



State Indemnity Guidance

SIG 01: State Indemnity Operated by the SCA - Overview

a) Who is the State Claims Agency (SCA)?

Under the National Treasury Management Agency (Amendment) Act, 2000 the management of personal injury¹ and third party² property damage³, claims against Delegated State Authorities (DSAs)⁴ was delegated to the National Treasury Management Agency (NTMA). The NTMA also provides related risk management services to DSAs. When performing these functions, the NTMA is known as the State Claims Agency.

b) What is State Indemnity (SI)?

State indemnity⁵, as operated by the SCA, is provided to DSAs. It indemnifies the DSA its servants and/or agents in respect of any claims for personal injury and/or third-party property damage, arising from the negligence of the DSA, its servants and/or agents. State indemnity extends to all business activities of a DSA.

State indemnity is a self-insurance or 'pay as you go' system, whereby the DSA retains the costs of claims.

c) Implications of SI

A DSA no longer purchases cover for personal injury and third party property damage claims (i.e. employer's public liability and motor cover.) The DSA retains the risks associated with these claims. It is essential that a DSA operates an effective risk management system to reduce

potential costs.

d) Who are servants and/or agents?

State indemnity indemnifies the servants and/or agents of a DSA. Servants and/or agents are persons who perform tasks on behalf of the DSA including employees, persons on a *contract of service*⁶, volunteers and those on placements/work experience.

e) How does SI apply to third parties?

DSAs, their servants and/or agents are indemnified by the State in respect of their 'duty of care' to third parties who are impacted by the DSAs' activities. Third parties include those engaged in a *contract for service*⁷, visitors and service users, students in a delegated school, patients in a delegated hospital etc. The common law duty of care applies to DSAs whereby all employees, servants or agents of the DSA must act in a bona fide "good faith" manner when performing their duties.

f) Indemnifying a third party

State indemnity indemnifies a third party in respect of personal injury and third party property damage claims which are the result of the DSA's negligence. SI is provided by the Minister for Finance under legislation, therefore it cannot be extended to cover the liabilities of a third party i.e. their negligent act(s). These are referred to as 'hold harmless

losses that they incur as a result of the activities of the State (or State body) and in a situation where the State has been negligent in some way.

⁶**Contract of service** - DSA directs not only what to do but how to do it. DSA owes a higher duty of care to these persons e.g. agency nurses and contract IT staff.

⁷**Contract for services (External Contractor)** - independent contractors employed to undertake a particular job. DSA tells them what to do but the contractor decides how to complete the job and hires out their services for a fee e.g. contractor hired to build an extension.

¹**Personal Injury** - Personal injury includes any disease and any impairment of a person's physical or mental condition, including minor injuries.

²**Third party** - A third party in context of State indemnity is body or individual other than the DSA.

³**Property damage** is the physical damage to or loss of material property including buildings, contents, vehicles and/or personal property.

⁴**Delegated State Authority (DSA)** - Refers to all bodies where management of personal injury and third-party property damage claims against the body is delegated to the SCA. This includes State Agencies, healthcare enterprises, community & comprehensive schools and prisons.

⁵**State indemnity** - Indemnity is a protection against possible damage or loss, typically a promise of payment should damage or loss occur. State indemnity is given to third parties or individuals by the State, to compensate them for any

agreements'. A DSA should ensure they do not enter into such agreements.

The DSA should confirm that any third party it engages in a 'contract for service' has appropriate insurance cover in place which indemnifies the DSA in respect of the third party contractor's negligence.

g) Exclusions

Exclusions are listed on the State Indemnity Confirmation Statement.

h) Territorial limits/jurisdiction limits

There are no territorial limits in respect of State indemnity. It will operate in all countries provided the claim is within the scope of State Indemnity.

There are no jurisdiction clauses set out by State Indemnity. A claimant can take a claim in accordance with the Jurisdiction of Courts and Enforcements of Judgments Acts.

i) Reporting incidents

A DSA has a statutory duty to report all incidents to the SCA within a reasonable period of time.

Incidents should be reported via the National Incident Management System (NIMS)⁸ or by forwarding soft/hard copy to the SCA where local NIMS reporting is not available.

j) How are claims submitted to the SCA?

A claim should be submitted in writing to the SCA. If a DSA receives a notice of claim, it should forward this immediately to the SCA, together with any information it may have in respect of the incident.

There should be no admission, offer, or promise of payment or indemnity, without the written consent of the SCA. Where an employee wishes to make a personal injury claim, this should be submitted in the first instance through the [Personal Injuries Assessment Board \(PIAB\)](#).

