



Llywodraeth Cymru  
Welsh Government

# **National Health Service (Indemnities) (Wales) Bill**

**Explanatory Memorandum**  
Incorporating the Regulatory Impact  
Assessment and Explanatory Notes

7 January 2020

# **National Health Service (Indemnities) (Wales) Bill**

## **Explanatory Memorandum to National Health Service (Indemnities) (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services of the Welsh Government and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in October 2019, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

### **Member's Declaration**

In my view the provisions of the National Health Service (Indemnities) (Wales) Bill introduced by me on 14 October 2019, would be within the legislative competence of the National Assembly for Wales.

### **Vaughan Gething AM**

Minister for Health and Social Services  
Assembly Member in charge of the Bill

7 January 2020

## Contents page

<b>PART 1 – EXPLANATORY MEMORANDUM .....</b>	<b>4</b>
1. Description .....	4
2. Legislative Competence .....	4
3. Purpose and intended effect of the legislation.....	4
4. Consultation .....	8
5. Power to make subordinate legislation .....	9
 <b>PART 2 – REGULATORY IMPACT ASSESSMENT.....</b>	 <b>13</b>
1. Regulatory Impact Assessment summary .....	13
2. Options.....	17
3. Costs and benefits.....	18
4. Impact Assessments .....	20
5. Post implementation review.....	27
 <b>ANNEX 1 – Explanatory Notes .....</b>	 <b>28</b>
<b>ANNEX 2 – Index of Standing Orders.....</b>	<b>31</b>
<b>ANNEX 3 – Schedule of Amendments .....</b>	<b>35</b>

# **PART 1 – EXPLANATORY MEMORANDUM**

## **1. Description**

- 1.1 The National Health Service (Indemnities) (Wales) Bill amends Section 30 of the National Health Service (Wales) Act 2006 (“the NHS Wales Act”) (Schemes for meeting losses and liabilities etc. of certain health service bodies) so as to make provision about indemnifying a body or person’s expenses and liabilities arising in connection with the provision of health services.

## **2. Legislative Competence**

- 2.1 The National Assembly for Wales (“the Assembly”) has the legislative competence to make the provisions in the National Health Service (Indemnities) (Wales) (“the Bill”) pursuant to Part 4 of the Government of Wales Act 2006 as amended by the Wales Act 2017.

## **3. Purpose and intended effect of the legislation**

### **Background**

- 3.1 Clinical negligence cover is a condition of registration in the UK for all regulated healthcare professionals, and in the case of medical practitioners (i.e. GPs), a condition of licence under s.44C of the Medical Act 1983. The cover can be an insurance policy, an indemnity arrangement, or a combination of both. The majority of GPs in the UK typically secure discretionary clinical negligence indemnity as a benefit of their membership one of the three long established Medical Defence Organisations (“MDOs”), mutual non-profit making organisations owned by their members and which focus entirely on the provision of indemnity and advice to healthcare professionals.
- 3.2 It is estimated that the cost of indemnity has increased by 7% per year on average between 2013 and 2017. Among the factors driving the increasing cost of indemnity is an ageing population; technological innovations in medicine which keep people alive longer; an increase in people living with complex conditions and an increasing claims culture. There is no evidence to suggest that deterioration in the quality of care has acted as a driver to increase the cost of indemnity.
- 3.3 The rising cost of indemnity (as reflected in MDO subscriptions) has been cited as one of the reasons why GPs are reducing their hours, and if the trend continues, may create a further shortage of GPs as they will increasingly be driven away from the profession resulting in an impact on the provision of health services in Wales<sup>1</sup>. The Welsh Government made

---

<sup>1</sup> The British Medical Association in response to the rising cost stated that “*The potential consequences of this could make the provision of unscheduled GP services unsustainable*”.

a commitment to GPs in Wales, as part of the changes to the General Medical Services (“GMS”) contract for 2017/18<sup>2</sup>, to develop a solution to address this issue.

- 3.4 On 27 February 2017, the Lord Chancellor announced<sup>3</sup> a change to the Personal Injury Discount Rate (“PIDR”) (the rate used to calculate the damages that are payable in respect of future pecuniary losses) from 2.5% to minus 0.75%<sup>4</sup>. As a result of this change, the cost of large personal injury claims increased significantly. This has led to large increases in the cost of meeting historic liabilities for the MDOs, the current providers of professional indemnity cover for medical practitioners. As MDOs are mutual bodies, this increase could only be covered by increasing GP membership subscription costs further. It was estimated that indemnity premiums would need to increase by 25% to fund the change in PIDR.
- 3.5 In response to the impact on the medical defence market of the change to the PIDR and the wider rising cost of indemnity, in October 2017 the Secretary of State for Health and Social Care in England announced an intention to establish a government funded state backed scheme to provide clinical negligence indemnity cover for providers of GP services in England. The scheme, which would commence in April 2019, was to–
- Indemnify individuals against claims arising from clinical negligence for NHS work, but not private work, complaints, involvement in coroners’ cases, General Medical Council (“GMC”) hearings and other matters relating to professional regulation. GPs would be expected to take out a separate indemnity policy for those aspects not covered by the scheme.
  - Include cover for future clinical negligence liabilities of GPs carrying out NHS work (a Future Liabilities Scheme (FLS)) arising after 1 April 2019.
  - On the 14th May 2018, the Minister for Health and Social Services announced that the Welsh Government would also introduce a state backed scheme to provide clinical negligence indemnity for providers of GP services in Wales<sup>5</sup>. The FLS in Wales would come into force on 1 April 2019 (to cover future liabilities) and would cover all GPs with a GMS contract and other health professionals working in NHS general practice from that date. The FLS would help to address the concerns of GPs about the affordability of professional indemnity costs and deliver a sustainable, long term solution to address the increasing costs of professional indemnity. The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019 establishing the FLS came into force on 1 April 2019. In Wales, the

---

<sup>2</sup><http://www.wales.nhs.uk/sites3/Documents/480/GMS%20contract%202017%2018%20Grant%20Duncan%2014%20March%20%20v2.pdf>

<sup>3</sup> <https://gov.wales/written-statement-gp-professional-indemnity>

<sup>4</sup> The PIDR was further changed to minus 0.25% on 15 July 2019. The effect on the indemnity market at the time of compiling this Explanatory Memorandum has not been quantified.

<sup>5</sup> <https://gov.wales/written-statement-gp-professional-indemnity>

FLS is being administered by NHS Wales Shared Services Partnership, Legal and Risk Services in accordance with the Clinical Negligence Scheme (Administration) (Wales) Directions 2019.

