

## **Integrated Impact Assessment**

### **National Health Service (Existing Liabilities Scheme for General Practice) (Wales) Regulations 2020.**

#### **WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?**

**In narrative form, please describe the issue and the action proposed by the Welsh Government.**

The National Health Service (Existing Liabilities Scheme for General Practice) (Wales) Regulations 2020 ("the Regulations") establish the Existing Liabilities Scheme for General Practice ("the Scheme"), a direct indemnity scheme under which the Welsh Ministers will consider indemnifying clinical negligence claims made against a GP and others working in a general practice setting as a result of an act or omission prior to 1 April 2019 giving rise to a tortious liability in connection with the provision of primary medical services and other NHS services by general practice. The 'existing liabilities' covered by the Scheme, in the main, will be clinical negligence liabilities.

**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?**

#### **Long term**

The state-backed GP Professional indemnity scheme for liabilities post 1 April 2019 (Future Liabilities Scheme - FLS) for Wales provided a long term sustainable solution to the cost of indemnity cover for Primary care GMS contract holders. The Existing Liabilities Scheme element (ELS) builds on the successful launch of the FLS.

#### **Prevention**

The indemnity provided under these Regulations covers the clinical negligence liabilities of GPs (and others working in a general practice setting) reported, or incurred but not reported, prior to 1 April 2019 in connection with the provision of NHS services provided by general medical practice. Indemnity cover must have been in existence with an MDO that has entered into an ELS contractual agreement with the Welsh Ministers at the time the act or omission giving rise to the liability took place.

#### **Integration**

*Prosperity for All: The national strategy* has been considered. The aims and objectives of the state-backed scheme meets the key healthy and active aims to

improve health and well-being in Wales, for individuals, families and communities, through the greater stability and sustainability of the provision of general medical services.

The ELS together with the FLS integrates with and supports the delivery of the strategic primary models of care in Wales, such as *A Healthier Wales: our Plan for Health and Social Care*, and the national primary care plan for Wales. This builds on the shared learning process currently embedded in the Wales secondary care scheme (*Putting Things Right*), aimed at reducing frequency of claims and improving the quality of care and patient safety.

### **Collaboration and Involvement**

The views of GPC Wales, RCGP Wales, GP Practice Managers, Local Health Boards and NHS Wales Shared Service Partnership - Legal and Risk Services (SSP-LARS) Medical Defence Union, Medical and Dental Defence Union of Scotland and the Medical Protection Society have been sought regarding the draft Regulations together with the draft Explanatory Memorandum (including the Regulatory Impact Assessment) for the Regulations. There have also been discussions with colleagues in the Department of Health and Social Care to ensure that these Regulations are aligned as closely as possible with England's. These views and comments has also informed the development of a Bank of Frequently Asked Questions to supplement the existing Scheme for General Medical Practice Indemnity.

Dialogue and feedback between stakeholders will continue throughout the Scheme's delivery over the forthcoming years.

### **Impact**

The expansion of the state backed GP Indemnity Scheme for Wales to include the ELS will help provide long term stability for GP Primary Care Services for the people of Wales.

### **Costs and Savings**

The establishment of the ELS follows completion of due diligence and satisfactory negotiations with participating MDOs. The assumption of legal responsibility for GP liabilities from a participating MDO is subject to a transfer of economic assets to Welsh Government which has been part of the negotiations.

## **Mechanism**

The ELS is being established by Regulations under s30 NHS Wales Act 2006 as amended by the NHS (Indemnities) (Wales) Act 2020. NHS Wales Shared Services Partnership Legal & Risk Services will deliver the ELS under these Regulations.

## **Conclusion**

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

A short stakeholder targeted consultation on these Regulations has been undertaken commencing 21 January 2020 and completed on 10 February 2020. This was addressed to those most affected by the Regulations - the Stakeholder Reference Group whose members include GPC Wales, Royal College of General Practitioners Wales, NHS Wales Local Health Boards (including Directors of Finance; Directors of Primary Care; Associate Medical Directors; Board Secretaries; Directors of Nursing) and GP Practice Managers.. The views of the Medical Defence Union, the Medical and Dental Defence Union of Scotland and the Medical Protection Society have also been sought.

The views of the Stakeholder Reference Group and the MDOs have been most useful in producing the final version of these Regulations together with a suite of frequently asked questions / guidance that has been used to supplement the existing Scheme for General Medical Practice Indemnity guidance.

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

The state-backed GP Professional indemnity scheme for liabilities post 1 April 2019 (FLS) for Wales provided a long term sustainable solution to the cost of indemnity cover for Primary care GMS contract holders. It will help the delivery of strategic primary models of care in Wales that align with the vision set out in *A Healthier Wales: our Plan for Health and Social Care*, and the national primary care plan for Wales. It enables GMS contract holders to continue to meet their statutory obligations.

These Regulations will ensure that Wales' state back GP indemnity schemes are fully aligned with England's. This will mean 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. This will help the long term sustainability of NHS Wales's General Medical Services and therefore the benefit of all of the people of Wales.

**How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?**

From April 2021, an annual report will be submitted to the relevant Assembly Committee. The report will cover the technical operation of the FLS and the ELS and will be informed by GPs and other key stakeholders, medical defence organisations, NHS Wales and NHS Wales Shared Services Partnership - Legal and Risk Services, who operate the Future Liability Scheme and will take over claims handling of the Existing Liability Scheme in line with ELS arrangements between Welsh Government and participating medical defence organisations.

The annual report will also outline the ELS arrangements agreed between Welsh Government and medical defence organisations and the way in which the scheme has been operationalised together with a financial impact of the ELS arrangements, subject to adhering to confidentiality agreements.