



Department
of Health

Health Care and Associated Professions (Indemnity Arrangements) Order

Consultation Response: *2nd May 2014*

<p>Title: Health Care and Associated Professions (Indemnity Arrangements) Order - Consultation Response.</p>
<p>Author: Strategy and External Relations Directorate/ Professional Standards Division/ cost centre 13730</p>
<p>Document Purpose: Consultation response</p>
<p>Publication date: May 2014</p>
<p>Target audience: Healthcare professionals, healthcare regulatory bodies, royal colleges, unions, patients</p>
<p>Contact details: Professional Standards Branch Room 2N09 Quarry House Quarry Hill Leeds LS2 7UE Email: HRDlistening@dh.gsi.gov.uk</p>

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright

Published to gov.uk, in PDF format only.

www.gov.uk/dh

Health Care and Associated Professions (Indemnity Arrangements) Order 2014

Consultation Report: May 2014

Prepared by Professional Standards Branch, Strategy and External Relations Directorate,
Department of Health

Contents

Executive summary.....	5
Background.....	6
Consultation process	7
Consultation responses.....	8
Conclusion	21

Executive summary

On 22 February 2013, the Department of Health published a UK wide consultation paper '*Health Care and Associated Professions (Indemnity Arrangements) Order 2013*', on behalf of the four UK Health Departments. The consultation paper was accompanied by the draft Order, which set out the Government's proposed amendments of existing legislation and to introduce new legislation in the UK that implements the Finlay Scott recommendations 'Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional' and takes account of related provisions at Article 4(2)(d) of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare.

The proposed Order makes provision for the following:-

- The requirement for all practising regulated healthcare professionals to hold indemnity or insurance arrangement as a condition of their registration with the relevant regulatory body.
- A provision to give regulators rule making powers for ensuring how the requirement is met.

The consultation was available on the Department of Health website for the period between 22 February 2013 and 17 May 2013. The Department received 816 consultation responses and this document provides a summary of those responses.

The purpose of the proposed provisions is to ensure that all individuals who suffer at the hands of a negligent registered health professional are able to obtain compensation and it is right that the healthcare professional treating those individuals should take responsibility for ensuring appropriate arrangements are in place. The Order will also implement part of the EU Directive on cross-border healthcare that the UK Government is required to transpose and therefore further commits us to taking forward this legislation.

After careful consideration of the responses the Department is of the view that as the vast majority of regulated healthcare professionals are in receipt of cover by virtue of their employer's liability, or via a professional body which offers an indemnity arrangement as a benefit of membership the benefits brought about by the new legislation outweigh any negative impact that might arise from the proposals.

The impact and equality considerations that have been raised through this consultation process have been considered as part of the Impact Assessment and Equalities Analysis that will be made available when the Order is laid in Parliament.

Background

In the UK, there is currently no consistency across the 9 statutory healthcare professional regulatory bodies with regard to legislation or guidance on the need to hold insurance and indemnity.

The four UK Health Departments believe that it is unacceptable for anyone not to have access to recourse to compensation where they suffer harm through negligence on the part of a regulated healthcare professional.

To address this, the Government put forward proposals to amend existing legislation and introduce new legislation with the effect of requiring all statutorily regulated healthcare professionals to have insurance or indemnity in place as a condition of their registration with their respective regulator. Unless regulated healthcare professionals can demonstrate that such arrangements are in place they will be unable to practise.

This is in line with Article 4(2)(d) of the Directive 2011/24/EU Of The European Parliament And Of The Council Of 9 March 2011 On The Application Of Patients' Rights In Cross-Border Healthcare which requires Member States to ensure that

“systems of professional liability insurance, or a guarantee or similar arrangement that is equivalent or essentially comparable as regards its purpose and which is appropriate to the nature and the extent of the risk, are in place for treatment provided on its territory”

It should also be noted that:

- It will be for individual healthcare professionals to assure themselves that appropriate cover is in place for all the work they undertake. Therefore for those healthcare professionals who want to practise their profession, unless they can demonstrate that appropriate indemnity arrangements are in place they will be unable to be registered as a healthcare professional and so be unable to practise.
- The vast majority of regulated healthcare professionals are in receipt of cover by virtue of their employer's vicarious liability or via a professional body which offers an indemnity arrangement as a benefit of membership.
- Those affected will be a very small number of self-employed independent midwives who currently practise without personal injury liability (0.4 per cent of the 41,700 midwives registered in the UK), as well as around 4,200 self-employed nurses and therapists who may be required to obtain indemnity cover at an average estimated cost of £240 per head per annum.

