will include a specific data item on ethnicity, within the view to monitoring impacts. People from ethnic minority backgrounds have much higher rates of detention under the Mental Health Act than white people nationally, as reported by the CQC in their 2018 report *The rise in the use of the MHA to detain people in England*. The 2019 – 2020 Mental Health Act Statistics show that known rates of detention for Black or Black	According to the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill[13] people from Black Asian and Minority Ethnic communities have a preference to receive care in their own home. The UK Government's Equality Analysis also states: "Under the current system, deprivations of liberty that occur in domestic and community settings must be authorised by the Court of Protection. Under the proposed system, deprivations of liberty in domestic and community settings will be covered by the LPS as well, meaning individuals can be assessed and authorised without going to court. This will cost less than the current process of applying to	Data shows that a higher percentage of people from minority ethnic communities receive their care in the community and in their own home, than in nursing or residential care home settings.[16] A comprehensive monitoring and reporting system will help to ensure the rights of people deprived in any setting are protected. In May 2021, the Welsh Government and the Wales Alliance for Mental Health established a Task and Finish Group focussing on the needs of minority ethnic communities and access to mental health services. We will engage with the

[10] Health Inspectorate Wales (March 2021) Deprivation of Liberty Safeguards (DoLS) Annual Monitoring Report 2019-2020

[13] Page 10: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

[16] Page 10: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	British people (321.7 detentions per 100,000 population) were over four times those of white people (73.4 per 100,000 population).[11] (See Annex A of this EIA for a further discussion of mental health and impacts on Minority Ethnic Communities.) The UK Government White Paper 'Reforming the Mental Health Act' contains proposals to address inequalities in the application of the Mental Health Act through improving the transparency of decision making, providing greater choice and autonomy, and increasing the ability for patients to challenge decisions. In some cases, a person with a mental illness that requires arrangements that amount to a deprivation of liberty for the purpose of their care, support or treatment could have their arrangements authorised either under the MHA or the LPS. This replicates the interface between the MHA and DoLS. The UK Government's updated Equality Analysis for the LPS	the Court of Protection, takes less time and is more straightforward which is beneficial to the individual and their family. Whilst the Court of Protection provides effective safeguards in the cases brought before them, we know that in many situations applications are simply not made - leaving people without safeguards entirely. The easier access to the LPS should advance equality of opportunity, making the authorisations representative of the overall population, and improve the experience for those of BAME backgrounds."[14] As set out in the UK Government's updated Equality Analysis for the LPS: The proposed monitoring and reporting system will also cover	members of this group to gather evidence of the impacts of the LPS on minority ethnic communities – to ensure they are not differentially or adversely effected by their implementation. Welsh Government is also developing a draft LPS Workforce Plan and Training Framework – to ensure the LPS workforce for Wales is in place and has the necessary skills and competencies to provide support. The Workforce Plan and Training Framework includes a specific reference to cultural competency to ensure ethnic minority communities are supported appropriately.

[11] UK Government (Department for Health and Social Services) Equality Analysis – Liberty Protection Safeguards

[14] Page 10: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	states: "We recognise that the higher rates of detention under the MHA of Black or Black British people mean that there is a potential equality impact in relation to the protected characteristic of race, in terms of access to the LPS. The Code of Practice clearly states that the regime used to authorise a person's deprivation of liberty, where the interface applies, should never be based on the general preference of the assessor. The professional should always consider the less restrictive regime. In addition, both the MHA and the LPS provide the legal safeguards and protections as required by Article 5. This should minimise any negative impact of the interface."[12] Welsh Government will use the consultation period to request additional evidence of the	authorisations in settings where there is no regulated activity being provided (under DoLS, these cases fall under the Court of Protection). This mitigates the risk of discriminating against some people with protected characteristics, disproportionately.[15]	Reference will also be made to other relevant support and training – including the work of Diverse Cymru and its cultural competency scheme, as well as guidance and resources such as the Race Equality in Practice resource Pack Supporting Advocates Working with Cultural Diversity, produced by the North Wales Race Equality Network.[17] Other ongoing developments will also support the delivery of a culturally competent and diverse and equal workforce and "parity of esteem between health and social care, Welsh Language

[12] UK Government (Department for Health and social Services) Equality Analysis – Liberty Protection Safeguards

[15] UK Government (Department for Health and social Services) Equality Analysis – Liberty Protection Safeguards

[17] Race Equality in Practice resource Pack supporting Advocates Working with Cultural Diversity, produced by the North Wales Race Equality Network

