

**2014 No. 931**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Liabilities to Third Parties Scheme) (Amendment) Regulations 2014**

<i>Made</i> - - - -	<i>3rd April 2014</i>
<i>Laid before Parliament</i>	<i>9th April 2014</i>
<i>Coming into force</i> - -	<i>1st May 2014</i>

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 71 and 272(7) and (8) of the National Health Service Act 2006(a).

These Regulations are made with the consent of the Treasury in accordance with section 71(1) of that Act.

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Liabilities to Third Parties Scheme) (Amendment) Regulations 2014 and come into force on 1st May 2014.

(2) These Regulations apply to England only.

(3) In these Regulations “the Principal Regulations” means the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999(b).

**Amendment of regulation 1 of the Principal Regulations**

2. In Regulation 1 (citation, commencement and interpretation) of the Principal Regulations, in paragraph (2)—

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

““the 2012 Act” means the Health and Social Care Act 2012;”(c);

(b) for the definition of “relevant function”, substitute—

““relevant function” means—

(a) arranging for the provision of, or providing services for the purposes of, or exercising functions in relation to, the health service;

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(a) 2006 c.41. Relevant amendments to section 71 were made by sections 95 and 142 of, and paragraph 85 of Schedule 5 to, the Health and Social Care Act 2008 (c.14) and sections 55(1), 56(4), 249(1) and 277 of, and paragraph 18 of Schedule 4, paragraphs 17 and 19 of Schedule 7, paragraph 10 of Schedule 17, and paragraph 9 of Schedule 19 to, the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(b) S.I. 1999/873, amended by S.I. 2000/2385, 2002/2469, 2004/696, 2005/604, 2012/1641 and 2013/235.

(c) 2012 c.7.

- (b) exercising powers under, or by virtue of, section 7 of the Health and Medicines Act 1988(a);
- (c) exercising powers under section 13W, 14Z5, 43(3) or 44 of, or paragraphs 19 and 20 of Schedule 4 to, the National Health Service 2006 Act(b);
- (d) exercising powers under section 243 or 270 of the 2012 Act;
- (e) exercising powers by virtue of section 240(1)(a) or (b) of the 2012 Act;”.

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

**3.** In Regulation 4 (liabilities to which the Scheme applies) of the Principal Regulations, after paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(a) (and with effect from 1st May 2014), loss, damage or injury which occurred on or after 1st April 1999 and before 1st May 2014, and which—

- (a) before 1st May 2014 was not loss, damage or injury arising out of the carrying out of any relevant function of that member; but
- (b) would have been loss, damage or injury arising out of the carrying out of any relevant function of that member, had the change to the definition of “relevant function” in regulation 1(2) that was made on 1st May 2014 been made before the loss, damage or injury occurred,

is loss, damage or injury arising out of the carrying out of any relevant function of that member.”.

### **Amendment of regulation 7 of the Principal Regulations**

**4.—**(1) Regulation 7 (termination of membership) of the Principal Regulations is amended as follows.

(2) In paragraph (1), for “12” substitute “7”.

(3) After paragraph (3), insert—

“(4) Where a member is no longer an eligible body the Secretary of State may terminate that member’s participation in the Scheme with immediate effect.”.

### **Amendment of regulation 8 of the Principal Regulations**

**5.—**(1) Regulation 8 (members’ contributions to the Scheme) of the Principal Regulations is amended as follows.

(2) In paragraph (2), for “the Secretary of State shall have regard to”, substitute “the Secretary of State may have regard to”.

(3) In paragraph (3)(c), for “31st October” substitute “31st December”.

(4) For paragraph (6)(c), substitute—

“(c) in relation to any subsequent membership year, at such time, or in such instalments at such times, and in such manner—

- (i) as the Secretary of State and the member may, by no later than 1st March immediately preceding the membership year in question, agree, or

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(a) 1988 c.49. Relevant amendments to section 7 were made by section 66(1) of, and paragraph 34 of Schedule 9 to, the National Health Service and Community Care Act 1990 (c.19), section 5 of the Health and Social Care Act 2001 (c.15), section 2 of, and paragraphs 115 and 116 of Schedule 1 to, the National Health Service (Consequential Provisions) Act 2006 (c.43), section 55(2) of, and paragraph 45 of Schedule 5 to, the 2012 Act, and article 2(1) of, and paragraph 99 of Schedule 1 to S.I. 2009/1941.