Consultation process

The Department consulted on a UK wide basis, on behalf of the four UK Health Departments for a 12 week period on a draft Order relating to eight of the healthcare professional regulatory bodies (the General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council, General Osteopathic Council, General Pharmaceutical Council, Health and Care Professions Council and Nursing and Midwifery Council).

Legislation in respect of the Pharmaceutical Society of Northern Ireland is subject to a separate consultation.

The consultation ran from 22 February 2013 to 17 May 2013 and was taken forward in accordance with the requirements of Section 60 of the Health Act 1999. The regulation making power in Section 60 permits modifications to the regulation of healthcare professions by means of an Order in Council. The Health Act requires that the Secretary of State must consult on draft Section 60 Orders prior to their introduction into Parliament.

The consultation sought views on the provisions in the draft Order which sets out:

- The requirement for all practising regulated healthcare professionals to hold indemnity or insurance arrangement as a condition of their registration with the relevant regulatory body.
- A provision to give regulators rule making powers for ensuring how the requirement is met.

The consultation invited respondents to consider 15 questions about the effects that these provisions could have. It also sought clarification on the costs and benefits or any impacts as a result of the proposals, both to individual regulated healthcare professional and to the regulators themselves.

The consultation asked respondents to consider any equalities issues that could result from implementing the proposals.

The Department received 816 responses; the respondents identified themselves as follows:

Category	Number of respondents	Percentage
A member of the public	202	25%
A health or social care professional	551	68%
On behalf of an organisation	63	7%
Total	816	

It should be noted that not all of the respondents answered all the questions in the consultation.

The Department would like to thank all of those who responded to this consultation and is grateful to them for their input.

Consultation responses

Q1: Do you agree that the requirement for healthcare professionals to have an indemnity arrangement in place should match the requirements set out in the Directive and place an obligation on healthcare professionals themselves to ensure that any indemnity arrangement in place is appropriate to their duties, scope of practise, and to the nature and the extent of the risk?

Please set out your reasons in your response.

41% of respondents chose not to respond to this question or stated that they were unsure.

36% of respondents were in disagreement with the proposals. The majority of these classified themselves as members of the public or healthcare professionals. The key reasons for disagreement is concerns about access to indemnity provision for independent midwives for the period during labour and the impact of this on their ability to work as a self-employed midwife. Also about the human right to make a choice of midwifery provision arguing that women are being denied a right to choose thereby restricting women's choice in maternity services.

'IMUK recognise the benefits and importance of having indemnity insurance in place. Independent midwives want access to PII. Currently, their homes and personal belongings are at risk. It would also provide peace of mind for their clients'

*'Independent midwives can access PII for ante-natal and postnatal care. There is no insurance available to them during the period during labour. Independent Midwives have been seeking PII since 2002.'*¹

Other respondents who disagreed with this proposal objected on the grounds that individuals will be required to provide their own insurance for carrying out work which is already covered by their employer's indemnity arrangements. This is a misunderstanding. Where individuals are covered by their employers indemnity arrangements this will be sufficient to meet the requirement for registration with their regulatory body.

23% of respondents who agreed with this proposal thought that healthcare professionals should be responsible for ensuring that they have indemnity arrangements in place as this would ensure consistency of approach across all healthcare professions. There was also support that the proposal recognised that the indemnity should be practical and proportionate to the varying risks of each group. It was recognised that the majority of healthcare professions would be covered through their employment but concerns were raised about putting this responsibility on to the individual should not exempt employers from their responsibilities.

