

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Northern Ireland

Part 5 – Miscellaneous

Amendments relating to National Health Service

Section 142: Indemnity schemes in connection with provision of health services

484. *Subsections (2) and (3)* of section 142 expand membership eligibility of indemnity schemes to the Secretary of State, who may secure health services directly. They also expand membership to non-NHS bodies who provide services or secure the provision of services on behalf of one or more of Strategic Health Authorities, PCTs, NHS trusts, Special Health Authorities, NHS Foundation Trusts, CHAI (or, in future, the Commission), the Health Protection Agency or the Secretary of State.
485. *Subsection (4)* (which inserts new subsection (2A) into section 71 of the NHS Act 2006) limits the losses and liabilities that an indemnity scheme may cover in respect of the Secretary of State or non-NHS bodies to functions in respect of the National Health Service. This is because both the Secretary of State and some of the eligible non-NHS bodies may have functions not related to care provided through the NHS, and these functions should not be covered by these schemes.
486. Currently, membership of the existing schemes is voluntary, although the Secretary of State may direct a body that is eligible to be a member to become a member of any of the schemes established under section 71 of the NHS Act 2006. However, *subsection (6)* (which substitutes subsection (5) of section 71) provides that the Secretary of State may not direct a non-NHS body to become a member of a scheme. NHS Foundations Trusts are already excluded, and continue to be excluded, from this power of direction. This provision essentially reserves the right of the Secretary of State to direct certain eligible members to become members of an established or future scheme.