

2008 No. 60

NATIONAL HEALTH SERVICE

The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2008

Made - - - - *19th February 2008*
Laid before the Scottish Parliament *22nd February 2008*
Coming into force - - *17th March 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(5), 85B, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2008 and come into force on 17th March 2008.

Amendment of the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000

2.—(1) The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000(b) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the Act” insert—

““following year” means, in relation to a membership year, the period of 12 months immediately following that membership year;”;

(b) omit the definition of “preceding year”.

(3) In regulation 7 (contributions to the Scheme)—

(a) in paragraph (2)—

(i) for sub-paragraph (a) substitute—

(a) 1978 c.29; section 85B was inserted by the National Health Service and Community Care Act 1990 (c.19), section 41 and was amended by the Health Act 1999 (c.8), (“the 1999 Act”) section 65 and Schedule 4, paragraph 56, by the Community Care and Health (Scotland) Act 2002 (asp 5), section 21 and by S.I. 2001/3649, article 221, and S.S.I. 2005/465, Schedule 2, paragraph 1; section 105(7), which contains provisions relevant to the making of Regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and by the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury consent was removed by section 55 of that Act.

(b) S.S.I. 2000/54, amended by S.S.I. 2000/168 and 2002/239.

- “(a) the total amount which, by virtue of regulation 9 (payments under the Scheme), was paid during that membership year in respect of all qualifying liabilities and financial losses under the Scheme;” and
- (ii) omit sub-paragraph (d);
- (b) for paragraph (3) substitute–
 - “(3) (a) As respects the membership year 1st April 2007 to 31st March 2008, the Scottish Ministers may reconsider the determination of the amount of the contribution due from each member for that membership year, and may, at any time before 30th April 2008, re-determine the amount of the payment to be made by that member under paragraph (1) and in that event, they shall give the member notice in writing of that re-determined amount; and
 - (b) The Scottish Ministers shall give notice in writing of the contribution due from each member as respects the membership year 1st April 2008 to 31st March 2009, and any subsequent membership year, by no later than 30th April in the following year.”; and
- (c) in paragraph (4)–
 - (i) omit “which begins after the membership year beginning 1st April 2000”;
 - (ii) in sub-paragraph (b) for “him” substitute “them”; and
 - (iii) for “membership year to which it relates” substitute “following year”.
- (4) In regulation 9 (payments under the Scheme) omit paragraph (2)(a).

NICOLA STURGEON
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
19th February 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 (“the principal Regulations”) which established a scheme under which members of the scheme could make provision for meeting liabilities arising out of negligence in the carrying out of functions and for indemnity for other financial loss.

Regulation 2(2) amends regulation 1(2) of the principal Regulations to insert a definition of “following year” and to omit the definition of “preceding year”.

Regulation 2(3)(a)(i) and (b) amends regulation 7 of the principal Regulations to provide that instead of members’ contributions being payable on the basis of estimated liability in advance of any membership year, they will be paid in arrears after the expiry of the membership year on the basis of the claims actually paid during that membership year.

Regulation 2(3)(a)(ii) omits paragraph (2)(d) of regulation 7, with the result that Scottish Ministers will no longer consider in determining the payment to be made by a member, their assessment of the effectiveness of the steps taken by the member to reduce the incidence of qualifying liabilities and financial losses, and any other factors which they consider to be material.

Regulation 2(3)(c) makes consequential amendments to paragraph (4) of regulation 7.

Regulation 2(4) omits paragraph (2)(a) of regulation 9 of the principal Regulations which requires that members intimate a claim to the Scottish Ministers or the managers of the scheme within 2 months of the date the claim is paid.

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