- 3.6 The FLS in Wales has been aligned as far as possible to the state backed scheme also introduced on 1 April 2019 for providers of GP services in England by the UK government. This has ensured that GPs in Wales are not at a disadvantage relative to GPs in England and will also help to ensure that GP recruitment and cross border activity will not be adversely affected by different schemes operating in England and Wales.
- 3.7 In 15 November 2018 the Minister for Health and Social Services confirmed the commitment by the Welsh Government<sup>6</sup>, as part of the state backed scheme, to assume responsibility to consider the liability of GPs for those historic clinical negligence claims that had been reported, or incurred but not reported, prior to 1 April 2019 (the ELS), subject to the completion of legal and financial due diligence<sup>7</sup> and satisfactory negotiations with the MDOs. This commitment to extend the state backed scheme to assume responsibility to cover existing liabilities mirrors the commitment announced by the Department of Health and Social Care to extend the state backed scheme arrangements in England to cover existing liabilities. Discussions with MDOs on ELS arrangements are ongoing.
- 3.8 The policy intention is to deliver, subject to the Bill being enacted, regulations to establish the ELS. The UK Government Department of Health and Social Care also intend to prepare regulations that will underpin the English ELS.
- 3.9 Section 30 of the NHS Wales Act allows the Welsh Ministers to make regulations to establish indemnity schemes whereby several bodies collectively meet their liabilities. These bodies are limited to health service bodies.
- 3.10 The scope of these powers is not sufficient to allow the Welsh Ministers to establish a scheme by regulations to directly indemnify providers of primary medical services.
- 3.11 The Bill expands the bodies that may be included in a scheme established pursuant to regulations made by the Welsh Ministers in accordance with their powers in section 30(1). The additional bodies inserted into section 30(2) will include all of those persons providing, or who have provided, primary medical services in Wales in accordance with an arrangement pursuant to the NHS Wales Act, as well as a body or other person providing or arranging the provision of, or who provided or arranged the provision of, health services, the provision of which is the subject of arrangements with a Local Health Board, NHS trust or Special Health

---

<sup>6</sup> <https://gov.wales/written-statement-gp-professional-indemnity-0>

<sup>7</sup> Access to due diligence information is restricted due to its commercial sensitivity and non-disclosure agreements between MDOs and Welsh Government.

Authority. Section 30(1) is also amended so as to clarify the schemes to which it applies by the inclusion of the definition ‘mutual indemnity scheme’.

- 3.12 The Bill further inserts a provision into section 30 stipulating that the Welsh Ministers may establish a scheme by regulations to indemnify, directly, those bodies listed in subsection (2) (as amended by the Bill). The proposed inclusion in section 30 of an additional, specific regulation making provision will have the effect of providing the Welsh Ministers with the requisite secondary legislation making power to enact regulations to establish a direct indemnity scheme. The Bill allows GPs and the other bodies or persons to be indemnified by the Welsh Ministers under the terms of a statutory scheme. The Bill names these “direct indemnity schemes”. By contrast, the collective schemes under section 30(1) are now labelled “mutual indemnity schemes” by the Bill.
- 3.13 Any regulations that establish a direct indemnity scheme may specify who are eligible bodies or persons, what type of expenses or liabilities are covered and to what extent they are indemnified and set out when payments may be required by a person indemnified by a scheme, amongst other things.
- 3.14 The Bill also inserts a definition of ‘functions’ for the purposes of section 30 along with making other minor amendments as a consequence of the substantive changes the Bill makes. There are no consequential amendments to any other enactment.
- 3.15 The ELS regulations which will be made pursuant to section 30 (as amended by the Bill) will establish, through regulations, the ELS (as a direct indemnity scheme). The regulations will set out how the Welsh Ministers will consider the liability of GPs and make any payments due under the indemnity provided to GPs. The ELS will apply to those historic clinical negligence claims that have either been reported, or which have been incurred but not reported, prior to 1 April 2019 in accordance with the proposed legal agreements between the Welsh Ministers and a participating MDO.
- 3.16 This will, in turn, assist the Welsh Ministers in delivering on their duty under section 1 of the NHS Wales Act to “continue the promotion in Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of Wales and in the prevention, diagnosis and treatment of illness”. In particular, the effect of the Bill in providing the legal base for the introduction of the ELS regulations, together with the FLS scheme which was introduced in April 2019, will underpin the long term sustainability of the provision of general medical services and help ensure that GP recruitment and cross border activity will not be adversely affected by different schemes operating in England and Wales.

3.17 In conclusion, the Bill will mean that the Welsh Ministers, via the introduction of the ELS Regulations, are delivering on the commitment to introduce a state backed indemnity scheme for GPs in Wales.

## **Risks**

3.18 If the amendments to Section 30 are not made, the ELS regulations cannot in turn be made, with the attendant risks that;

- i. the Welsh Ministers may not deliver on their commitment to introduce both a future liability scheme and an existing liability scheme for GPs in Wales.
- ii. GPs in Wales may be at a disadvantage relative to GPs in England and GP recruitment and cross border activity could be adversely affected.
- iii. The stability of indemnity provision for GPs and the protection of patients and GPs which would derive from ELS arrangements will not be fully assured.
- iv. Practising as a GP in Wales will be viewed as a less attractive proposition when compared with England, exacerbating the difficulty faced by Welsh GP practices in recruiting and retaining GPs.
- v. any reduction in the number of GPs practising in Wales as a result would consequently reduce access by the people of Wales to general medical services, contrary to a key commitment of the Welsh Government made in 'Prosperity for All'<sup>8</sup>.

## **Evidence base**

3.19 The decision to establish a state backed scheme has been driven by the events referred to at paras 3.1 - 3.6.

3.20 The Bill itself does not charge any expenditure on the Welsh Consolidated Fund. Therefore, the RIA contains limited financial information relating to this Bill.

## **4. Consultation**

4.1. Proactive and sustained engagement with stakeholders has been carried out since the announcement by the Minister for Health and Social Services that the Welsh Government would introduce a state backed clinical indemnity scheme on 14 May 2018. The medical profession and its representatives<sup>9</sup>, along with the MDOs, have been kept fully apprised of the developments in relation to both the FLS and ELS.

4.2. On 18 October 2017 and on 16 May 2018 the Assembly discussed topical questions related to professional indemnity. The links to the relevant Records of Proceedings are below.

---

<sup>8</sup> <https://gov.wales/sites/default/files/publications/2017-10/prosperity-for-all-the-national-strategy.pdf>

<sup>9</sup> Including General Practitioners Council of Wales and Royal College of General Practitioners.



