

7 July 2022

## **The Information Commissioner's response to the Welsh Government's consultation on Liberty Protection Safeguards**

The Information Commissioner is pleased to respond to the Welsh Government's consultation on the draft Regulations on the Mental Capacity (Amendment) Act 2019 and Liberty Protection Safeguards.

### **Comments on your draft**

From our understanding, the new Liberty Protection Safeguards regulations will provide important rights and protections for people who lack the mental capacity to agree to care, support or treatment arrangements, where these arrangements amount to a deprivation of liberty.

For this reason, we would like to draw your attention to potential obligations under Article 36(4) of the UK GDPR regarding the need to consult with the ICO when developing policy proposals relating to the processing of personal data. Article 36(4) imposes a requirement on Government to consult with the ICO and states that: "The relevant authority must consult the Commissioner during the preparation of a proposal for a legislative measure to be adopted by Parliament, the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly, or of a regulatory measure based on such a legislative measure, which relates to processing."

If a decision is made to proceed with specific legislation, Welsh Government may need to initiate the requirement under Article 36(4) to consult with our office. Your Data Protection Officer will be able to guide you on this if it becomes relevant, and provide the necessary WG submission template.

Should you require clarification on the points made within this response, please feel free to contact us at wales@ico.org.uk or on 0330 414 6421.

Yours sincerely,

Information Commissioner's Office- Wales