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	impacts on minority ethnic communities in Wales.		and diversity and equality of the workforce" (Welsh Government Consultation Document on Developing and Strategic Mental Health Workforce Plan for Health and Social Care (February 2022). This includes the actions and commitments in the Welsh Government Race Equality Action Plan, the proposed Mental Health Workforce Plan for Health and Social Care (published for consultation on 1 February 2022), and the Workforce Strategy for Health and Social Care.
Religion, belief and non-belief	All people subject to the LPS will experience an equivalent process, regardless of religion or belief whilst recognising their individual circumstances and rights. We use the consultation period to request additional evidence of	As highlighted in the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill: "Those who are actively practising a religion may want to have these included in	

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	the impacts on this specific group – to ensure they are not differentially or adversely effected by their implementation.	their care arrangements, their families may also see this as in the best interest of the person, care arrangements facilitating observation of religious custom and rituals will be considered as part of care provision. Those responsible for planning a person's care involving a deprivation of liberty should ensure that their religious needs are taken fully into account. This can be assisted by involving the family and carers in addition to engaging with the person. The LPS has an explicit duty to conduct consultation and this will help advance equality of opportunity and experience for those of religion or belief."[18] The UK Government's updated Equality Analysis for the LPS also states: "Some people waiting for a DoLS authorisation may be being unlawfully	

[18] Page 13: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
		deprived of their liberty. If they die in these circumstances, a coroner must hold an inquest with a jury into the death. This could risk delaying a swift burial, a potential issue of concern for people of Jewish or Muslim faith. However, if a person dies and their arrangements have been authorised under the DoLS, any inquest does not need to be held with a jury, so this delay should not occur. This is a proportionate safeguard and the protocol will be replicated under the LPS. The streamlined LPS system will decrease the number of cases waiting for authorisation. This means that the negative impact for people who are Jewish or Muslim (and their families and loved ones) will reduce."[19]	

[19] UK Government (Department of Health and Social Care) Equality Analysis – Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
Sex / Gender	In Wales: More DoLS authorisations were made for males up to the age of 64, but after the age of 85, a significantly higher number of authorisations were in relation to females.[20] As highlighted in the UK Government's Equality Analysis for the Mental Capacity (Amendment) Bill: "This may be because women have a longer life expectancy so are therefore more likely to lose capacity because of age related conditions. This means that women will be impacted more and benefit more from the increased access to safeguards provided by the LPS. As this proportion is in line with those receiving long term support in social care, there is no indication that the system disadvantages men: we do not expect this to change."[21] The UK Government's updated Equality Analysis on the LPS[22] highlights that the LPS will apply in more settings than DoLS – extending from care homes and		See section on age.

[20] Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2019-2020

[21] Page 9: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

[22] UK Government (Department of Health and Social Care) Equality Analysis - Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	hospitals to community settings. The Equality Analysis for England notes that "the potential disproportionate impact of the LPS on women highlighted above may therefore be tempered by the fact that a higher percentage of men (73%) than women (68%) that receive long term social care receive it in the community (Adult Social Care Activity and Finance Report, 2019- 2020). It is therefore anticipated that both sexes will benefit from the safeguards provided by the LPS." According to Carers UK, data from the 2011 Census estimates that 58% of women are carers.[23] While not all unpaid carers will be involved in the LPS system, women will disproportionately benefit from the benefits envisaged for carers outlined in the section on age – included in this assessment. In particular (as stated in the UK Government's updated Equality Analysis for the LPS): "As DoLS only applies in care home and hospitals, under existing rules, a deprivation of liberty in a private home would have to be authorised by the		

[23] Carers UK – Key Facts and Figures

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	Court of Protection. The LPS will apply in domestic settings, and will take less time and be more straightforward than applying to the Court, which is beneficial to the individual and those closest to them. This will be disproportionately beneficial to women, as they make up the majority of unpaid carers and are therefore more likely to be caring for someone deprived of their liberty in a community setting."[24] In addition, the UK Government's updated Equality Analysis for the LPS states: "The role of the Appropriate Person is designed to be carried out by someone who knows the person well. Unpaid carers will often have a close relationship with the person they provide care for and will be suitable for the role of Appropriate Person. This role provides an opportunity to support and represent the person who is going through the LPS process. As more women are unpaid carers, they are more likely to care for someone deprived of their liberty at home, and therefore more likely to be		