'It is vital that healthcare professionals and their indemnifiers have the responsibility for determining the appropriateness of their indemnity arrangements. The regulatory bodies should not be placed in a position where

¹ IMUK

they become the 'insurer of default' by having to determine the appropriate indemnity for each individual joining or retaining on the register².

Whilst we acknowledge the issues raised by individuals and select groups who disagree with the proposal, those in agreement with these proposals were mainly professional regulators and other membership organisations who were responding on behalf of their membership. They recognised that for the vast majority of statutorily regulated healthcare professionals, who are practising, the new legislation will mean no change. The purpose of the proposed provisions is to ensure that all individuals who suffer at the hands of a negligent registered health professional are able to obtain compensation and it is right that the healthcare professional treating those individuals should take responsibility for ensuring appropriate arrangements are in place. The Order also implements part of the EU Directive on cross-border healthcare that the UK Government is required to implement.

Agree	Disagree	Unsure	Not answered
189	295	47	285
23%	36%	6%	35%

**Q2: Do you agree with the proposed definition of an indemnity arrangement?
Please set out your reasons in your response.**

49% of respondents chose not to respond to this question or stated they were unsure.

37% of respondents agreed with the proposed definition that:

an "Indemnity Arrangement" may be an insurance policy, an arrangement for the purposes of indemnification, or a combination of both.

Respondents thought the definition was flexible enough to cover all circumstances and requirements. The majority of respondents thought that in most cases an employer's indemnity arrangements should be sufficient to meet employees' requirements, however concerns were raised that there is still a level of confusion in the service about indemnity cover and that this needs to be addressed.

'Unison is concerned at the level of confusion in the service about the role of indemnity insurance and its purpose. It is important to take this into account in order to avoid further uncertainty in the service'.³

'Yes, we agree that if an employer has an indemnity arrangement in place that this should be sufficient to cover registered healthcare professionals within their employment'⁴

² The General Optical Council

³ Unison

⁴ Royal Pharmaceutical Society

14% of respondents did not agree with the definition, stating concerns about the ability to obtain coverage and the consequence of being unable to continue to work for some self-employed healthcare professionals. There was also disagreement about the practicalities of the proposed definition.

*'Neighbourhood Midwives agree, but it has to be noted that at the current time such an arrangement is unavailable to non-employed midwives. What of self-employed midwifery lecturers, consultants, researchers etc who rely on their midwifery registration for work, but as far as we are aware have no option of available insurance despite not being involved in clinical care (RCN or RCM do not offer it).'*⁵

Agree	Disagree	Unsure	Not answered
303	113	88	312
37%	14%	11%	38%

Q3: Do you agree with the proposed provisions that set out that healthcare regulatory bodies have powers to make rules on:

(a) What information needs to be provided by healthcare professionals, and when, in relation to the indemnity arrangement they have in place;

Agree	Disagree	Unsure	Not answered
242	120	86	368
30%	15%	11%	45%

(b) The requirement to inform the Regulator when cover ceases; and,

Agree	Disagree	Unsure	Not answered
245	137	66	368
30%	17%	8%	45%

(c) The requirement for healthcare professionals to inform their regulatory body if their indemnity arrangement is one provided by an employer?

Agree	Disagree	Unsure	Not answered
242	137	70	367
30%	17%	9%	45%

⁵ Neighbourhood midwives

The responses were similar across all three parts of this question. Around 54% of respondents were unsure or choosing not to respond, 30% were in agreement and around 16% in disagreement.

Points made were that regulators should adopt a practical and proportionate approach and this provision should not create any additional unnecessary burdens on the regulators and registrants at a time of increasing economic hardship. Also that further clarification is needed for different types of employment roles e.g. patients seen through contracted services. Concerns were raised that the new arrangements should not require registrants to have indemnity cover when they are not practising e.g. on maternity leave, changing their role or working in a non-practising role e.g. lecturer.

