

## **POLICY NOTE**

### **THE NATIONAL HEALTH SERVICE (CLINICAL NEGLIGENCE AND OTHER RISKS INDEMNITY SCHEME) (SCOTLAND) AMENDMENT REGULATIONS 2015**

#### **SSI 2015/102**

1. The above instrument was made in exercise of the powers conferred by sections 85B and 105(7) of the National Health Service (Scotland) Act 1978 (the "1978 Act").

#### **Policy Objectives**

2. The Clinical Negligence and Other Risks Indemnity Scheme ("the Scheme") was created on 1 April 2000 pursuant to The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000. The members of the Scheme, prior to the amendments made by these Regulations, comprised all NHS Scotland entities plus the Mental Welfare Commission for Scotland.

3. These Regulations amend the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 to make provision for local authorities, and integration joint boards to become members of the Scheme. Integration joint boards may be established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 ("the 2014 Act"). Membership of the Scheme will provide integration joint boards and local authorities with a cost-effective risk pooling alternative to choosing to purchase conventional insurance. The Scheme may therefore provide indemnity for loss arising in relation to the exercise of integrated health and social care functions.

4. From 3 April 2015, integration joint boards and local authorities may apply to Scottish Ministers to become members of the Scheme. The information provided in the application will be used to determine the level of risk each applying body will bring to the Scheme which in turn will determine the level of contribution required to participate.

5. Membership of the scheme is not a mandatory measure - it will be for each integration joint board and local authority to decide whether or not to apply to become members of the Scheme. Equally, there are provisions in the Regulations for Integration Joint Boards and Local Authorities to withdraw their application or to leave the Scheme if they so wish. Scottish Ministers will also have the power to terminate membership if there is a default in financial contributions which are due in respect of a body's membership of the Scheme.

6. The policy objectives of the 2014 Act are fully described in the Policy Memorandum which accompanied the Bill for that Act. To view the Policy Memorandum click [here](#).

7. The Regulations also extends the application of the Scheme to Health Board functions to cover forensic services that a Health Board provides to third parties as an income-generation activity. This is to ensure that such services can be provided with suitable indemnity arrangements in place.

## **Transitional Provisions**

8. Article 2(3) inserts new regulation 3A into the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000. Regulation 3A(8) makes transitional provision in relation to applications to join the scheme which are made before 31<sup>st</sup> October 2016. If an application is made before that date, a body's membership of the Scheme may take effect at any date determined by the Scottish Ministers under regulation 3A(6). This enables integration joint boards and local authorities to join the scheme at a time which reflects local arrangements for integration of health and social care. After this initial period, by virtue of regulation 3A(7), a body may only become a member with effect from 1<sup>st</sup> April in the year after it makes an application.

## **Saving provisions**

9. There are no savings provisions within this Order.

## **Impact Assessments**

10. An equality impact assessment has already been completed on the Public Bodies (Joint Working) (Scotland) Act 2014. To view the Equality Impact Assessment click [here](#).

## **Financial Effects**

11. A Business and Regulatory Impact Assessment has already been completed on the Public Bodies (Joint Working) (Scotland) Act 2014. To view the Business and Regulatory Impact Assessment click [here](#).

Scottish Government  
Directorate for Finance, e-Health and Analytics  
Health Finance Division