The SCA will manage the claim from point of notification to final resolution. The DSA must cooperate with the investigation of an incident/claim.

k) What is a State Indemnity Confirmation Statement?

The State Indemnity Confirmation Statement (Confirmation Statement) briefly sets out the scope of State indemnity. This document operates in lieu of a certificate of insurance.

The Confirmation Statement is not subject to change unless there is a change in legislation; therefore, there is no requirement to re-issue the Confirmation Statement on an annual basis. The SCA does not amend the Confirmation Statement to include third party names.

l) Issuing the Confirmation Statement

Occasionally, your organisation may be required to provide confirmation of insurance cover i.e. 'the Confirmation Statement' to a third party. The process for issuing the Confirmation Statement is as follows:

- The organisation must be satisfied that State indemnity applies to the circumstance in question;
- The Confirmation Statement should only be issued by personnel at an appropriate level within the organisation typically by legal, health and safety, risk, insurance managers or procurement managers.

The SCA advises that a record be maintained of when and to whom the Confirmation Statement is issued.

State Indemnity and Property

m) Damage to DSA property

A DSA is responsible for managing the cost of repairs/replacement of own damage to property (including vehicles). The SCA and/or DSA can pursue a third party for cost of damage which is due to the third party's negligence.

n) Damage to third party property

The SCA will manage claims for third party property damage if that damage was due to a negligent act, omission or other matter constituting a cause of action against the DSA. This includes property of employees.

⁸National Incident Management System (NIMS) - a web-based database which facilitates direct reporting of incidents and the management of adverse events by State authorities and healthcare enterprises.

o) Renting/leasing property

SI extends to the use of a third party's property e.g. lease or hire. Refer to 'indemnifying a third party' above.

If a third party is leasing/renting DSA property, appropriate insurance cover and risk assessments must be in place. Please contact the SCA for guidance on arrangements which are outside a normal lease/hire agreement e.g. a third party hosting events on a DSA's property or sharing of equipment.

State Indemnity and Vehicles

In Ireland, it is compulsory to have a motor insurance policy which complies with the terms of the Road Traffic Act 1961 (RTA) and the European Communities Regulations and Directives. Part VI of the 1961 RTA states that compulsory insurance of mechanically propelled vehicles, does not apply to State Vehicles. The indemnity provided by the State indemnity scheme covers DSAs for the use of their vehicles for DSA-related business.

State indemnity is unlimited. Therefore, it exceeds the minimum requirements of the RTA.

p) What is a DSA vehicle?

A DSA vehicle, for the purposes of indemnity, is vehicle which is registered in the name of the DSA and/or in the DSA's custody and control (including hired vehicles). They are not vehicles owned by employees or other third parties e.g. charities, clubs and associations.

q) Vehicle Confirmation Statement

A vehicle confirmation statement is provided in lieu of an insurance certificate and should be placed in each vehicle owned by a DSA. This document confirms the indemnity arrangements and should be referred to in the case of an accident or where requested by a member of An Garda Síochána.

r) Who issues the Vehicle Confirmation Statements?

Vehicle confirmation statements are managed and distributed by each DSA. Confirmation statements are not required to be re-issued yearly. Re-issue will only be required on the SCA's direction.

s) Use of vehicle

DSA vehicles are used for DSA-related authorised business. They should not be used for social, domestic or pleasure purposes. DSA management approval should be obtained when there is uncertainty over whether an activity is considered business use.

t) Who can drive a DSA vehicle?

Servants and/or agents of a DSA who are authorised by their management can drive specific DSA vehicles.

Drivers with appropriate, current and valid license(s) for the vehicle(s) they drive.

Those on contracts of service⁶ (agency staff/temporary DSA employees) can drive DSA vehicles provided:

- DSA management approval has been given;
- Driving is part of the terms of their employment contract;
- A risk assessment has been completed.

u) Does the indemnity extend to an employee's vehicle?

No, the indemnity applies to vehicles owned or contracted to the DSA only, it cannot be extended to cover privately owned vehicles. Private vehicles require their own commercial insurance arrangements.

v) When do I need to contact the SCA?

The SCA do not require updates on changes in operations and/or activities which are within the DSA's normal functions. If a DSA is uncertain as to whether State indemnity would apply and/or risk management guidance is required, please contact the SCA or local insurance manager/risk manager where designated in your DSA.

This is a summary guidance document only; please visit stateclaims@ntma.ie for more information.

This State Indemnity Guidance is solely for the use of members of the State indemnity schemes managed by the State Claims Agency, in accordance with its mandate under the National Treasury Management Agency (Amendment) Act, 2000 (Delegated State Authorities or DSAs). The SCA does not bear responsibility for use of or reliance on the guidance by any party other than a DSA.