*'The recommendations are necessary to ensure the regulator has up-to-date information. It is important that this is reviewed as part of the regulators CPD audit of staff. Clear guidance is required for staff on the outcome and actions which will be taken if staff members withhold or provide inaccurate information'*⁶

*'GCC registrants already provide evidence that their insurance is in place before registration or re-admission to the Register as well as providing details of insurance when retaining their name on the Register. We will further enhance this system by including a specific declaration that registrants must agree that they will ensure they have adequate indemnity arrangements in place before they begin to practise in the UK and will also ensure there is continuity of cover.'*⁷

Q4: Do you agree with the proposal to allow healthcare professional regulatory bodies the ability to refuse to allow a healthcare professional to join, remain on, or return to, their register, or, for the GMC, to hold a licence to practise unless they have an indemnity arrangement in place?

44% of respondents chose not to respond to this question or stated that they were unsure.

34% of respondents disagreed and 22% of respondents were in agreement. Reasons stated for disagreeing with this approach included concerns that registration fees could rise to fund additional fitness to practise cases or there could be an additional burden or costs on employees. Concerns were raised about whether an individual could be on the register whilst not in employment, e.g. when they are in-between jobs. Self-employed professionals, mainly independent midwives formed the majority of the respondents who disagreed with the proposal, citing difficulties in obtaining appropriate indemnity cover.

Generally the healthcare professional regulatory bodies agreed with this proposal. Other bodies that were in agreement thought this proposal was necessary and some commented that it should be further supported by regulatory guidance to make clear under what circumstances professional bodies would apply this proposal.

⁶ Allied Health Professions Division (Northern Ireland)

⁷ General Chiropractic Council

'This power is central to the effectiveness of the indemnity arrangements as drafted. Doctors would be required to confirm by way of declaration that they understand the need to hold, or undertake to have in place, appropriate indemnity cover'.⁸

'The regulator will need to make clear in what circumstances such provisions would apply and they should not be a normal occurrence. They might be used for example on restoration to the register for a registrant administratively removed for not holding insurance'.⁹

Agree	Disagree	Unsure	Not answered
184	274	54	304
23%	34%	7%	37%

Q5: Do you agree with the proposal to permit healthcare professional regulatory bodies to remove a healthcare professional from their register, withdraw their license to practise, or take fitness to practise action against them, in the event of there being an inadequate indemnity arrangement in place?

49% of respondents chose not to respond to this question or stated that they were unsure.

33% of respondents disagreed with this proposal. A significant number thought that failure to have inadequate indemnity arrangements in place should not be dealt with via fitness to practise procedures but could be dealt with through reasonable and proportionate administration. This should only be linked to fitness to practise procedures if failure to obtain indemnity was linked to some other misconduct.

'The requirement has little force if such sanctions are not available. However this should generally be processed as an administrative matter rather than a full fitness to practise issue unless there is a wilful action to mislead that indemnity is in place when it is not'¹⁰.

19% agreed that healthcare professionals should be removed from the register or have fitness to practise action taken against them if they failed to have appropriate indemnity arrangements in place.

'We understand and support the rationale for the proposal to allow the regulators to remove registrants from the register, withdraw their licence, to take fitness to practice action against them, in the event of inadequate indemnity arrangements. This enables regulators to respond proportionately to the risk they feel is posed by a registrant depending on the circumstances of their case.'¹¹

⁸ General Medical Council

⁹ Royal College of Midwives

¹⁰ The Association for Clinical Biochemistry & Laboratory Medicine

¹¹ Professional Standards Authority

Overall, there were general concerns that individuals should be given time to find alternative cover and to have a right of appeal. Suggestions were put forward that there should be consistency and guidance on what constitutes an inadequate arrangement and that employers should take responsibility for informing employees when making changes to their indemnity cover.

Agree	Disagree	Unsure	Not answered
153	266	78	319
19%	33%	10%	39%

Q6: Please provide any information with regard to the potential barriers to independent midwives moving to alternative governance and delivery practices in Order to obtain appropriate indemnity arrangements.

The information given in respect of this question centred mainly on the ability of self-employed independent midwives having access to affordable insurance and the impact this would have. Concerns included freedom of choice for women to choose to employ an independent midwife to provide personalised one on one care as an alternative to the service offered on the NHS and the impact on the high quality care provided. Many did not want to work in the NHS as they considered working practises too bureaucratic. Some expressed views that the Department should be responsible for providing indemnity for this group while others thought they should not be subsidised by the government.