<http://record.assembly.wales/Plenary/4651#C28739>

<http://record.assembly.wales/Plenary/4984#C88145>

- 4.3. In August 2018, the Welsh Government published a GP Professional Indemnity factsheet on developing a long term and sustainable solution for GP Professional Indemnity. The factsheet, in addition to highlighting that Welsh Government officials were continuing to work closely with GPs, Medical Defence Organisations, Department of Health and Social Services, Health Boards, and the NHS Shared Services Partnership Legal and Risk Services to develop the way in which the state backed scheme will operate, also highlighted that the Welsh Government was committed to the FLS and the ELS, subject to the completion of legal and financial due diligence and satisfactory discussions with the MDOs. The intention to commit to an ELS covering clinical negligence claims which have arisen before April 2019, was also confirmed in the November 2018 Ministerial Written Statement and the February 2019 Ministerial Written Statement.
- 4.4. Regular discussions with GPs, Health Boards, and NHS Shared Services Partnership Legal and Risk Services on progress on the state backed scheme for the FLS took place through a Stakeholder Reference Group. The Welsh Government also discussed separately with the Medical Defence Organisations the proposals to introduce the ELS, subject to the completion of legal and financial due diligence and satisfactory discussions with the MDOs.
- 4.5. Given the view that the amendments to section 30 made by the Bill do not impact the general public, but only specific sectors of the health service which have been engaged throughout development of the Bill, it was not considered appropriate to undertake an open consultation on a draft Bill.

## **5. Power to make subordinate legislation**

- 5.1. The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions, codes and guidance) set out in relation to these:
  - i. the person upon whom, or the body upon which, the power is conferred;
  - ii. the form in which the power is to be exercised;
  - iii. the appropriateness of the delegated power;
  - iv. the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

- 5.2. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

**Table 5.1: Summary of powers to make subordinate legislation in the provisions of the National Health Service (Indemnities) (Wales) Bill**

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
1(2) and 1(3) – amending sections 30(1) and (2) of the NHS Wales Act	Welsh Ministers	Regulations	The pre-existing power in s30(1) of the NHS Wales Act is appropriate for delegated powers as it enables the establishment of an indemnity scheme or schemes, the details of which may vary from case to case. The amendments made by this Bill to the power clarify that the schemes are mutual indemnity schemes, and expand the bodies who may be included within a scheme.	Negative	The procedure is set by the NHS Wales Act.
1(8) – inserting new subsection 30(8) into the NHS Wales Act	Welsh Ministers	Regulations	Appropriate for delegated powers as it enables the Welsh Ministers to establish direct indemnity schemes, in a way consistent with the mutual schemes established in regulations made under s30(1). Suitable for regulations as they will accommodate detail which would encumber the reading of the Bill (and subsequently section 30 once amended).	Negative	It is consistent to follow the same Assembly scrutiny procedure that applies to a mutual scheme established by the existing power in s30(1) of the NHS Wales Act, as amended. Furthermore, the detail of these regulations will be of a technical nature.

**Table 5.2: Summary of powers to make directions in the provisions of the National Health Service (Indemnities) (Wales) Bill**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
1(5) – amending section 30(4) of the NHS Wales Act	Welsh Ministers	Directions	There is no change to the scope of this power. The amendment made by the Bill specifies the NHS bodies which the Welsh Ministers may direct in accordance with subsection (4) as a result of the expansion of the bodies covered by subsection (2) as amended.	No procedure	The procedure is set by the NHS Wales Act.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **1. Regulatory Impact Assessment (RIA) summary**

- 1.1. A Regulatory Impact Assessment has been completed for the Bill and it follows below.
- 1.2. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.
- 1.3. The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).
- 1.4. The amendments to section 30 of the NHS Wales Act made by the Bill are discrete and of themselves will not incur any costs, unless and until the regulation making powers are used. As such there is no direct financial information relating to it. We have therefore provided narrative relating to benefits that are unquantifiable from a monetary perspective.
- 1.5. The benefits of the amendments made by the Bill will be to confer further subordinate legislation making power on the Welsh Ministers in respect of the provision of indemnity for providers of primary medical services, the immediate use of which will be to make regulations establishing the ELS, subject to due diligence and negotiation with the medical defence organisations, as referred to in the Explanatory Memorandum.
- 1.6. The rising cost of medical indemnity has affected all GPs in the United Kingdom. As outlined in the Explanatory Memorandum at paragraphs 3.5 - 3.8, the Welsh Government recognised the problem and made a commitment to GPs in Wales to deliver a state backed scheme for future liabilities (the FLS, known as the Scheme for General Medical Practice Indemnity) which was launched on 1 April 2019. This has mirrored the approach taken by the Secretary of State for Health and Social Care and we have ensured that as far as possible, the Wales scheme is aligned with England's. The establishment of the ELS would deliver the second element of the policy in order to ensure stability for GPs.
- 1.7. Currently, one medical defence organisation ("MDO") has signed an ELS agreement whereby Welsh Government has agreed to assume responsibility to consider clinical negligence liabilities of NHS general practitioners in Wales incurred before 1 April 2019 in return for a transfer of assets. Discussions with the other two MDOs remain ongoing. The current estimate of liabilities that would be assumed by Welsh Government were an ELS agreement to be signed with each MDO (subject to legal and financial due diligence and successful discussion of terms with all MDOs) is in the region of £100m before any transfer of assets.

- 1.8. Such estimated liabilities that would be assumed by Welsh Government are expected to materialise over the period to 2027, although the actual value of the liabilities may fluctuate according to claims incidence patterns, claims notifications and the value of settled claims.
- 1.9. Subject to legal and financial due diligence and successful discussions with the MDOs, the net financial exposure, including any transfer of assets, of Welsh Government would be expected to decrease annually over the period to 2027.

