

## SECTION 1. WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

(Please note that this Section will be published)

*In narrative form, please describe the issue and the action proposed by the Welsh Government. How have you applied / will you apply the five ways of working in the Well-being of Future Generations (Wales) Act 2015 to the proposed action, throughout the policy and delivery cycle?*

### **1.1. Background to the NHS ( Indemnities ) Wales Bill to amend s30 (Schemes for meeting losses and liabilities etc of certain health bodies) NHS (Wales) Act 2006**

- 1.1.1.** 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. Under this legislation, 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.
- 1.1.2.** General practitioners (GPs) have traditionally purchased their own indemnity from the medical defence organisations (MDOs). There are currently three medical defence organisations (MDOs) in the UK which provide medical indemnity for Welsh GP medical practitioners in respect of clinical negligence, professional regulatory matters, and other medico-legal issues.
- 1.1.3.** Concerns had been expressed by GPs about the increasing costs of GP professional indemnity, with indemnity premiums having 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 and an increase in people living with complex conditions. There is no evidence to suggest that a deterioration in the quality of clinical care has acted as a driver to increase the cost of indemnity.
- 1.1.4.** Welsh Government made a commitment to GPs in Wales, as part of the changes to the GMS contract for 2017/18, to develop a solution to address this issue. This commitment was reviewed following the change to the Personal Injury Discount Rate (PIDR) and the impact on GPs and the medical indemnity market, and the decision by Secretary of State to introduce a state-backed scheme for GPs in

England from April 2019. Welsh Government made a commitment that GPs in Wales will not be disadvantaged relative to GPs in England whose clinical negligence indemnity will be covered by the English state backed Scheme.

**1.1.5.** In May 2018, the Minister for HSS announced that there would be a state-backed GP Professional Indemnity Scheme for Wales for GMS contract work for liabilities incurred after April 2019 (the Future Liabilities Scheme), which would be aligned with, as far as possible, to the scheme to be introduced in England. In August 2018, the Minister for HSS also made a commitment to expand the state backed indemnity scheme to cover clinical negligence claims which were incurred before April 2019 (known as the Existing Liabilities Scheme) subject to the completion of legal and financial due diligence and satisfactory negotiations with the MDOs.

**1.1.6.** The FLS scheme was successfully introduced on 1 April 2019 enabled by the NHS (Wales) (Clinical Negligence Scheme) Regulations 2019. The FLS, known as the Scheme for General Medical Practice Indemnity (GMPI), is operated by NHS Wales Shared Services Partnership Legal & Risk Services. The GMPI in Wales mirrors the FLS scheme (known as the Clinical Negligence Scheme for General Practice) which was introduced by Department of Health and Social Care for GPs in England also on 1 April 2019. Similarly, the ELS scheme/arrangements will mirror the ELS to be introduced in England.

**1.1.7.** Aligning the Wales FLS and ELS schemes with England will ensure that GPs in Wales are not disadvantaged relative to GPs in England and that GP recruitment and cross border activity will not be adversely affected by different schemes operating in England and Wales.

## **1.2. The Amendment**

**1.2.1.** The amendments to section 30 (Schemes for meeting losses and liabilities etc of certain health service bodies) of the National Health Service (Wales) Act 2006, which are of a limited policy nature, will enable the creation of Regulations to establish the ELS scheme.

**1.2.2.** The effect of changes to section 30:

i) Enable the Welsh Ministers to make ELS regulations which will make provision to meet those liabilities to GPs for historic clinical negligence claims, that have either been reported, or reported but not incurred, prior to 1 April 2019. The ELS Regulations will underpin, together with the FLS GMPI, the long term sustainability of the provision of general medical services.

- ii) Future proofs for the effects, market shocks and stresses of future events relating to clinical negligence cover.

### 1.3. Long term

- 1.3.1. The amendment enables future policy development and delivery in the area of Schemes for meeting losses and liabilities etc. of certain health service bodies. This includes the existing state backed indemnity schemes for clinical negligence for primary, out of hours and secondary care.

### 1.4. Prevention

- 1.4.1. Making the amendment to section 30 will enable the Welsh Ministers to future proof existing GP clinical negligence schemes. This will help to prevent the schemes from failing to meet the needs of GPs as the schemes evolve.

### 1.5. Integration

- 1.5.1. *Prosperity for All: The national strategy* has been considered. The amendment to section 30 of the NHS (Wales) Act 2006 supports the legal infrastructure that is needed to deliver NHS Services in Wales.

### 1.6. Collaboration & Involvement

- 1.6.1. The amendments to the NHS (Wales) Act 2006 made by the Bill are essential in order that the Welsh Ministers may establish the Existing Liabilities Scheme (the ELS). 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. Stakeholders are aware of the need for the Bill which will enable the delivery of ELS Regulations.

### 1.7. Impact

- 1.7.1. **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.** Enabling the Welsh Ministers to establish the ELS, 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.

- 1.7.2.** The alternative is to do nothing and maintain the status quo. This results in the opposite effect to the benefits set out in paragraph 1.7.1 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 and the inability of the Welsh Ministers to adequately future proof for the effects, market shocks and stresses of future events relating to clinical negligence cover.

## **1.8. Costs and Savings**

- 1.8.1.** All financial information including cost and options analysis cannot be made public due to its highly confidential commercially sensitive nature and that it is bound by non-disclosure agreements.

## **1.9. Mechanism**

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

## **SECTION 7. CONCLUSION**

(Please note that this section will be published)

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

- 7.1.1.** The amendments to section 30 of the NHS (Wales) Act 2006 are of a limited policy nature. The amendments enable the Welsh Ministers to produce secondary legislation that will establish an Existing Liabilities Scheme for historic clinical negligence liabilities for GPs in respect of NHS Work. Given the limited nature of the Bill there is little, if any, scope to influence the policy outcome through open public consultation.

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

**7.2.1.** We have considered the Well Being of Future Generations Act 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.

**7.2.2.** The Bill will amend section 30 (Schemes for meeting losses and liabilities etc of certain health service bodies) of the NHS (Wales) Act 2006

This will have the positive effect of:

- a) The Bill will enable the Welsh Ministers to make ELS regulations which will make provision to meet those liabilities to GPs for historic clinical negligence claims, that have either been reported, or reported but not incurred, prior to 1 April 2019. The ELS Regulations will underpin, together with the FLS GMPI, the long term sustainability of the provision of general medical services.
  
- b) By amending section 30 of the NHS (Wales) Act 2006 to facilitate the introduction of the ELS Regulations, the Welsh Government are future proofing for the effects, market shocks and stresses of future events relating to clinical negligence cover. The ELS Regulations will underpin, together with the GMPI, 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.

**7.2.3.** We see no negatives as a result of this Bill.

