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STATUTORY INSTRUMENTS

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**2005 No. 604**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service Liabilities  
Schemes Amendment Regulations 2005**

<i>Made</i>	- - - -	<i>9th March 2005</i>
<i>Laid before Parliament</i>		<i>10th March 2005</i>
<i>Coming into force</i>	- -	<i>1st April 2005</i>

The Secretary of State for Health, in exercise of the 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 all other powers enabling him in that behalf, and with the consent of the Treasury, hereby makes the following Regulations:

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the National Health Service Liabilities Schemes Amendment Regulations 2005, and shall come into force on 1<sup>st</sup> April 2005.

(2) In these Regulations—

“the CNS Regulations” means the National Health Service (Clinical Negligence Scheme) Regulations 1996(3);

the ELS Regulations” means the National Health Service (Existing Liabilities Scheme) Regulations 1996(4);

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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”), section 65(1) and paragraphs 4, 37(1) and (6) of Schedule 4 to the Health Act 1999 (c. 8) (“the 1999 Act”), section 67(1) and paragraph 5(1) and 13(b) of Part I of Schedule 5 to the Health and Social Care Act 2001 (c. 15), sections 6(3)(c), 31(7) and paragraphs 1 and 10(a) of Schedule 8 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002” Act) and section 196 and Part 4 of Schedule 14 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”); see section 128(1) for the definition of “regulations”.
- (2) 1990 (c. 19); section 21 was amended by section 2(1) and paragraphs 79(a) and (b) in Schedule 1 to the Health Authorities Act 1995 (c. 17) (“the 1995 Act”); section 65(1) and paragraphs 74, 81(1), (2)(a), (2)(b) and (3) to the 1999 Act; section 1(3) and paragraphs 39, and 43(a) and (b) of Schedule 1 and section 6(2) and paragraphs 30 and 33 of Schedule 5 to the 2002 Act, section 34 and paragraphs 83, 84(b) and (c) and 85 of Schedule 4 to and sections 190(2) and 196 and paragraph 6(b) of Schedule 13, and Part 7 of Schedule 14 to the 2003 Act and section 11(1) and paragraphs 11(1) and (3) of Schedule 3 to the Health Protection Agency Act 2004 (c. 17) to come into force on 1 April 2005, pursuant to the Health Protection Agency Act 2004 (Commencement) Order 2005, S.I.2005/121 (C.5).
- (3) S.I.1996/251 amended by S.Is 1997/527,1999/1274, 2000/2341, 2002/1073 and 2002/2469.
- (4) S.I. 1996/686 amended by 1997/526, 1999/1275, 2002/2469 and 2004/696.

“the LTPS Regulations” mean the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999(5);

“the PES Regulations” mean the National Health Service (Property Expenses Scheme) Regulations 1999(6).

(3) These Regulations apply in England(7).

#### **Amendment of regulation 1 of the CNS Regulations**

2. In regulation 1(2) of the CNS Regulations (interpretation) in the definition of “relevant function” for “or 15” substitute “15 or 15A(8)”.

#### **Amendment of regulation 3 of the CNS Regulations**

3. In regulation 3 of the CNS Regulations (eligible bodies) for paragraph (1)(e) substitute—  
“the Health Protection Agency(9).”.

#### **Amendment of regulation 3 of the ELS Regulations**

4. In regulation 3 of the ELS Regulations (eligible bodies) for paragraph (a)(iv) substitute—  
“the Health Protection Agency;”.

#### **Amendment of regulation 1 of the LTPS Regulations**

5. In regulation 1(2) of the LTPS Regulations (interpretation), in the definition of “relevant function” after the words “services in England” insert the words “or securing the provision of services” and for “paragraph 14 or 15” substitute “paragraphs 13,14, 15 or 15A”.

#### **Amendment of regulation 3 of the LTPS Regulations**

6. In regulation 3 of the LTPS Regulations (eligible bodies)—  
(a) at the end of sub-paragraphs (b) and (c) omit “or”;  
(b) at the end of sub-paragraph (d) insert—  
“or  
(e) the Health Protection Agency.”.