**Table A**

<b>NHS (Indemnities) (Wales) Bill</b>		
<b>Preferred option:</b> <i>To amend s30 of the NHS (Wales) Act 2006, see page XX of the RIA</i>		
<b>Stage:</b> Introduction	<b>Appraisal period:</b> 2019 / 2020 – 2026-27	<b>Price base year:</b> <b>2019/2020</b>
<b>Total Cost</b> <b>Total: £ 30,000</b> <b>Present value: £30,000</b>	<b>Total Benefits</b> <b>Total: £0</b> <b>Present value: 0</b>	<b>Net Present Value (NPV):</b> <b>£-30,000</b>

### **Administrative cost**

<b>Costs:</b> These costs represent the estimated external professional support costs during the Bill process and implementation of the Bill. . These costs are estimated to be £30,000 and will be incurred in 2019-20. The costs will fall on the Welsh Government.			
<b>Transitional:</b> <b>£30,000</b>	<b>Recurrent: £0</b>	<b>Total: £ 30,000</b>	<b>PV: £30,000</b>
<b>Cost-savings:</b> No cost-savings have been identified.			
<b>Transitional: £0</b>	<b>Recurrent: £0</b>	<b>Total: £0</b>	<b>PV: £0</b>
<b>Net administrative cost: £30,000</b>			

### **Compliance costs**

There are no compliance costs as a result of the Bill given the limited nature of the provisions of the Bill

**Transitional: £0**

**Recurrent: £0**

**Total: £0**

**PV: £0**

## **Other costs**

Implementation of The ELS Regulations

Welsh Government does not anticipate any additional costs for NHS Wales Shared Service Partnership when it begins managing the existing liabilities scheme from 1 April 2021 that would be greater than the operational costs paid to participating MDOs during the interim period of management.

**Transitional: £0**

**Recurrent: £0**

**Total: £0**

**PV: £0**

## **Unquantified costs and disbenefits**

There are no unquantifiable costs

## Benefits

The primary purpose of the Bill will be to enable the Welsh Ministers to make regulations to establish direct indemnity schemes. In the short term, the Welsh Government anticipates using this power to establish a direct indemnity scheme enabling the Welsh Ministers to indemnify GPs for historic clinical negligence claims reported or incurred but not yet reported prior to 1 April 2019 (the ELS). By amending section 30 of the NHS (Wales) Act 2006 and conferring powers on the Welsh Ministers to make regulations establishing the ELS, the Welsh Government are future proofing for the effects, market shocks and stresses of future events relating to clinical negligence cover for providers of primary medical services in Wales. The ELS Regulations will underpin, together with the Scheme for General Medical Practice Indemnity, the long term sustainability of the provision of general medical services. This will help GP recruitment and retention in Wales because no Wales based GP will be at a disadvantage regarding clinical medical negligence indemnity in comparison with England.

**Total: Not Known**

**PV: Not known**

## Key evidence, assumptions and uncertainties

The type of indemnity scheme envisaged by the ELS requires an amendment to section 30 of the NHS (Wales) Act 2006. The Welsh Government commissioned consultants to undertake an analysis of the medical defence market in Wales to identify sustainable, long term options for Wales to address the increasing costs of GP professional indemnity. This was completed in March 2018 and fed in to the decision to establish a state backed scheme in conjunction with the events referred to at paras 3.1 - 3.8 of the Explanatory Memorandum.



## 2. Options

2.1. There are two options regarding this Bill – either

- a) Do nothing
- b) Make the amendments to section 30 of the NHS (Wales) Act 2006

### **a) Do nothing**

2.2. Maintaining the status quo means that the powers of the Welsh Ministers in section 30 of the NHS (Wales) Act 2006 will remain unchanged. For the purposes of delivering the policy of a state backed indemnity scheme, the Welsh Ministers would continue to lack the necessary secondary legislation making powers to establish and operate the ELS. The inconsistency of approach to that in England could make working there more attractive for GPs currently working in Wales, or deter GPs working in England from moving to Wales

2.3. The cumulative effect of this option is the risk to the delivery and sustainability of health services that is posed by the increasing costs of indemnity, which is affecting recruitment and retention in general practice, will be exacerbated for Welsh GPs.

### **b) Make the amendments to section 30 of the NHS (Wales) Act 2006**

2.4. The primary purpose of the Bill is to amend section 30 of the NHS (Wales) Act 2006 and thereby enable the Welsh Ministers to establish direct indemnity schemes by regulations, subject to ELS contractual arrangements being agreed with MDOs. This will facilitate the delivery of the ELS to prevent risks to the delivery and sustainability of health services that are posed by the increasing costs of indemnity which is affecting recruitment and retention in general practice.

2.5. This will, in turn, assist the Welsh Ministers in delivering on their duty under section 1 of the NHS (Wales) Act 2006 to “continue the promotion in Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of Wales and in the prevention, diagnosis and treatment of illness”.

2.6. It will also prevent practising as a GP in Wales being viewed as a less attractive proposition when compared with England thereby preventing an exacerbation of the difficulty faced by Welsh GP practices in recruiting and retaining GPs and contribute to the Welsh Ministers’ ability to deliver on its commitment made to improve access to general medical services in ‘Prosperity for All’.

2.7. Section 30 of the NHS (Wales) Act 2006 provides the Welsh Ministers with powers to establish Schemes for meeting the losses and liabilities of certain health service bodies. However the scope of these powers is not

sufficient to establish the ELS as envisaged or to indemnify those providers of primary medical services in the future as they may require.

- 2.8. The amendments to section 30 that will be made by the Bill will enable the Welsh Ministers to create a direct indemnity scheme by regulations which will establish and set out the administrative arrangements for the ELS. The ELS will provide indemnity cover in respect of historic negligence liabilities that arise in consequence of a breach of duty of care by a GP (or other person working in general practice) which results in injury, loss or damage. Subject to ELS contractual arrangements being agreed with MDOs, the Welsh Ministers will assume responsibility to consider (at their discretion) the liability of GPs for those historic clinical negligence claims that had been reported, or incurred but not reported, prior to 1 April 2019.

### **3. Costs and benefits**

#### **a) Do nothing**

- 3.1. The cost of not making the amendment means that the Welsh Ministers are precluded from establishing, the ELS element of the GP indemnity scheme through regulations, thereby preventing the alignment of the Wales scheme with England. This means that GPs in Wales are at a disadvantage compared to GPs in England. This will adversely affect the retention and recruitment of GPs in Wales– to the detriment of the provision of NHS Wales Primary Care Services for the people of Wales.
- 3.2. The latter is important given that according to Statistics Wales bulletin, there were 2,986 total GPs (all Practitioners, Registrars and Retainers plus Locums registered to work) in Wales as at 30 September 2018<sup>10</sup>. The figures have been stable over the last few years but the provision of different levels of indemnity cover between England and Wales would be likely to adversely affect the ability to recruit and retain GPs in Wales.
- 3.3. Practising as a GP in Wales will be viewed as a less attractive proposition when compared with England exacerbating the difficulty faced by Welsh GP practices in recruiting and retaining GPs. Any reduction in the number of GPs practising in Wales as a result would consequently reduce access for the people of Wales to general medical services, contrary to a key commitment of the Welsh Government made in '*Prosperity for All: the national strategy*'.
- 3.4. In conclusion Option a) does not provide any benefit.

