

SL(5)372 – The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

Background and Purpose

The Regulations establish the Clinical Negligence Scheme for NHS Trusts and Local Health Boards to provide for all qualifying liabilities, from 1 April 2019, in tort and in contract.

The indemnity provided under the Scheme covers the clinical negligence liabilities of members (Local Health Boards and NHS Trusts) as well as those of non-member contractors who provide primary medical services by virtue of an arrangement with a member of the Scheme (e.g. a general medical services contract).

The Scheme applies from 1 April 2019 in respect of all liabilities within its scope. This means that, from that date, members and contractors will automatically be covered by the Scheme in relation to such liabilities.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These Regulations introduce a state-backed scheme to provide clinical negligence indemnity for providers of GP services. The scheme will cover all contracted GPs and other health professionals working in NHS general practice.

The Explanatory Memorandum to these Regulations states, at paragraph 6:

“A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors.”

Given the significance of these Regulations, we would welcome clarification from the Welsh Government as to why no Regulatory Impact Assessment was carried out (and upon which exemption in the “Welsh Ministers’ Regulatory Impact Assessment Code for Subordinate Legislation” is the Welsh Government relying to not carry out a Regulatory Impact Assessment).

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Government Response

Response to Merits Scrutiny pursuant to Standing Order 21.3(ii) seeking clarification as to why no Regulatory Impact Assessment was undertaken.

1. Policy Considerations

1.1 The Minister for Health and Social Services announced on [14 May 2018](#) that the Welsh Government will be introducing from 1 April 2019 a state backed scheme to provide Clinical Negligence Indemnity for providers of GP services in Wales (i.e. for NHS work). The announcement was welcomed and supported by GPC Wales who specifically highlighted that the introduction of the Scheme represented an important step towards increasing the sustainability of general practice in Wales by addressing the significant cost pressures on GPs given the increasing cost trend associated with GP indemnity premiums. The introduction of the Scheme would be aligned as far as possible with the state backed scheme announced for GPs in England which is also planned to come into force on 1 April 2019.

1.2 The Scheme will build on the existing state backed indemnity cover provided for secondary care and GP out of hours services within NHS Wales.

1.3 Following this announcement extensive engagement has been undertaken with GPs, the three medical defence organisations in the UK, NHS Wales Shared Services Partnership, NHS Wales including Health Boards, Directors of Primary Care, Associate Medical Directors, Directors of Finance, Directors of Nursing and GP Practice Managers. In particular a Stakeholder Reference Group has been established as a forum for discussing and improving proposals to deliver the Scheme as well as ensuring key stakeholders were clearly updated and informed on key developments. Welsh Government has also been working closely with the Department of Health and Social Care to ensure alignment of the Wales and England Schemes wherever possible. The state backed scheme for GP Professional Indemnity has no impact on the voluntary sector or local government.

1.4 A further two written statements were also released by the Minister on [15 November 2018](#) and [6 Feb 2019](#) providing updates on progress of the state backed scheme for Wales.

2. Professional Requirement for Clinical Negligence Indemnity

2.1 Clinical negligence cover is a condition of registration in the UK for all regulated healthcare professionals, and in the case of medical practitioners, a condition of licence under s.44C of the Medical Act 1983. Therefore healthcare professionals are required to hold appropriate clinical negligence indemnity cover to cover the costs of claims and damages awarded to patients



arising out of negligence. The cover can be an insurance policy, an indemnity arrangement, or a combination of both.

3. Financial Impact of the Scheme

3.1 The financial impact of delivering the Scheme has been assessed by NHS Finance and Welsh Government Strategic Budgeting. The actuarial advice and cost analysis have been provided by Pricewaterhouse Coopers together with an overview provided by Government Actuarial Department. The details of the financial assessment cannot be released since they are subject to non-disclosure agreements with the three medical defence organisations.

3.2 It must be emphasised that all financial information including cost and options analysis cannot be made public due to the highly confidential commercially sensitive nature of it and that it is bound by non-disclosure agreements.

3.3 The Scheme will be funded through existing budget lines and will be cost neutral to both members and contractors covered under the Scheme.

3.4 The Scheme will not have any financial impact on the public or voluntary sectors.

3.5 The Scheme will have a broadly neutral financial impact on medical defence organisations since any future liabilities will be taken over by Welsh Government and GP indemnity premiums provided by the medical defence organisations will be adjusted to reflect the removal of the clinical negligence claims for NHS work. This overall impact for Wales' activity is in the context of the Wales market share (3%) of the total medical defence market in the UK.

4. Longer Term Sustainability

4.1 The Scheme will deliver a sustainable longer term solution to address the increasing costs of medical indemnity cover. Further, the Scheme will help ensure on-going GP recruitment and that England and Wales cross border activity will not be affected by different schemes operating in England and Wales.

5. Exception to the need for a Regulatory Impact Assessment

5.1 There is no major policy impact as it is an existing requirement for GPs to have clinical negligence cover as set out at 2.1. These Regulations provide for a mechanism to provide indemnity cover for GPs for NHS work and aligns with the existing state backed NHS Wales secondary care and GP out of hours indemnity.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 18 March 2019 and reports to the Assembly in line with the merits reporting points above.

