
STATUTORY INSTRUMENTS

1999 No. 1274

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service (Clinical Negligence
Scheme) (Amendment) Regulations 1999**

<i>Made</i>	- - - -	<i>4th May 1999</i>
<i>Laid before Parliament</i>		<i>5th May 1999</i>
<i>Coming into force</i>	- -	<i>26th May 1999</i>

The Secretary of State for Health, in exercise of powers conferred on him by section 126(4) of the National Health Service Act 1977(1) and section 21 of the National Health Service and Community Care Act 1990(2) and of all other powers enabling him in that behalf, and with the consent of the Treasury, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 1999 and shall come into force on 26th May 1999.

Amendment of regulation 9 of the National Health Service (Clinical Negligence Scheme) Regulations 1996

2. In regulation 9 of the National Health Service (Clinical Negligence Scheme) Regulations 1996(3) (payments under the scheme)—

- (a) in paragraph (1), for the words “pay to that member an amount” substitute the words “pay to or on behalf of that member an amount”;
- (b) in paragraph (2)(d), after head (ia)(4), insert the following heads:—
 - “(iib) any payment which falls to be made by a member where the member has not complied with any condition imposed by the Secretary of State relating to the claim,

(1) 1977 c. 49; section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”).

(2) 1990 c. 19. See, for the definition of “regulations”, section 128(1) of the 1977 Act, as amended by section 26(2)(i) of the 1990 Act. Section 21 of the 1990 Act was amended by paragraph 79 of Schedule 1 to the Health Authorities Act 1995 (c. 17).

(3) S.I. 1996/251, as amended by S.I. 1997/527.

(4) Head (ia) was inserted by S.I. 1997/527, regulation 4(b).

- (iic) any payment into court which the member has made without the prior consent in writing of the Secretary of State;”;
- (c) in paragraph (3)—
 - (i) omit the words “to a member”;
 - (ii) in sub-paragraphs (a), (b)(iii), and (c), after the words “costs incurred by”, and in sub-paragraph (d)(5), after those words appear for the second time, insert the words “or on behalf of”;
 - (iii) in sub-paragraph (b)(i), after the word “paid”, insert the words “or payable”;
 - (iv) in sub-paragraph (e)(6), for the words “incurred by either party” substitute the words “incurred by the person making the claim and any such costs incurred by or on behalf of the member;”
 - (v) after sub-paragraph (e) add the following sub-paragraph—
 - “(f) where the member has decided to make a payment into court, the amount of that payment;”.

Insertion of regulation 9A into the National Health Service (Clinical Negligence Scheme) Regulations 1996

3. After regulation 9 of the National Health Service (Clinical Negligence Scheme) Regulations 1996 insert the following regulation—

“Payments on account

9A.—(1) Where, in any membership year, a payment (including a payment into court) falls to be made by a member in connection with a claim in respect of which a payment may become payable by the Secretary of State under regulation 9, the Secretary of State may make a payment on account of any amount which may become payable by him under that regulation.

(2) Such payment on account may be made to or on behalf of the member.

(3) Where the amount of any such payment on account exceeds the amount of any payment the Secretary of State subsequently determines to make under regulation 9 the excess shall be recoverable from the member.”

Signed by authority of the Secretary of State for Health

27th April 1999

Hayman
Parliamentary Under Secretary of State,
Department of Health

(5) Sub-paragraph (d) was inserted by [S.I. 1997/527](#), regulation 4(c).

(6) Sub-paragraph (e) was inserted by [S.I. 1997/527](#), regulation 4(c).

4th May 1999

Jim Dowd
Jane Kennedy
Two of the Lords Commissioners of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Clinical Negligence Scheme) Regulations 1996 which established a Scheme whereby NHS trusts and certain other bodies providing NHS services may make provision for meeting liabilities to third parties in connection with personal injury arising out of negligence in the carrying out of their functions.

In particular they provide for the Secretary of State to make payments under the Scheme to third parties on behalf of members. They also make minor amendments relating to the matters the Secretary of State shall consider in determining payments under the Scheme and provide for additional circumstances where he may refuse to meet any liabilities. Provision is also made, by the insertion of a new regulation 9A, enabling the Secretary of State to make payments on account of any payment which may become payable by him under regulation 9.