[24] UK Government (Department of Health and Social Care) Equality Analysis for the Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	disproportionately affected by this new role."[25] We will use the consultation period to request additional evidence of the impacts.		
Sexual orientation (Lesbian, Gay and Bisexual)	All people subject to the LPS will experience an equivalent process for assessment and authorisation of a deprivation of liberty regardless of the protected characteristic sexual orientation whilst recognising their individual characteristics and rights. We do not anticipate that the LPS will have any negative effects for any specific group. We will use the consultation period to request additional evidence of impacts on this specific group – to ensure they are not differentially or adversely effected by their implementation.		See section on age.
Marriage and civil partnership	All people subject to the LPS will experience an equivalent process for assessment and authorisation of a deprivation of liberty regardless of the protected		

[25] UK Government (Department of Health and Social Care) Equality Analysis for the Liberty Protection Safeguards

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	characteristic of marriage and civil partnership whilst recognising the individual characteristics and rights. We will use the consultation period to request additional evidence of impacts on this specific group - to ensure they are not differentially or adversely effected by their implementation.		
Children and young people up to the age of 18	The Rights of the Children and Young Persons (Wales) Measure 2011 requires policy to have due regard to the rights contained within the United Nations Convention on the Rights of the Child (UNCRC). A CRIA has been completed for the four sets of draft Regulations for Wales. The inclusion of 16 and 17 year olds into the LPS provides parity with the safeguards currently available to persons aged 18 and over.	The development of the new Regulations for Wales and the implementation of the LPS in Wales will take account of the rights of the child under the UNCRC.	To inform and support the development the products for this consultation, the Welsh Government established a dedicated Sub Group on 16/17 Year Olds to ensure that the needs of children and young people are reflected. Parallel sub-groups were also established around workforce and training, monitoring and reporting and transition arrangements from DoLS to the LPS.
Low-income households	All people subject to the LPS will experience an equivalent process for assessment and authorisation	The UK Government's Equality Analysis on the Mental Capacity	

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate impacts?
	of a deprivation of liberty regardless of the household income whilst recognising the individual characteristics and rights. We will use the consultation period to request additional evidence of impacts on this specific group – to ensure they are not differentially or adversely effected by their implementation.	(Amendment) Bill comments on the anticipated reduced costs associated with the introduction of the LPS. Specifically: "One area to highlight is the reduction in overall cost envisaged in this new system."[26] The Equality Analysis goes on to state: "By alleviating the resource required, local authorities and care providers will have more to spend on other patients and cared-for persons. This will be especially impactful in more deprived areas, helping to reduce health inequalities."[27]	

Human Rights and UN Conventions

Do you think that this policy will have a positive or negative impact on people's human rights? (Please refer to point 1.4 of the EIA Guidance for further information about Human Rights and the UN Conventions).

[26] Page 15: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

[27] Page 15: Equality Analysis - Liberty Protection Safeguards – Mental Capacity (Amendment) Bill

Human Rights	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate negative Impacts?
EHRC Article 5	The LPS are new and enhanced rights introduced by the UK Mental Capacity (Amendment) Act 2019 that will replace the Deprivation of Liberty Safeguards (DoLS). They are necessary procedures to safeguard people's Article 5 (right to liberty) of the European Convention on Human Rights (ECHR). Article 5 protects the individual from arbitrary dispossession of his or her right to liberty. Any procedure for the lawful deprivation of liberty on the basis of unsoundness of mind must establish the minimum following conditions: a) for unsoundness of mind to be shown by objective medical expertise; b) the person's mental disorder must be such to warrant compulsory confinement; c) any compulsory confinement must be kept under appropriate review.	The purpose of the LPS are to protect the Article 5 Rights (under the European Convention on Human Rights) of people who lack mental capacity to consent to their health and/or social care and treatment. Where those arrangements amount to a deprivation of a person's liberty due to the degree of restrictions or confinement they involve, the appropriate lawful authority to begin or continue those arrangements must be sought. Under the LPS three conditions must be met before the arrangements can be authorised: the person in respect of whom those arrangements are proposed must lack capacity to consent to the arrangements, the person has a mental disorder and the arrangements are necessary to prevent harm to the person and are proportionate in relation to the likelihood and seriousness of harm to them.	There will be regular monitoring and reporting of the new LPS to evidence how they are being implemented in Wales and how they are protecting the rights of people whose care, support or treatment arrangements amount to a deprivation of liberty.