Concerns were also raised about the workability and the cost implications of the solutions put forward to overcome the issue of availability of insurance, namely around the social enterprise solution, which they considered was not yet proven commercially. Respondents advised that this solution would only be financially viable if they were to take on larger caseloads and that this would undermine the core principles and levels of quality service that independent midwives are seeking to provide.

The majority of regulatory and other bodies did not respond to this question as they considered it was not within their professional responsibilities.

*'Implementing the requirement for midwives to have indemnity arrangements will mean the end of independent midwifery (self-employment midwifery) as it currently exists. It will reduce choice for women as most areas of the country offer only NHS care.'*¹²

*'We strongly encourage the Department to explore all possible options for this group of midwives, as it would be an unfortunate by-product of the legislation if the choices available to women through the pregnancy pathway were lessened.'*¹³

¹² Neighbourhood Midwives

¹³ Nursing and Midwifery Council

Q7: Do you agree that the provisions in the Draft Order should only apply to qualified healthcare professionals and not students?

59% of respondents chose not to respond to this question or stated that they were unsure

28% of respondents agreed. Points raised were that students are still training, they do not practise legally until fully qualified, and should always be under the supervision of a qualified healthcare professional. The student should be covered by their academic organisation or the indemnity arrangements in place within the environment they are training. Once they are qualified the responsibility should transfer to them as a registrant. Other comments were that there should be clarity and consistency so graduates understand the indemnity arrangements when they enter the register.

*'Students in training are not considered to be healthcare professionals and should be covered by the indemnity arrangements of the organisation in which they undertake their training and/or those that supervise them.'*¹⁴

*'If adopted, these approaches will deal appropriately with the situation of new graduates. However clarity and consistency of approach in this area will be crucial in order for students and new graduates to know what is expected of them as they enter the register and to ensure that there are no obstacles to new graduates entering employment'*¹⁵.

13% of respondents disagreed and thought the draft Order should apply to students. Some respondents commented that this should certainly apply in the final years of study because students are involved in direct patient care with minimal supervision and consequently they should be covered by the provisions in the draft Order. There were concerns however that the liability may fall upon the professional who is supervising the student. This could result in fewer training opportunities being available.

Agree	Disagree	Unsure	Not answered
225	110	82	399
28%	13%	10%	49%

Q8: Are there any equalities issues that would result from the implementation of the Draft Order which require consideration? If so, please provide evidence of the issue and the potential impact on people sharing the protected characteristics covered by the Equality Act 2010: disability; race; age; sex; gender reassignment; religion & belief; pregnancy and maternity and sexual orientation and carers (by association).

75% of respondents chose not to respond to this question or stated that they were unsure. With the majority of responses stating there was not enough information available for them to comment or that they could not identify any inequalities.

¹⁴ NHS Wales

¹⁵ Councils of Deans

Amongst the 14% of respondents who agreed with the question there is a core section of respondents who expressed concern for the potential loss of self-employed or part-time midwives, resulting in a loss of choice for women on where, how and with whom they give birth. There were also concerns raised that proposals could impact on individuals on long term maternity leave and other career breaks by affecting their return to practise.

*'The Draft Order has serious potential implications for pregnant and birthing women. The Equality Analysis of the impact on this protected group is remarkably brief and does not contain basic information (such as the number of women who might be affected) that is necessary for consultees to make an informed response, or for the Department of Health to make an informed decision. It is predicated on the false assumption that independent midwifery care will continue to be available to women in some form after the implementation of the Order. As a result there has been no meaningful analysis of potential impacts.'*¹⁶

*'Loss of self-employed midwives resulting in the loss of choice and quality care for women.'*¹⁷

There appears to be a consensus amongst the 11% who disagreed that all registrants should be treated equally and without exception.

*'The Draft Order will not have any significant impact on any of the equalities issues other than perhaps those on maternity or sickness leave where they should be entitled to be able to suspend their own indemnity arrangements whilst they are not working'*¹⁸.