#### **b) Make the amendments to section 30 of the NHS (Wales) Act 2006**

- 3.5. Conversely, the preferred Option b) makes a difference - it provides benefits that are the opposite of those recited under Option a). The Bill will ensure the Welsh Ministers can deliver long term stability for both GPs

---

<sup>10</sup> <https://gov.wales/general-medical-practitioners-30-september-2018>

and users of NHS Wales services in the area of clinical negligence indemnity.

- 3.6. The amendments made by the Bill will support the continuing recruitment and retention of GPs in Wales. They will further ensure that GPs will not be placed at a disadvantage in the important matter of clinical negligence indemnity cover and the cost of it in comparison with GPs in England. The amendments are therefore a positive first step that will underpin the delivery of ELS for NHS Wales.
- 3.7. There are costs associated with the preparation and implementation of the Bill. These costs, anticipated to be £30,000 which will be incurred in 2019/20, represent the anticipated costs for external professional support during the Bill process and to implement the Bill utilising the new Direct Indemnity Scheme regulation making powers delivered by the Bill. There are no other costs directly attributable to the Bill. The costs estimated for delivering the ELS regulations are based on the standard programming of a statutory instrument following the negative procedure. The costs will fall on the Welsh Government. The MDOs will not incur any additional costs as a result of the Bill.
- 3.8. Currently, one medical defence organisation (“MDO”) has signed an ELS agreement whereby Welsh Government has agreed to assume responsibility for considering clinical negligence liabilities of NHS general practitioners in Wales incurred before 1 April 2019 in return for a transfer of assets. Discussions with the other two MDOs remain ongoing. The current estimate of liabilities that would be assumed by Welsh Government were an ELS agreement to be signed with each MDO (subject to legal and financial due diligence and successful discussion of terms with all three MDOs) is in the region of £100m before any transfer of assets. The £100m estimate of liabilities is not the expected cost to Welsh Government because it does not take account of any asset transfers from MDOs. This estimate of liabilities is not a cost that arises from the Bill.
- 3.9. Such estimated liabilities that would be assumed by Welsh Government are expected to materialise over the period to 2027, although the actual value of the liabilities may fluctuate according to claims incidence patterns, claims notifications and the value of settled claims.
- 3.10. Subject to legal and financial due diligence and successful discussions with the MDOs, the net financial exposure of Welsh Government would be expected to decrease annually over the period to 2027, although the exact profile of financial exposure over this period is not known
- 3.11. Access to more detailed information about the financial implications of the ELS is restricted due to its commercial sensitivity and non-disclosure agreements between MDOs and Welsh Government.

- 3.12. Overall, this will strengthen the stability of indemnity provision for GPs and will ensure that patients and GPs are protected. This will also contribute to the Welsh Ministers' ability to deliver on its commitment made to improve access to general medical services in '*Prosperity for All: the national strategy*'. The Welsh Ministers will further their duty under section 1 of the NHS (Wales) Act 2006 to "continue the promotion in Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of Wales and in the prevention, diagnosis and treatment of illness".

## **Conclusions**

- 3.13. The Welsh Ministers have decided Option b) is the preferred option, given the benefits it will provide

## **4. Impact Assessments**

### ***What action is the Welsh Government considering and why?***

#### **4.1. The Amendment**

- 4.1.1. The primary purpose of the Bill will be to enable the Welsh Ministers to make regulations to establish direct indemnity schemes. In the immediate future, the intention is to use this power to establish a direct indemnity scheme enabling the Welsh Ministers (at their discretion) to indemnify GPs for historic clinical negligence claims reported or incurred but not yet reported prior to 1 April 2019 (the ELS). The amendments to section 30 of the NHS (Wales) Act 2006 confer powers on the Welsh Ministers to make regulations establishing direct indemnity schemes, as well as expanding the bodies which may make provision for mutual indemnity schemes. The ELS Regulations will underpin, together with the Scheme for General Medical Practice Indemnity, the long term sustainability of the provision of general medical services. This will help GP recruitment and retention in Wales because no Wales based GP will be at a disadvantage regarding clinical medical negligence indemnity in comparison with England. The amendments to the NHS (Wales) Act 2006 made by the Bill ensure that the Welsh Ministers may deliver the Existing Liabilities Scheme (the ELS).

#### **4.1.2. The effect of changes to section 30:**

- Increasing the powers of the Welsh Ministers in relation to the provision of indemnity schemes for primary care providers in Wales.

- Enabling the Welsh Ministers to make regulations setting out how the Welsh Ministers will consider the liability of GPs for those historic clinical negligence claims that have either been reported, or which have been incurred but not reported, prior to 1 April 2019.
- Provide legislative underpinning for the long term sustainability of the provision of general medical services in Wales. This will help GP recruitment and retention in Wales because no Wales based GP will be at a disadvantage regarding the state backed provision of clinical negligence indemnity in comparison with their English counterparts.

***How the five ways of working in the Well-being of Future Generations (Wales) Act 2015 are being applied:***

**4.2. Long term**

- 4.2.1. The amendments enable future policy development and delivery in the area of Schemes for meeting losses and liabilities etc. of certain health service bodies and provision of indemnities by the Welsh Ministers prescribed by regulations. This includes the existing state backed indemnity schemes for clinical negligence for primary, out of hours and secondary care.

**4.3. Prevention**

- 4.3.1. Making the amendment to section 30 will provide the Welsh Ministers with the power, via regulations, to safeguard the future provision of indemnity within the NHS in Wales, thereby preventing the possibility of schemes not meeting the needs of GPs and other health professionals in Wales. This will, in turn, assist the Welsh Ministers in delivering on their duty under section 1 of the NHS (Wales) Act 2006 to “continue the promotion in Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of Wales and in the prevention, diagnosis and treatment of illness”.
- 4.3.2. It will also prevent practising as a GP in Wales being viewed as a less attractive proposition when compared with England thereby preventing an exacerbation of the difficulty faced by Welsh GP practices in recruiting and retaining GPs and contribute to the Welsh Ministers’ ability to deliver on its commitment made to improve access to general medical services in ‘*Prosperity for All: the national strategy*’.

**4.4. Integration**

- 4.4.1. *Prosperity for All: The national strategy* has been considered. The amendment to section 30 of the NHS (Wales) Act 2006 will

support the legal infrastructure that is needed to deliver NHS Services in Wales.