Human Rights	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate negative Impacts?
		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 and treatment. This must review the assessments and determine whether the "authorisation conditions" are met (i.e. that the three assessments have reached the appropriate conclusion). Only once the pre-authorisation review has been concluded can the Responsible Body give an authorisation of the deprivation of liberty.	
ECHR Article 8	Article 8 of the ECHR provides that everyone shall have the right to respect for his private and family life, his home and his correspondence. This right is qualified and the State may interfere if justified as in accordance with the law and necessary in a democratic society. Implicit in this is the requirement to give a person a degree of involvement in decisions affecting their private	The LPS provides a clear role for AMCPs in cases where a person is broadly objecting to the arrangements to which an authorisation relates. Additionally, section 4 of the Mental Capacity Act 2005 requires the decision maker in relation to a person who lacks mental capacity to involve the person in the	

Human Rights	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate negative Impacts?
	and family life and protection against arbitrary interference with personal autonomy.	decision as far as possible. The powers provided to monitoring bodies to visit a place where authorisations are occurring or to speak to the cared-for person under the Monitoring and Reporting Regulations will be subject to obtaining appropriate consent. The Code of Practice will also set out clear guidance on the expectations in terms of placing the person at the heart of decision making and respecting Article 8 rights.	

Annex A: Mental Health and Impacts on Minority Ethnic Communities

A review of the evidence published by the Race Equality Foundation (2019) carried out for NHS England[28] on racial disparities in mental health found that:

- The evidence suggests that black and minority ethnic communities are at comparatively higher risk of mental ill health, and disproportionately impacted by social detriments associated with mental ill health. From accessing treatment to receiving mental health support, through to assessment and treatment, inequality and discrimination remains rife for black and minority ethnic communities.
- Prevalence: The evidence on prevalence suggests that black and minority ethnic communities are at comparatively higher risk of mental ill health, and disproportionately impacted by social detriments associated with mental illness.
- Access: The evidence shows black and minority ethnic communities are less likely to access mental health support in primary care (i.e. through their GP) and more likely to end up crisis care. There is a wide range of different barriers for black and minority

[28] Race Equality Foundation (2019) Racial Disparities in mental Health – Literature and Evidence Review

ethnic communities accessing mental health care. Some of these include a lack of knowledge around mental health care, different cultural attitudes or ideas about mental health, and relationships with healthcare practitioners in the local area. For people without immigration status, who have a gender non-conforming or trans identity, and/or also have a disability, institutional attitudes towards minorities, really serve as a barrier for communities accessing mental health access and treatment. However, it has been shown that services based in the community (and particularly in the voluntary, community and social enterprise sector) are more likely to develop the relationships of trust that promote access and awareness of mental health services for diverse communities.

- Once in the mental health system, black and minority ethnic people experience further inequalities and discrimination. Poor health conditions of black Minority Ethnic patients is likely to lead doctors to focus on physical conditions despite the fact that some diseases such as cardiovascular, are complicated by depression and other mental health conditions.
- Assessment: There is no evidence of direct racial discrimination in assessments, but there is evidence of ethnic bias including greater uncertainty by clinicians in the diagnosis of emotional problems and depression in Black Minority Ethnic patients. However, mental health services need to be aware and recognise the impact of racism on accessing mental health care and in perpetuating ethnic and racial inequalities.
- Treatment: After being assessed, inequalities persist into treatment. This can further compound the discrimination and inequality already experienced by black and minority ethnic people and affect their recovery. It has been proven that black and minority ethnic people are less likely to be referred to talking therapies and more likely to be medicated for ill mental health. It is absolutely pivotal that black and minority ethnic patients also want the impact of racism and wider inequalities on their mental health to be addressed in treatment for their mental illness. Some work suggests that matching the cultural, linguistic religious and/or racial identity between service users and practitioners can improve treatment duration and outcomes among ethnic minorities however, there was variability on impact within the literature evidence.
- Recovery: Traumatic, inappropriate and discriminatory experiences of services can have a detrimental impact on chances for recovery, particularly if the same risk factors of bereavement, family breakdown, incarceration, poverty and exposure to racism continue to be present. There has also been criticism of a Eurocentric approach to recovery for black and minority ethnic people, as the definition does not take a race equality perspective and look at the external factors that impact on the individual. Better understanding of cultural and faith beliefs for black and minority ethnic communities will help with designing services to promote recovery. Furthermore, voluntary, community and social enterprise organisations play an important role in supporting black and minority ethnic people with mental illness in navigating the mental health pathway; providing culturally appropriate advice and support; access therapies and cope with everyday activities service.