The information collected as part this question has been fed into the equalities analysis that has been carried out on these proposals.

Agree	Disagree	Unsure	Not answered
114	86	215	401
14%	11%	26%	49%

Q9: Please provide comments as to the accuracy of the costs and benefits assessment of the proposed changes as set out in the Impact Assessment (including, if possible, the provision of data to support your comments).

A significant number of respondents considered that they were unqualified and therefore unable to respond to this question. Others felt that there was insufficient data for them to comment on. The main concerns raised were that the proposals were not cost neutral and there will be costs to the regulators in introducing an administration system, updating their IT systems and communicating the changes to their members. There was also concern about the effectiveness in implementing the proposals e.g. potential time delays causing delays to graduates starting work. Other concerns were that these costs could impact on the professionals themselves either directly or indirectly via registration cost increases.

¹⁶ Birthrights

¹⁷ Bournemouth University

¹⁸ The Law Society of Scotland

'It would seem cheaper for professionals to have to provide evidence of indemnity than for regulatory agencies to have to provide evidence of no indemnity'¹⁹

Answered	Unanswered
226	590
28%	72%

Q10: Please provide information on the numbers of self-employed registered healthcare professionals and whether they are in possession of indemnity cover or business insurance which includes public liability insurance and professional indemnity insurance.

175 responses were received to this question, but the majority of them were not detailed enough to draw any valid conclusions. A number of respondents advised that around 170 Independent Midwives do not have indemnity cover for the entire maternity pathway because they are unable to obtain cover for births. IMUK also suggested that there are about 2000 more midwives who would be interested in practicing independently if affordable insurance was available.

'The GOsC has 4690 registrants of which the majority are self-employed healthcare professionals who are already required to hold appropriate indemnity cover. We are aware of minimal numbers of practitioners who rely on employer cover rather than their own insurance arrangements.'²⁰

'The GPhC does not hold this data. All applicants for registration and registrants applying for renewal whether practising in employment or self-employed capacity already declare as part of the relevant application process that they have appropriate indemnity arrangements in place.'²¹

Answered	Unanswered
175	641
21%	79%

Q11: Please provide information on the numbers of employed healthcare professionals who, in addition to working in an employed capacity covered by an employer's arrangement for indemnity or insurance, undertake self-employed practice. Where possible, please provide information as to whether they are in possession of indemnity

¹⁹ British Association of Dermatologists

²⁰ General Osteopathic Council

²¹ General Pharmaceutical Council

cover or business insurance which includes public liability insurance and professional indemnity insurance for that self-employed element of their practice.

163 responses were received to this question but did not provide enough evidence to draw any valid conclusions. The responses given, ranged from 'I am employed and also work self-employed. I have cover,' to 'I work in a self-employed capacity and do not have cover'.

*'It is a GDC Standard requirement that all Dental Professionals must ensure themselves that their level of indemnity cover is sufficient in the event of any claims against them. This applies equally to all GDC registered dentists and DCPs whether employed or self-employed.'*²²

*'We are concerned as to the mechanism for policing indemnity arrangements outside the major employer. Would restrictions be place on the individual to ensure they only worked in their employing institution? For example, if working on waiting list initiatives in a private institution for their major employer, would they still be covered? Or would they be covered if they were asked to support services in another NHS Organisation in their region?'*²³

The information collected as part of questions 9, 10 and 11 has been fed into the analysis on the impact and cost and benefits of these proposals. The full Impact Assessment will accompany the Order when it is laid in Parliament.

Answered	Unanswered
163	653
20%	80%

Q12: Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes set out in the Draft Order? Please provide information/examples in support of your comments.

85% of respondents chose not to respond to this question or stated they were unsure.

10% of respondents agreed with proposal. Their main concerns were about the added burden on the NHS. There was also concern about the administrative burden to the regulators and the potential for passing on the costs to registrants, as discussed in question 11. Other concerns raised were that some sectors of the workforce may be unable to find appropriate cover, particularly some Independent Midwives, therefore putting their ability to practise at risk.