#### **4.5. Collaboration & Involvement**

- 4.5.1. The amendments to the NHS (Wales) Act 2006 made by the Bill are essential in order that the Welsh Ministers may establish the ELS through regulations. This was identified and recognised during discussions with the UK Government Department of Health and Social Care which remain ongoing. The proactive collaborative working relationship with Department of Health and Social Care and NHS Resolution has been invaluable.

#### **4.6. Impact**

- 4.6.1. The Bill will ensure the Welsh Ministers can deliver long term stability for both GPs and users of NHS Wales services in the area of clinical negligence indemnity. The amendments made by the Bill will support the continuing recruitment and retention of GPs in Wales. They will further ensure that GPs will not be placed at a disadvantage in the important matter of clinical negligence indemnity cover and the cost of it in comparison with England or the other devolved administrations. The amendments are therefore a positive first step that will underpin the delivery of ELS for NHS Wales.
- 4.6.2. The alternative is to do nothing and maintain the status quo. This results in the opposite effect to the benefits set out in paragraph 4.6.1 above with GPs in Wales being at a disadvantage in respect of clinical negligence indemnity and the cost of it, with a consequent impact on their recruitment and retention, lack of vires to create the ELS.

#### **4.7. Costs and Savings**

- 4.7.1. There are costs associated with the preparation and implementation of the Bill. These costs, anticipated to be £30,000 which will be incurred in 2019/20, represent the anticipated costs for external professional support during the Bill process and to implement the Bill utilising the new Direct Indemnity Scheme regulation making powers delivered by the Bill. There are no other costs attributable to the Bill.
- 4.7.2. The Welsh Government does not anticipate any additional costs for NHS Wales Shared Services Partnership Legal and Risk Services as a result of the ELS that would be greater than the operational costs paid to participating MDOs during the interim period of management.

#### **4.8. Mechanism**

- 4.8.1. The only mechanism that will lead to delivery of the policy aim to deliver the ELS in accordance with the Ministerial commitment is the use of a Bill to amend Section 30 (Schemes for meeting losses and liabilities etc. of certain health service bodies) of the NHS (Wales) Act 2006.

#### **4.9. Children's Rights Impact Assessment**

- 4.9.1. A Children's Rights Impact Assessment has been considered. The Welsh Government formally adopted the United Nations Convention on the Rights of the Child (UNCRC) in 2004 and our work is based on delivering the core aims of the UNCRC.<sup>11</sup>
- 4.9.2. However, given that the effect of the Bill is of a discrete nature it has no identifiable impact on Children's rights. There is no change to health care or access to it. The CRIA has been cleared with CRIA unit.

#### **4.10. Equality Impact Assessment**

- 4.10.1. The Equality Impact Assessment has been considered. The Bill has no possible impacts for subsections of different protected characteristic groups in regards amendments to s30 NHS (Wales) Act 2006. The EIA has been discussed with Equalities Unit and cleared by HSS Operations.

#### **4.11. Rural Proofing Impact Assessment**

- 4.11.1. Whilst the amendment will not directly impact rural individuals and communities the amendments will safeguard the ability of patients to make successful claims for clinical negligence against GPs for NHS work and maintain confidence for GPs that claims will be defended and reputations protected. The positive impacts on recruitment and retention will support the provision of rural GP services.

#### **4.12. Health Impact Assessment**

- 4.12.1. We have considered the Health Impact Assessment and in our view there is no need to complete a detailed health impact because the amendments are of a discrete nature.

#### **4.13. Privacy**

- 4.13.1. The Bill does not involve processing information that could be used to identify individuals.

---

<sup>11</sup> Welsh Government, Children and young people <<https://gov.wales/topics/people-and-communities/people/children-and-young-people/?lang=en>>

#### **4.14. Welsh Language Impact Assessment**

- 4.14.1. A Welsh Language Impact Assessment has been completed. The Bill is considered neutral in terms of its impact.

#### **4.15. Justice Impact Assessment**

- 4.15.1. A JIA has been completed which assessed no impact on the Justice system in England and Wales will arise given the nature of the Bill. The JIA has been forward to Ministry of Justice for consideration. A link to the JIA will be will added in due course after the Ministry of Justice have provided their response / clearance.

#### **4.16. Conclusion**

##### ***How have people most likely to be affected by the proposal been involved in developing it?***

- 4.16.1. The amendments to section 30 of the NHS (Wales) Act 2006 will enable the Welsh Ministers to establish direct indemnity schemes by regulations. In the immediate future, using the new powers, the Welsh Ministers will establish and set out the administrative arrangements for the ELS.
- 4.16.2. Proactive and sustained engagement with all stakeholders has been undertaken since the announcement by the Minister for Health and Social Services that the Welsh Government would introduce a state backed clinical indemnity scheme 14 May 2018. Given the discrete nature of the amendments made by the Bill there is little, if any, scope to influence the policy outcome through open public consultation. Consequently, a consultation exercise has not been undertaken.

##### ***What are the most significant impacts, positive and negative?***

- 4.16.3. We have considered the Well-being of Future Generations (Wales) Act 2015 goals, in particular, sustainable Wales and a more resilient Wales. The aims and objectives of the state backed scheme, which will provide greater long term certainty for the on-going provision of general medical services in Wales, reflect the goals of the Well Being of Future Generations Act.
- 4.16.4. The Bill will amend Section 30 (Schemes for meeting losses and liabilities etc. of certain health service bodies) of the NHS (Wales) Act 2006.
- 4.16.5. This will have the positive effect of:



- a) Increasing the powers of the Welsh Ministers in relation to the provision of indemnity schemes for primary care providers in Wales.
- b) Enabling the Welsh Ministers to make regulations setting out how the Welsh Ministers will consider the liability of GPs for those historic clinical negligence claims that have either been reported, or which have been incurred but not reported, prior to 1 April 2019.
- c) Legislatively underpinning the long term sustainability of the provision of general medical services in Wales. This will help GP recruitment and retention in Wales because no Wales based GP will be at a disadvantage regarding the state backed provision of clinical negligence indemnity in comparison with their English counterparts.

4.16.6. We see no negative impact as a consequence of this Bill.

#### 4.17. Competition Assessment

4.17.1. A Competition Assessment has been undertaken to assess the potential impact of amending section 30 of the NHS (Wales) Act 2006. This policy is not expected to have a significant detrimental effect on competition within the discretionary medical indemnity market for NHS work. The results of a filter test (consisting of nine yes/no questions) which support this conclusion are below, followed by evidence to support the answers.