- Evidence gaps: There are gaps within the evidence reviewed in terms of the experiences of Gypsy, Roma and Traveller communities; the Chinese community; and the different ethnic groups amongst the Eastern European apart from Polish, which includes Slovak, Czech and Romanian ethnic groups.

In 2002, "Breaking the Circles of Fear" was published by the Sainsbury Centre for Mental Health.[29] The review was focused on documenting the 'circles of fear' and impediments to change which lead to the poorer treatment of African and African Caribbean adults and to use this information to produce a strategy for Breaking the Circles of Fear. The review found:

- The need for changes to the mental health care and treatment of Black people is widely recognised and long overdue. There is compelling research and statistical evidence which shows that Black and African Caribbean people are over-represented in mental health services and experience poorer outcomes than their White counterparts. Stereotypical views of Black people, racism, cultural ignorance, and the stigma and anxiety associated with mental illness often combine to undermine the way in which mental health services assess and respond to the needs of Black and African Caribbean communities.
- When prejudice and the fear of violence influence risk assessments and decisions on treatment, responses are likely to be dominated by a heavy reliance on medication and restriction. Service users become reluctant to ask for help or to comply with treatment, increasing the likelihood of a personal crisis, leading in some cases to self-harm or harm to others. In turn, prejudices are reinforced and provoke even more coercive responses, resulting in a downward spiral, which we call 'circles of fear', in which staff see service users as potentially dangerous and service users perceive services as harmful.
- Ten key themes emerged from the research: 1) There are circles of fear that stop Black people from engaging with services These function in the way described above. 2) Mainstream services are experienced as inhumane, unhelpful and inappropriate Black service users are not treated with respect and their voices are not heard. Services are not accessible, welcoming, relevant or well integrated with the community. 3) The care pathways of Black people are problematic and influence the nature and outcome of treatment and the willingness of these communities to engage with mainstream services Black people come to services too late, when they are already in crisis, reinforcing the circles of fear. 4) Primary care involvement is limited and community-based crisis care is lacking. 5) Acute care is perceived negatively and does not aid recovery. 6) There is a divergence in professional and lay discourse on mental illness/distress Different models and descriptions of 'mental illness' are used and other people's philosophies or worldviews are not understood or even acknowledged. 7) Service user, family and carer involvement is lacking. 8) Conflict between professionals and service users is not always

[29] Sainsbury Centre for Mental Health (2002) Breaking the Circles of Fear

addressed in the most beneficial way The concept of 'culture' has been used to attempt to address some of these issues, but can divert professionals away from looking at individual histories, characteristics and needs. 9) Black-led community initiatives are not valued. Specifically, secure funding and long term capacity building initiatives are absent. 10) Stigma and social inclusion are important dimensions in the lives of service user.

The Independent Review of the Mental Health Act published in 2018[30] also highlighted the inequalities facing those from minority backgrounds in relation to the Mental Health Act. Key findings included:

- One of the most troubling and difficult areas we have considered is the fact that those from ethnic minority communities are far more likely to be subject to compulsory powers under the Act, whether in hospital or in the community. Even amongst that group, black African and Caribbean men are significantly over represented. The profound inequalities that exist for people from ethnic minority communities in access to treatment, experiences of care, and 20 quality of outcomes following mental health service care are longstanding. There has been much anxious thought why this should be the case and why this group does not have adequate access to, or else is reluctant to use, pre-crisis services. The answer (although not fully understood) is multifactorial, involving longstanding experiences of discrimination and deprivation, with a lack of understanding of the human dynamics of what is happening and some crucial gaps in trust between service users and providers. We are in no doubt that structural factors which engender racism, stigma and stereotyping increase the risk of differential experiences in ethnic minority communities. There is no single or simple remedy to resolve this situation, which is not unique to the health service in general, or mental health services in particular.

- We have heard repeatedly of the distressing and unacceptable experiences from people from ethnic minority communities and in particular black African Caribbean men. Fear of what may happen if you are detained, how long you may be in hospital and even if you will get out are all widespread in ethnic minority communities.

Specific recommendations made by the review regarding minority ethnic communities includes:

- Ensuring the provision of culturally-appropriate advocacy services (including Independent Mental Health Advocates) for people of ethnic minority backgrounds, in doing so responding appropriately to the diverse needs of individuals from diverse communities.