Only 5% of respondents disagreed with the proposal

'We are concerned that any new system to track all registered healthcare professionals to ensure they are appropriately covered by indemnity insurance would be very costly to set up and maintain in real time. Any

²² General Dental Council

²³ Royal College of Surgeons Edinburgh

*new system must not impose additional cost on registrants, directly or indirectly, or any additional bureaucracy to the current UK-wide system which generally works well.*²⁴

*'Minimal if included in the HCPC's self-declaration requirements in bi-annual registration renewal, and otherwise by exception if there is an individual compliance problem.'*²⁵

Agree	Disagree	Unsure	Not answered
84	42	180	510
10%	5%	22%	63%

Q13: Do you think there are any benefits or drawbacks that are not already discussed relating to the proposed changes?

78% of respondents chose not to respond to this question or stated that they were unsure advising that it was difficult to determine.

The majority of respondents who identified benefits highlighted the benefits already covered in the Impact Assessment e.g. the benefits to the public and patients and did not recognise any additional benefits. Some respondents, from professions who already require indemnity, highlighted benefits in time and costs of monitoring compliance e.g. moving from individual checks to self-directed compliance.

*'The main benefit should be the increased confidence that patients and the public can have in registered healthcare professionals and the increased risk they take when they engage with those not so regulated.'*²⁶

Drawbacks identified included concerns about unscrupulous employers who would shirk their responsibilities. Others reiterated that the proposals are not cost neutral and will incur costs to the individual and regulators.

*'UNISON believes that the provision of indemnity insurances is the responsibility of employers and not employees. They employ staff and should as an express term of business accept and provide sufficient remedies & accept their vicarious responsibilities as employers.'*²⁷

*'CHS would suggest there is the opportunity to further consider the diversity of the healthcare profession and that some registrants will have limited contact with patients and so may be negatively affected by the requirement to establish an indemnity arrangement.'*²⁸

²⁴ Pharmacy Voice Ltd

²⁵ British Society of Hearing Aid Audiologists

²⁶ Association of Clinical Sciences

²⁷ UNISON

²⁸ Council of Healthcare Science in Higher Education

Q14: Do you have any further comments on the Draft Order itself?

81% of respondents did not answer this question or stated they had no further comments. Of those who did want to add further comment, some asked that the proposals are reconsidered as they feel that the proposals will add no real solutions and they put forward a preference to continue to practise as they currently are practising. There is also a belief that Independent Midwifery will cease to exist.

19% of respondents did put forward further comments on the Draft Order. Some of the responses commented that the intention and concept of the proposals is very good, logical and will benefit all parties, although there were calls for a plain English version of the draft. The majority of Regulatory Bodies put forward specific comments on the wording of the Draft Order and these have been discussed with the Department's Legal Services.

'A section on definitions would be helpful and consideration of 'Plain English Campaign' approval for the draft order'.²⁹

'The order is relatively clear to understand and clearly arranged such that provision for each regulated professional group can be found'.³⁰

'We regard it as anomalous that the new provisions evidently do not apply to visiting practitioners from other European states, unless it be the case that such persons are required to demonstrate evidence of insurance when applying for registration in this country. This is an important point because many insurance policies are restricted by geography; such that a practitioner who is insured in (for example) France or Italy may not be covered to practise in England'³¹

Some of the responses to this question are about whether NHS organisations will provide cover for their staff. There seems to be a misconception that NHS organisations will either cease to do this or they had not understood that this provision is already in place.

Yes	No	Not answered
155	217	444
19%	27%	54%

Q15: What are your views on extending the requirement to hold an indemnity arrangement as a condition of registration to all professionals statutorily regulated by the Health and Care Professions Council? This would cover Social Workers in England only.

62% of respondents chose not to respond to this question or stated that they were unsure

²⁹ LSA (PHA), Northern Ireland

³⁰ Chartered Society of Physiotherapy

³¹ NHS Litigation Authority

20% of respondents agreed with the proposal and thought all healthcare professionals should be treated equally. Therefore social workers should be brought in line with other professions and be required to have indemnity cover and provide assurance and protect patients and the public.