4.17.2. Filter test for the amendment to section 30 of the NHS (Wales) Act 2006.

Question	Answer: Yes or No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three	Yes

firms together have at least 50% market share?	
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

4.17.3. The Bill does not affect the market for clinical medical indemnity – it relates to schemes for meeting losses and liabilities etc. of certain health service bodies. It enables the Welsh Ministers to make Regulations to establish Direct Indemnity Schemes (in the immediate future, this will be the ELS). As part of the ELS arrangements, participating MDOs will pass their responsibility to consider a GP's liability for historic clinical negligence claims relating to NHS work (as outlined in paragraph 3.8 of the Explanatory Memorandum) to the Welsh Government. The participating MDO(s) will not be further affected after this event. Any MDO that does not participate in the intended ELS retains this responsibility for historic GP member liabilities and will not be affected by the introduction of ELS Regulations made pursuant to the amended section 30 of the NHS (Wales) Act 2006.

#### **4.18. Post implementation review**

4.18.1. Once the Bill has received Royal Assent, the policy objective is to:

- i. establish the ELS, by regulations made pursuant to section 30, setting out how the Welsh Ministers will consider the liability of GPs for those historic clinical negligence claims that have either been reported, or which have been incurred but not reported, prior to 1 April 2019.
- ii. monitor the operation of the ELS, together with the FLS GMPI, to consider their effectiveness in the context of the long term sustainability of the provision of general medical services.
- iii. provide a Report to the Assembly on the operation of the Wales state backed GP indemnity scheme (i.e. FLS and ELS) including views of GPs and other stakeholders.

4.18.2. We will review section 30 of the NHS (Wales) Act 2006 as required but we think that it is unlikely that a further amendment will be needed in the foreseeable future.

## **Annex 1**

### **Explanatory Notes**

# **NATIONAL HEALTH SERVICE (INDEMNITIES) (WALES) BILL**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the National Health Service (Indemnities) (Wales) Bill which was introduced into the National Assembly for Wales on 14 October 2019. They have been prepared by the Department for Health and Social Services of the Welsh Government to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.
2. The Bill amends section 30 of the National Health Service (Wales) Act 2006 ("the 2006 Act"). It makes provision about indemnifying persons and bodies for expenses and liabilities arising in connection with the provision of health services in Wales and creates a new power for the Welsh Ministers to make regulations in respect of direct indemnity schemes.

### **SECTION 30 - NATIONAL HEALTH SERVICE (WALES) ACT 2006**

3. Section 30 of the 2006 Act enables the Welsh Ministers to establish a scheme so that certain bodies can make provision to meet expenses for loss or damage to their property, and to meet liabilities to third parties for loss, damage or injury arising out of those bodies carrying out their functions. These bodies are Local Health Boards, NHS Trusts and Special Health Authorities.

### **COMMENTARY ON SECTIONS**

#### **Section 1 – Indemnities in connection with provision of health services**

4. Subsection (2) of section 1 of the Bill inserts the definition "mutual indemnity scheme" into subsection (1) of section 30 of the 2006 Act. Inclusion of the defined term distinguishes those schemes made in accordance with subsection (1), where several health service bodies meet their expenses and liabilities by combining resources in a collective fund, from those schemes made under the new subsection (8) which are termed "direct indemnity schemes".
5. Subsection (3) of section 1 of the Bill adds to the bodies who may make provision within an indemnity scheme under section 30. The first of these new bodies is a person providing or who has provided primary medical services. This would include General Practitioners. The second addition is a body or other person providing or arranging the provision of, or who provided or

*These notes refer to the National Health Service (Indemnities) (Wales) Bill which was introduced into the National Assembly for Wales on 14 October 2019*

arranged the provision of, health services (other than a body already listed in subsection (2)) under an arrangement with a Local Health Board, an NHS Trust or a Special Health Authority. This would include for example a person providing services under a contract with a Local Health Board.

6. Subsection (5) of section 1 of the Bill inserts the names of the bodies that the Welsh Ministers may direct to participate in a mutual indemnity scheme in accordance with their power in subsection (4) of section 30 of the 2006 Act. This clarification is required as a result of the expanded list of bodies included in subsection (2) of section 30.
7. Subsection (8) of section 1 of the Bill inserts new subsections (8) to (11) into section 30 of the 2006 Act.
8. The new subsection (8) of section 30 creates a power for the Welsh Ministers to make regulations to establish a statutory scheme under which they may indemnify the persons or bodies in subsection (2). The Bill names these “direct indemnity schemes”.
9. The new subsection (9) provides a non-exhaustive list of what regulations establishing a direct indemnity scheme may prescribe, including for example who is an eligible person, and what liabilities or expenses may be indemnified by such a scheme.
10. The new subsection (10) of section 30 makes it clear that there is nothing in section 30 that prevents the Welsh Ministers from exercising their powers to provide indemnities to any person other than those listed in subsection (2), or from providing different kinds of indemnities to those bodies listed in subsection (2).
11. New subsection (11) provides a definition of “functions”.
12. The Bill also makes a number of minor and consequential amendments to section 30 as a result of the substantive provisions.

## **Section 2 – Short title and coming into force**

13. The short title of the Bill is the National Health Service (Indemnities) (Wales) Act 2020 (section 2(1)).
14. The Bill will come into force on the day after the day on which it receives Royal Assent.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

15. The following table sets out the dates for each stage of the Bill’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Bill will be available on the National Assembly for Wales’ website at :

<http://www.assembly.wales/en/bus-home/bus-legislation/bus-legislation-progress-bills/Pages/bus-legislation-progress-bills.aspx>

*These notes refer to the National Health Service (Indemnities) (Wales) Bill which was introduced into the National Assembly for Wales on 14 October 2019*

<b>Stage</b>	<b>Date</b>
Introduced	14 October 2019
Stage 1 – Debate	19 November 2019
Stage 2 Scrutiny Committee – consideration of amendments	11 December 2019
Stage 3 Plenary – consideration of amendments	
Stage 4 Approved by the Assembly	
Royal Assent	

## Annex 2

### Index of Standing Order requirements

Table B

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Page 2 (Member's Declaration) and page 4, paragraph 2.1
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	Pages 4 – 8, paragraphs 3.1 – 3.18
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment	Page 22, paragraphs 4.6.2 and 4.8.1
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation	Pages 8 – 9, paragraphs 4.1 – 4.5

Standing order		Section	pages/ paragraphs
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	N/A
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Page 9, paragraph 4.5
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	Pages 29 - 31
26.6(viii)	Set out the best estimates of: <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill's provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Regulatory Impact Assessment	Page 13, paragraphs 1.3 – 1.9 and Table A