[30] Modernising the Mental Health Act: Final Report of the Independent Review of the Mental Health Act 1983 (publishing.service.gov.uk)

- Raising the bar for individuals to be detained under the Mental Health Act, as well as any subsequent use of Community Treatment Orders.
- Providing the opportunity for people to have more of a say in the care they receive, ensuring that people from ethnic minority backgrounds are involved in the care and treatment plans developed for them and thus increasing the likelihood that they are more acceptable.
- Increasing the opportunities available to challenge decisions about the care offered and received in a more meaningful way.
- Addressing endemic structural factors through the piloting and evaluation of behavioural interventions to combat implicit bias in decision-making.
- Reducing the use of coercion and restrictive practices within inpatient settings, including in relation to religious or spiritual practices.
- Seeking greater representation of people from ethnic minority backgrounds, especially those of black African and Caribbean heritage in key health and care professions.
- Endorsing ongoing work to explore how the use of restraint by police is reduced, encouraging police services to support people experiencing mental distress or ill health as a core part of day-to-day business.
- Extending the powers of the Mental Health Units (Use of Force) Act, 'Seni's Law', to seclusion.
- Improving the quality and consistency of data and research on ethnicity and use of the Mental Health Act across public services, including criminal justice system organisations and Mental Health Tribunals.
- Giving individuals the ability to choose which individuals from their community are involved with, and receive information about, their care.

The review also stated:

- The limitations of current national data reporting across mental health makes it very difficult to improve the experiences of minority ethnic groups, with the use of high level categories often blurring not insignificant distinctions between separate communities. The striking lack or ethnicity data across public bodies severely limits our ability to understand the wider experiences of many minority communities, particularly in cases where individuals identify with two or more 'ethnic categories'. We are recommending that data and research on ethnicity and use of the MHA is improved, to inform future policy and practice.
- Organisations covered by the MHA should be required to record and review ethnicity at every decision-making stage of the process, using an agreed set of definitions. This should include criminal justice system organisations and Tribunals, and should build upon the recent Mental Health Units (Use of Force) Act which requires mental health units to publish data on how and when force is used (further detail of which can be found in 'Coercion and restrictive practices within inpatient settings'). Efforts to

harmonise definitions of ethnicity across public services could be informed in line with existing work by the Race Disparity Unit and the Office of National Statistics.

- Research concerning MHA detentions consistently shows higher levels of detention in black African and Caribbean people. The explanations given for these detentions are often based on stereotyped assumptions and not backed up by evidence, and may be driven by structures which are inherently biased against black African and Caribbean people. We believe that there is a need for a fundamental reset of research into black mental health. It is vital that future research is of high quality but, above all, that any conclusions reached are reviewed in light of this forthcoming new evidence. Direct input of researchers from black African and Caribbean backgrounds should be sought to improve the quality and specificity of the research questions considered. We urge research bodies to support the pipeline of proficient academics from black African and Caribbean backgrounds, as well as to endorse and disseminate higher quality research into interventions to improve mental health outcomes for these communities.

A recent rapid review of ethnic inequalities in healthcare and within the NHS workforce by the NHS Race and health Observatory (February 2022)[31] found evidence to suggest clear barriers to seeking help for mental health problems rooted in a distrust of both primary care and mental health care providers, as well as a fear of being discriminated against in healthcare. Specifically – the rapid review found:

- Mental illness is, arguably, the health problem for which there are the most unjust and stark inequities for ethnic minority populations. In this illness context, racism (both interpersonal and institutional), socioeconomic inequalities and disadvantage over the life course, and at key junctures in life, can be observed in interplay, resulting in dire health outcomes for ethnic minority people.
- In the UK context, the over-use of coercive mental health treatment under the mental health act for Black Caribbean and Black African groups and the under-use of specialist mental health services by South Asian (Indian, Pakistani and Bangladeshi) groups have been two of the main concerns articulated by health policy commentators, clinicians, and health researchers.
- The first of these concerns is perhaps the more stark, with findings from numerous studies showing both increased rates of mental illness for Black Caribbean and Black African men, and systematic persecution from psychiatric services and criminal justice systems, with these groups much more likely to be subjected to coercive treatments such as involuntary admission to mental health wards, Community Treatment Orders and violence from state systems. Black patients in the UK are also subject to more intrusive treatments, such as injectable anti-psychotics, and are less likely to be offered talking therapy for severe mental illness.

[31] NHS Race and Health Observatory (2022) Ethnic Inequalities in Healthcare: A Rapid Evidence Review