

NATIONAL HEALTH SERVICE (INDEMNITIES) (WALES) ACT 2020

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the National Health Service (Indemnities) (Wales) Act 2020 which was passed by the National Assembly for Wales on 14 January 2020 and received Royal Assent on 26 February 2020. They have been prepared by the Department for Health and Social Services of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. The Act amends section 30 of the National Health Service (Wales) Act 2006 (“the 2006 Act”). It makes provision about indemnifying persons and bodies for expenses and liabilities arising in connection with the provision of health services in Wales and creates a new power for the Welsh Ministers to make regulations in respect of direct indemnity schemes.

SECTION 30 - NATIONAL HEALTH SERVICE (WALES) ACT 2006

3. Section 30 of the 2006 Act enables the Welsh Ministers to establish a scheme so that certain bodies can make provision to meet expenses for loss or damage to their property, and to meet liabilities to third parties for loss, damage or injury arising out of those bodies carrying out their functions. These bodies are Local Health Boards, NHS Trusts and Special Health Authorities.

COMMENTARY ON SECTIONS

Section 1 – Indemnities in connection with provision of health services

4. Subsection (2) of section 1 of the Act inserts the definition “mutual indemnity scheme” into subsection (1) of section 30 of the 2006 Act. Inclusion of the defined term distinguishes those schemes made in accordance with subsection (1), where several health service bodies meet their expenses and liabilities by combining resources in a collective fund, from those schemes made under the new subsection (8) which are termed “direct indemnity schemes”.
5. Subsection (3) of section 1 of the Act adds to the bodies who may make provision within an indemnity scheme under section 30. The first of these new bodies is a person providing or who has provided primary medical services. This includes General Practitioners. The second addition is a body or other person providing or arranging the provision of, or who provided or arranged the provision of, health services (other than a body already listed in subsection (2)) under an arrangement with a Local Health Board, an NHS Trust or a Special Health Authority. This would include for example a person providing services under a contract with a Local Health Board.
6. Subsection (5) of section 1 of the Act inserts the names of the bodies that the Welsh Ministers may direct to participate in a mutual indemnity scheme in accordance with

*These notes refer to the National Health Service (Indemnities) (Wales)
Act 2020 (c.2) which received Royal Assent on 26 February 2020*

their power in subsection (4) of section 30 of the 2006 Act. This clarification is required as a result of the expanded list of bodies included in subsection (2) of section 30.

7. Subsection (8) of section 1 of the Act inserts new subsections (8) to (11) into section 30 of the 2006 Act.
8. The new subsection (8) of section 30 creates a power for the Welsh Ministers to make regulations to establish a statutory scheme under which they may indemnify the persons or bodies in subsection (2). The Act names these “direct indemnity schemes”.
9. The new subsection (9) provides a non-exhaustive list of what regulations establishing a direct indemnity scheme may prescribe, including for example who is an eligible person, and what liabilities or expenses may be indemnified by such a scheme.
10. The new subsection (10) of section 30 makes it clear that there is nothing in section 30 that prevents the Welsh Ministers from exercising their powers to provide indemnities to any person other than those listed in subsection (2), or from providing different kinds of indemnities to those bodies listed in subsection (2).
11. New subsection (11) provides a definition of “functions”.
12. The Act also makes a number of minor and consequential amendments to section 30 as a result of the substantive provisions.

Section 2 – Short title and coming into force

13. The short title of the Act is the National Health Service (Indemnities) (Wales) Act 2020 (section 2(1)).
14. The Act will come into force on the day after the day on which it receives Royal Assent.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

15. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at:

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=26396>

<i>Stage</i>	<i>Date</i>
Introduced	14 October 2019
Stage 1 – Debate	19 November 2019
Stage 2 Scrutiny Committee – consideration of amendments	11 December 2019
Stage 3 Plenary – consideration of amendments	14 January 2020
Stage 4 Approved by the Assembly	14 January 2020
Royal Assent	26 February 2020