Standing order		Section	pages/ paragraphs
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment	Pages 13 – 20, paragraphs 1.1 – 1.8 and Table A, paragraphs 2.1 – 2.8 and 3.1 – 3.11
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</p>	Chapter 5 - Power to make subordinate legislation	Pages 10 – 12, paragraphs 5.1 and 5.2
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund,	The requirement of Standing Order 26.6(xi) does not apply to this Bill	Page 13, paragraph 1.2

Standing order		Section	pages/ paragraphs
	incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate		
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment	Page 24, paragraph 4.15.1
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	N/A
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 3 – Schedule of Amendments	Pages 36-39

## **Annex 3**

### **Schedule of amendments**

#### **NATIONAL HEALTH SERVICE (WALES) ACT 2006**

##### **AMENDMENTS TO BE MADE BY THE NATIONAL HEALTH SERVICE (INDEMNITIES) (WALES) BILL**

The National Health Service (Indemnities) (Wales) Bill has been drafted to amend section 30 of the National Health Service (Wales) Act 2006.

This document is intended to show how section 30 of the National Health Service (Wales) Act 2006 as it applied in relation to Wales on 13 September 2019 would look as amended by the National Health Service (Indemnities) (Wales) Bill (if enacted as introduced on 14 October 2019).

Material to be deleted by the National Health Service (Indemnities) (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the National Health Service (Indemnities) (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

#### **Warning**

This text has been prepared by officials of the Department for Health and Social Services of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the National Health Service (Indemnities) (Wales) Bill. It is not intended for use in any other context.

## National Health Service (Wales) Act 2006

## *Amending section of the National Health Service (Indemnities) (Wales) Bill*

### **30 Schemes for meeting losses and liabilities etc of certain health service bodies**

- |  |             |
|--|-------------|
| (1) The Welsh Ministers may by regulations establish a scheme                  | 1(2)(a)     |
| (a “ <u>mutual indemnity scheme</u> ”) whereby any of the bodies <u>or</u>     | 1(2)(b)     |
| <u>other persons</u> specified in subsection (2) may make                      |             |
| provision to meet—   |             |
| (a) expenses arising from any loss of or damage to their                       |             |
| property, and  |             |
| (b) liabilities to third parties for loss, damage or injury                    |             |
| arising out of the carrying out of the functions of the                        |             |
| bodies <u>or other persons</u> concerned.                                      | 1(2)(b)     |
| (2) The bodies <u>and other persons</u> referred to in subsection (1)          | 1(3)(a)     |
| are—   |             |
| (a) Local Health Boards,   |             |
| (b) NHS trusts, <del>and</del>   | 1(3)(b)     |
| (c) Special Health Authorities   |             |
| (d) ...  |             |
| (e) ...  |             |
| (f) <u>a person who is providing, or who has provided,</u>                     | 1(3)(c)     |
| <u>primary medical services in accordance with a contract</u>                  |             |
| <u>or other arrangement under Part 4, and</u>                                  |             |
| (g) <u>a body or other person (other than a body or other</u>                  |             |
| <u>person specified under paragraphs (a) to (f)) who is</u>                    |             |
| <u>providing or arranging the provision of, or who has</u>                     |             |
| <u>provided or arranged the provision of, health services</u>                  |             |
| <u>whose provision is the subject of a contract or other</u>                   |             |
| <u>arrangements with a Local Health Board, NHS trust or</u>                    |             |
| <u>Special Health Authority,</u>   |             |
| but a <del>scheme under this section</del> <u>mutual indemnity scheme</u>      | 1(3)(d)(i)  |
| may limit the class or description of bodies which, <u>or other</u>            | 1(3)(d)(ii) |
| <u>persons who,</u> are eligible to participate in it.                         |             |
| (3) A <del>scheme under this section</del> <u>mutual indemnity scheme</u> may, | 1(4)(a)     |
| in particular—   |             |
| (a) provide for the scheme to be administered by the                           |             |
| Welsh Ministers or by an NHS trust or Special Health                           |             |
| Authority specified in the scheme,   |             |
| (b) require any body which, <u>or other person who,</u>                        | 1(4)(b)     |
| participates in the scheme to make payments in                                 |             |
| accordance with the scheme, and  |             |

Please note: this document has been prepared solely to assist people in understanding the National Health Service (Indemnities) (Wales) Bill. It should not be relied on for any other purpose.

- (c) provide for the making of payments for the purposes of the scheme by the Welsh Ministers.
- (4) If the Welsh Ministers so direct a ~~body~~ Local Health Board, NHS trust or Special Health Authority which is eligible to participate in a scheme must do so. **1(5)**
- (5) Where a ~~scheme~~ mutual indemnity scheme provides for the scheme to be administered by the Welsh Ministers, a Special Health Authority or NHS trust must carry out such functions in connection with the administration of the scheme as the Welsh Ministers may direct. **1(6)**
- (6) Subsections (4) and (5) do not affect any other power of direction of the Welsh Ministers.
- (7) A person or body administering a ~~scheme under this section~~ mutual indemnity scheme does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme. **1(7)**
- (8) The Welsh Ministers may by regulations establish a scheme (a “direct indemnity scheme”) under which they may indemnify any of the bodies or other persons specified in subsection (2) against— **1(8)**
  - (a) expenses arising from any loss of or damage to their property, and
  - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies or other persons concerned.
- (9) A direct indemnity scheme may, in particular—
  - (a) specify the persons or other bodies eligible to be indemnified (including limiting the class or description of bodies or other persons who are eligible);
  - (b) specify the expenses and liabilities in respect of which a body or other person may be indemnified and the extent to which they may be indemnified;
  - (c) require any body or other person indemnified under the scheme to make payments in accordance with the scheme.
- (10) Nothing in this section limits or affects the powers of the Welsh Ministers under this Act, or any other enactment, to provide an indemnity—
  - (a) to any person other than the bodies or other persons specified in subsection (2), or
  - (b) to a body or other person specified in subsection (2) in respect of any expenses or liabilities other than those mentioned in subsections (1) and (8).
- (11) In this section—
  - (a) in subsections (1)(b) and (8)(b) “functions”, in relation to a body or other person specified in subsection (2)(g), means the body's or person's functions of providing, or

Please note: this document has been prepared solely to assist people in understanding the National Health Service (Indemnities) (Wales) Bill. It should not be relied on for any other purpose.

arranging the provision of, health services whose provision is the subject of a contract or other arrangements with a Local Health Board, NHS trust or Special Health Authority.

(b) in subsection (2) and in paragraph (a) of this subsection “health services” means services provided as part of the health service.