*'The majority agreed or thought it applicable and appropriate that all professions should have the same requirements and arrangements for indemnity cover.'*³²

*'We believe that indemnity should also extent to PH Specialists from a background other than medicine. Currently, this is a group that is not statutorily regulated. However, from 2015, they will be.'*³³

18% of respondents disagreed with the proposal. The concerns put forward were that these proposals would only affect the regulator for social workers in England and would not apply across the UK. Therefore a more comprehensive legislative solution should be sought which applies uniformly across all four countries. Other comments were that a longer lead in period was required to allow time to test the proposals out on healthcare professions before extending to other groups and concerns that it would be too costly and drive people away from the profession.

*'The HCPC only regulates social workers in England so, if the Draft Order was extended to that profession, it would not apply to social workers in the remainder of the UK. If the policy view of Government is that arrangements similar to those provided for in the Directive should apply to social workers then this should be achieved by a more comprehensive legislative proposal that applies to social workers throughout the UK.'*³⁴

Agree	Disagree	Unsure	Not answered
164	143	102	407
20%	18%	13%	50%

³² Northamptonshire County Council

³³ Faculty of Public Health

³⁴ Health and Care Professions Council

Conclusion

The four UK Health Departments accepted the recommendations of an independent review which recommended that all regulated healthcare professionals should be required to hold insurance or indemnity as a condition of their registration. We have therefore been committed to requiring all regulated healthcare professionals to hold indemnity or insurance for some time.

The implementation of these recommendations requires a Section 60 Order and in accordance with the requirements of Section 60 of the Health Act 1999, these recommendations and the draft Order, that will implement this requirement, have been considered at length via this UK wide consultation. This also took account of related provisions at Article 4(2)(d) of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare.

We received 816 responses to the consultation setting out a wide variety of views and concerns about this proposed legislation. After careful consideration of the responses the Department considers that these provisions will benefit all individuals who suffer at the hands of a negligent registered health professional by ensuring they are able to obtain compensation and it is right that the healthcare professional treating those individuals should take responsibility for ensuring appropriate insurance arrangements are in place. This view is supported by the majority of professional regulators and other membership organisations who responded on behalf of their membership. Therefore we consider that the benefits brought about by the new legislation outweigh any negative impact that might arise from the proposals and we are committing to taking forward the Order to put in place a requirement for all regulated healthcare professionals to hold indemnity or insurance to practice as a condition of their registration with the relevant regulatory body. The Order will also implement the EU Directive on cross-border healthcare.

Whilst we acknowledge the issues raised by individuals and select groups who disagree with the introduction of these proposals, for the vast majority of statutorily regulated healthcare professionals, who are practising in their profession, this new legislation will mean no change. This is because they are in receipt of cover by virtue of their employer's liability, or via a professional body which offers an indemnity arrangement as a benefit of membership.

However, it is recognised that a small sector of independent midwives (self-employed midwives working in the private sector) will be affected by these proposals and they have raised their concerns both through this consultation and via additional engagement with the Departmental officials and Ministers. The Government remains committed to offering women a choice of place of birth through the NHS Choice Framework 2014/15 which set out a range of choices women have over maternity services.

It is for the individual practitioner themselves to determine a suitable operating model under which they are able to continue to practise and the Department recognises that the new requirements may require self-employed midwives to change their own governance and delivery practices to comply with the terms of an indemnity policy. Some midwives practicing in the private sector, and as part of a corporate structure, have obtained cover that will enable them to provide care in an independent way, either commissioned by the NHS or by private clients.

The Government intends to lay the Healthcare and Associated Professions (Indemnity Arrangements) Order 2014 before Parliament during May 2014 with the intention that it will come into force in July 2014.

The impacts and equality considerations that have been raised through this consultation process have been considered fully as part of the Impact Assessment and Equalities Impact Assessment. These documents will be available when the Order is laid in Parliament.

The Government is committed to ensuring that people have access to appropriate redress in the unlikely event that they are negligently harmed during the course of their care. Everyone should have this by right.
