Introduction

1. This summary Impact Assessment relates to the National Health Service (Clinical Negligence Scheme for General Practice) Regulations 2019 (“the regulations”). The regulations establish a state indemnity scheme for health care professionals and others working in general practice that provides cover for clinical negligence liabilities in relation to incidents that occur on or after the start of the scheme on the 1st of April 2019 (‘clinical negligence indemnity cover’).

2. This document provides a summary of the overall impact of the introduction of a state indemnity scheme for general practice. The responsible Minister has read the Impact Assessment and is satisfied that, given the available evidence, it represents a reasonable summary view of the likely costs, benefits and impact of the leading options. The full version of the Impact Assessment has not been published as it contains legally privileged, confidential and commercially sensitive information - including information that, if disclosed, is likely to prejudice commercial interests.

Background and policy objectives

3. Currently, the vast majority of GPs and other primary care healthcare professionals purchase such cover annually from medical defence organisations (MDOs) who operate on a not-for-profit, mutual basis. Some GPs may also hold an insurance product. Healthcare professionals who turn to MDOs for indemnity provision pay an annual, risk-based, subscription for membership of an MDO. Indemnity cover is provided by the MDOs as part of the membership arrangements on a discretionary basis.

4. In contrast, the Clinical Negligence Scheme for Trusts (CNST) operated by NHS Resolution does not require hospital doctors to arrange their own cover or pay indemnity subscriptions. These are levied from Trusts directly by NHSR. Whilst GPs’ indemnity payments for the NHS primary medical services come out of the global sum for GP payments (funded by government), unlike with Trusts, the MDOs set subscription rates. This means that individual subscriptions charged to GPs are outside of direct government control.

5. Prior to the announcement of the state scheme, the cost of GPs’ indemnity subscriptions had risen sharply over a number of years, by approximately 10% per annum. The rising cost of indemnity 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. This can discourage GPs from taking up activity such as out of hours care, which the government or NHS may wish to encourage, and in relation to which subscription costs may be higher and increases more substantial.\(^1\) Increases in the last two years are estimated to be over 10% in total.\(^2\)

6. A review by NHS England and the Department of the GP indemnity market in 2016 found that inefficiency was not the cause of rising indemnity subscriptions in the current arrangements, but it did recognise the pressure on GPs caused by the rising costs of indemnity. Following

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the Review, additional one-off funding of £30m and £60m was made available by NHS England and paid to practices in 16/17 and 17/18.

7. The key policy objectives are therefore to create an indemnity system which contributes to improving retention and recruitment in general practice, meets the needs of current and future GPs, including new models of multi-disciplinary care involving the wider practice team; removes the burden of arranging indemnity cover for GPs; and provides value for money for taxpayers.

Options Considered

8. A wide range of options were initially considered to address the issues with GP indemnity identified above. These included both short term funding options which work within the current market to more radical reform. The criteria included compatibility with primary care policy; sustainability; legal and financial risks; and transitional arrangements from the current position. The precise quantified costs and benefits of each option are not presented here in detail due to the limited information that can be included because of the commercial basis on which the analysis is based. However in headline terms the options appraisal was informed by various factors including: whether the exercise of discretion or use of a cash call would be more likely or not under different arrangements; the costs under different systems; whether changes would lead to improvements in flexible working for GPs across NHS organisations and in relation to different types of NHS activities; the extent of enhanced control over the subscription costs of indemnity cover for GPs; and being more able to use data on GPs’ clinical negligence experience to better understand safety issues in primary care (as is increasingly the case in secondary care).

Impact on business

9. The Regulations have an impact on: the business of the MDOs, which are the main providers of discretionary indemnity to general practice; commercial insurance companies and brokers, which provide/arrange some indemnity insurance for general practice; and general practices.

Impact on Devolved Administrations

10. Currently MDOs operate across the United Kingdom and some Crown Dependencies (including the Isle of Man). The indemnity arrangements relevant to this document are a devolved matter. The Welsh government is seeking to implement a scheme in Wales that will broadly mirror the England scheme. The Department will continue to work closely with the Devolved Administrations as it implements the scheme in England, including to monitor any impacts.

Implementation and related policies

11. The Future Liabilities Scheme will be administered by NHS Resolution on behalf of the Secretary of State (which will include the day-to-day operation of the scheme). NHS Resolution is an ‘Arm’s Length Body’ of the Department and currently operates the clinical negligence scheme for trusts ("CNST"), the state indemnity scheme for providers and commissioners of NHS secondary health care services. As with the CNST, NHS Resolution will be responsible for managing the process of a GP claim, and where necessary, paying out

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3 NHS Resolution is the name by which the NHS Litigation Authority is now known.
compensation, building on their expertise in clinical negligence, accountability to the Secretary of State, and the relatively low costs of the scheme in the early years. The operational performance of NHSR in delivering the scheme will be kept under review.

Conclusion

12. Overall a state scheme for GP indemnity provides the best balance of costs and benefits as it provides a more affordable and more stable system that can reduce costs for GPs and remove a barrier to GP recruitment; gives HMG more control over the impact of increases in the cost of clinical negligence on GP incomes; and in removing discretionary cover and moving this to government brings arrangements into line with the position of clinicians working for NHS Trusts. These headline objectives were included in the Five Year Framework for GP Contract Reform to Implement The NHS Long Term Plan summarising the new GP contract published on 31st January 2019 and have been well received by both the BMA’s General Practitioners Committee and the Royal College of General Practitioners.