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STATUTORY INSTRUMENTS

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**1996 No. 686**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service (Existing  
Liabilities Scheme) Regulations 1996**

<i>Made</i>	- - - -	<i>8th March 1996</i>
<i>Laid before Parliament</i>		<i>8th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State for Health, in exercise of powers conferred 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, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Existing Liabilities Scheme) Regulations 1996, and shall come into force on 1st April 1996.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service and Community Care Act 1990;

“an eligible body” means a body of a kind described in regulation 3;

“qualifying liability” means a liability of a kind described in regulation 4;

“relevant function” means the function of managing for the purposes of the health service any hospital or other establishment or facility situated in England at or from which services were provided under the National Health Service Act 1977;

“the scheme” means the Existing Liabilities Scheme established by regulation 2.

(3) In these Regulations, a reference to a numbered regulation is a reference to the regulation which bears that number in these Regulations, and a reference in a regulation to a numbered paragraph is a reference to the paragraph which bears that number in that regulation.

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(1) 1977 c. 49 (“the 1977 Act”); 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 is amended by paragraph 79(a) of Schedule 1 to the Health Authorities Act 1995 (c. 17).

### **Establishment of scheme**

2. There is hereby established a scheme, to be known as the Existing Liabilities Scheme, whereby an eligible body may, in accordance with the following provisions of these Regulations, make provision to meet qualifying liabilities.

### **Eligible bodies**

3. A body is eligible to participate in the Scheme if—
- (a) the body is—
    - (i) a Health Authority,
    - (ii) a Special Health Authority,
    - (iii) a National Health Service trust, or
    - (iv) the Public Health Laboratory Service Board;
  - (b) the body has—
    - (i) during any period falling before 1st April 1995 exercised any relevant function; or
    - (ii) had transferred to it the liabilities of any other body which exercised any relevant function during any period falling before that date; and
  - (c) the body has applied to the Secretary of State, in such manner as he may require, to participate in the Scheme, and the Secretary of State has admitted the body to the Scheme.

### **Liabilities to which the Scheme applies**

4. The Scheme applies to any liability in tort owed by an eligible body to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach before 1st April 1995 of a duty of care owed by that body, or a body referred to in regulation 3(b)(ii), to any person in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act on the part of a person employed or engaged by such a body in connection with any relevant function of that body.

### **Administration of the Scheme**

5. The Scheme shall be administered by the Secretary of State.

### **Payments under the Scheme**

6.—(1) Where, in any year, a qualifying liability falls to be met by any eligible body, the Secretary of State may, subject to paragraph (2), pay to that body an amount to be determined by him in accordance with paragraph (3).

(2) No payment shall be made under paragraph (1), except to such extent as the Secretary of State may determine, in respect of—

- (a) any liability admitted by the eligible body without the consent in writing of the Secretary of State;
- (b) any liability determined by a Court in proceedings conducted by the eligible body otherwise than in consultation with the Secretary of State; or
- (c) any payment which the eligible body has agreed to make otherwise than in the course of legal proceedings, or in consequence of its having compromised legal proceedings, without the consent in writing of the Secretary of State.

(3) The amount of any payment to an eligible body under paragraph (1) shall be determined by reference to—

- (a) where an award of damages has been made against the eligible body by a Court, the amount of that award, together with the amounts of the legal and associated costs awarded to the plaintiff and of any such costs incurred by the eligible body;
- (b) where legal proceedings have been compromised by the eligible body, the amount of—
  - (i) any sum paid by the eligible body in relation to the plaintiff's claim for damages,
  - (ii) the eligible body's contribution towards any legal and associated costs incurred by the plaintiff; and
  - (iii) any such costs incurred by the eligible body;
- (c) where, in any legal proceedings, a Court has declined to award damages against the eligible body, the amount of any legal and associated costs incurred by the eligible body, to the extent that such costs are not recoverable from the plaintiff or from the Legal Aid Board under section 18 of the Legal Aid Act 1988;<sup>(3)</sup>
- (d) where the eligible body has agreed to make a payment, otherwise than in the course of legal proceedings, in settlement of the plaintiff's claim, the amount of that payment.

#### **Provision of information**

7. An eligible body shall, at such times and in such manner as the Secretary of State may require, furnish to the Secretary of State such information as he may request about—

- (a) the nature of any relevant function carried on, during any period falling before 1st April 1995 which the Secretary of State may specify, by the eligible body or by any body whose liabilities have been transferred to the eligible body; and
- (b) any event of which the eligible body is aware which it considers might give rise to a qualifying liability.

#### **Availability of directions and guidance**

8. The Secretary of State shall make available to eligible bodies, in such form and at such times as he may consider appropriate—

- (a) any directions<sup>(4)</sup> he may give, to any body directed under section 21(4)(b) of the Act<sup>(5)</sup> to carry out functions in connection with the administration of the Scheme, with respect to the discharge by that body of those functions; and
- (b) any guidance he may give to that body as to the manner in which the Scheme is to be administered.

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(3) 1988 c. 34.

(4) See section 17 of the National Health Service Act 1977 (c. 49), as substituted by paragraph 2 of Schedule 3 to the Health and Social Security Act 1984 (c. 48) and amended by sections 3(4) and 12(2) of the National Health Service and Community Care Act 1990 (c. 19); see also paragraph 8 of Schedule 1 to the Health Authorities Act 1995 (c. 17).

(5) See S.I. 1995/2800.

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

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Signed by authority of the Secretary of State for Health,

7th March 1996

*Gerald Malone*  
Minister of State,  
Department of Health

We consent,

8th March 1996

*Bowen Wells*  
*Simon Burns*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations establish a Scheme (to be known as the “Existing Liabilities Scheme”) whereby bodies providing services under the National Health Service Act 1977 may make provision for meeting liabilities to third parties in connection with personal injury arising out of negligence in the carrying out of functions under that Act (regulations 2, 3 and 4).

The Scheme is to be administered by the Secretary of State (regulation 5). Provision is also made for payments by the Secretary of State under the Scheme (regulation 6) and for the provision of information by bodies to the Secretary of State for the purposes of the Scheme (regulation 7).