#### **Amendment of regulation 4 of the LTPS Regulations**

7. In regulation 4(2) of the LTPS Regulations (liabilities to which the Scheme applies) at the end of the definition of “relevant person” add the words “and includes an employee or agent of the person so engaged.”.

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(5) [S.I. 1999/873](#) amended by S.Is [2000/2385](#), [2002/2469](#) and [2004/696](#).

(6) [S.I. 1999/874](#) amended by S.Is [2000/2342](#), [2002/2469](#) and [2004/696](#).

(7) The functions of the Secretary of State under section 126(4) of the 1977 Act and section 21 of the 1990 Act were transferred with respect to Wales to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999, [S.I. 1999/672](#) article 2 and Schedule 1 as amended by section 66(5) of the 1999 Act.

(8) See [S.I. 2002/2759](#) which added paragraph 15A to Schedule 2 to the 1990 Act.

(9) The Public Health Laboratory Service Board is abolished by section 190 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), which is to come into force on 1 April 2005, see the Health and Social Care (Community Health and Standards) Act 2004 (Commencement) (No. 6) Order 2005, [S.I. 2005/457\(c.22\)](#). The Health Protection Agency was established by section 1 of the Health Protection Agency Act 2004 to come into force on 1st April 2005, see [S.I. 2005/121 \(C.5\)](#).

### **Amendment of regulation 1 of the PES Regulations**

**8.** In regulation 1(2) of the PES Regulations (interpretation), in the definition of “relevant function” after the words “services in England” insert the words “or securing the provision of services” and for “paragraph 14 or 15” substitute “paragraphs 13,14, 15 or 15A(10)”.

### **Amendment of regulation 3 of the PES Regulations**

- 9.** In regulation 3 of the PES Regulations (eligible bodies)—
- (a) at the end of sub-paragraphs (b) and (c) omit the word “or”;
  - (b) At the end of sub-paragraph (d) insert—
    - “or
    - (e) the Health Protection Agency.”.

Signed by authority of the Secretary of State for Health

9th March 2005

*Rosie Winterton*  
Minister of State,  
Department of Health

9th March 2005

*Jim Murphy*  
*Nick Ainger*  
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.

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## EXPLANATORY NOTE

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

These Regulations further amend the following Regulations—

the National Health Service (Clinical Negligence Scheme) Regulations 1996 (CNS Regulations);

the National Health Service (Existing Liabilities Scheme) Regulations 1996 (ELS Regulations);

the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999 (LTPS Regulations);

the National Health Service (Property Expenses Scheme) Regulations 1999 (PES Regulations).

Each of these Regulations establishes a Scheme whereby NHS trusts and certain other bodies providing services under the National Health Service Act 1977 may make provision respectively—

for meeting liabilities to third parties in connection with personal injury arising out of, negligence in the carrying out of their functions;

for meeting liabilities incurred before 1<sup>st</sup> April 1995 to third parties in connection with personal injury arising out of negligence in the carrying out of their function;

for meeting liabilities to third parties in connection with loss, damage or injury arising out of the carrying out of the bodies' functions other than liabilities to which the CNS Regulations, the ELS Regulations and the PES Regulations apply;

for claiming reimbursement for expenses arising from liabilities to which the CNS Regulations, the ELS Regulations or the LTPS Regulations apply.

Regulations 2,5 and 8 amend the definition of “relevant function” to include arrangements made for securing the provision of certain NHS services whether in England or elsewhere and regulation 7 amends the definition of “relevant person” in respect of the liabilities to which the LTPS Regulations apply to include an employee or agent of a person engaged by a member of the Scheme.

Regulations 3,4,6 and 9 include the Health Protection Agency as an eligible body able to participate in the Schemes and in regulations 3 and 4, the references to the Public Health Laboratory Service Board are omitted.