

The National Health Service (Existing Liabilities Scheme for General Practice) (Wales) Regulations 2020

This note is prepared for Assembly Members following the decisions of the Business Committee on 27 March 2020 and 3 April 2020 regarding the temporary handling of statutory instruments laid before the Assembly.

Summary

These Regulations establish the Existing Liabilities Scheme for General Practice ("the Scheme").

The Scheme relates to tortious liabilities arising from incidents that occurred before 1 April 2019 in connection with the provision of primary medical services and other healthcare services by general practice as part of the NHS in Wales.

In the main, the liabilities covered by the Scheme will be clinical negligence liabilities.

Procedure

Negative

Further Points To Note

The following point is noted in respect of these Regulations.

1. Matters to which the Welsh Ministers must have regard when deciding the amount of indemnity payments

Regulation 8 sets out the matters that the Welsh Ministers must have regard to when deciding the amount of an indemnity payment made under the Scheme.

Under regulation 8(2), the Welsh Ministers must have regard to "an award of damages" made by a court against an eligible person. However, regulation 8(2) does not say that the award of damages has to be in respect of a liability to which the Scheme applies.

For example:

- The Welsh Ministers are deciding the amount of an indemnity payment in respect of Omission X by a general practitioner. Omission X is covered by the Scheme.
- A court has awarded damages against the same general practitioner in respect of a totally separate Omission Y. Omission Y is not covered by the Scheme.

Members may wish to seek clarification from the Welsh Government as to whether / why the Welsh Ministers must have regard to the award of damages in respect of Omission Y when deciding the amount of the indemnity payment in respect of Omission X.

That issue also arises under regulations 8(3) and 8(4).



It is also noted that, when it comes to the Welsh Ministers having regard to “settlement of a claim” (i.e. a settlement other than in the course of legal proceedings) under regulation 8(5), such a settlement **does** have to be in respect of a liability to which the Scheme applies.

That issue also arises under regulation 8(6).

Legal Services

National Assembly for Wales

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