(b) Sections 13W and 14Z5 of the National Health Service Act 2006 were inserted by sections 23(1) and 26 (respectively) of the 2012 Act. Section 43(3) was amended by section 164 of the 2012 Act and relevant amendments to section 44 were made by section 165(1) and (2) of the 2012 Act.

- (ii) in default of such agreement by that date, as the Secretary of State may determine.”.

### **Amendment of regulation 9 of the Principal Regulations**

**6.—**(1) Regulation 9 (payments under the Scheme) of the Principal Regulations is amended as follows.

(2) In paragraph (1), for “paragraph (2)” substitute “paragraphs (2), (2A) and (2B)”.

(3) After paragraph (1), insert the following paragraph—

“(1A) Where a payment falls to be made by any body which has at any time been a member of the Scheme in connection with a claim in respect of a qualifying liability which relates to a breach of the duty of care by that body whilst it was a member and, prior to the date of the termination of that member’s participation in the Scheme—

- (a) the Secretary of State has agreed with the member that the member is to pay an amount under regulation 8(1) in respect of the membership year immediately preceding the date of the termination of the member’s participation in the Scheme determined by the Secretary of State to be sufficient to cover any qualifying liabilities which relate to a breach of the duty of care by the member during any membership year, but which fall to be met after the date of the termination of the member’s participation in the Scheme; and
- (b) the member has, prior to the date of the termination of the member’s participation in the Scheme, either—
  - (i) paid the amount referred to in sub-paragraph (a); or
  - (ii) entered into an agreement with the Secretary of State to pay that amount in instalments after that date,

the Secretary of State may, subject to paragraphs (2A) and (2B), pay to or on behalf of that body an amount to be determined by the Secretary of State in accordance with paragraph (3).”.

(4) Omit sub-paragraphs (2)(d) and (e).

(5) After paragraph (2) insert—

“(2A) No payment is to be made under paragraphs (1) or (1A) except to such extent as the Secretary of State may determine, in respect of—

- (a) any payment made by or liability admitted by any member without the Secretary of State’s consent;
- (b) any liability of an amount which is less than that for the time being agreed by the Secretary of State and the member as the minimum amount in respect of which payment is to be made under the Scheme;
- (c) any liability of an amount in excess of such amount for the time being agreed by the Secretary of State and the member as the maximum amount in respect of which a payment in respect of such liability may be made under the Scheme, to the extent of that excess; and
- (d) any liability where the member has not complied with any condition imposed by the Secretary of State relating to that liability.

(2B) No payment is to be made under paragraphs (1) or (1A) in respect of any liability which is of a nature in respect of which the Secretary of State has in respect of all members and in respect of the relevant membership year determined that the same is not eligible for payment under the Scheme.”.

(6) In paragraph (3), for “paragraph (1)”, substitute “paragraphs (1) and (1A)”.

(7) After paragraph (6) insert—

“(7) In paragraphs (2A), (2B) and (3), “member” includes a body whose participation in the Scheme has terminated and which falls within paragraph (1A).”.

Signed by authority of the Secretary of State for Health.

18th March 2014

*Dan Poulter*  
Parliamentary Under-Secretary of State,  
Department of Health

We consent,

3rd April 2014

*Mark Lancaster*  
*David Evennett*  
Two of the Lords Commissioners of Her Majesty's Treasury

### **EXPLANATORY NOTE**

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

These Regulations amend the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999 (“the Principal Regulations”) which established a Scheme whereby certain bodies as set out in the Regulations may make provision for meeting liabilities to third parties in connection with any loss, damage or injury arising out of the carrying out of the bodies’ functions.

Regulation 2 amends the Principal Regulations by updating the definition of relevant function. The new definition corresponds to how services are now commissioned or provided for the purposes of the health service and covers the activities of bodies exercising other functions in relation to the health service and other powers to generate income.

Regulation 3 amends the Principal Regulations to provide that where loss, damage or injury arising out of the carrying out of a member’s relevant function occurred before the coming into force of the new definition of “relevant function” which is contained in these Regulations, it will be treated with effect from 1st May 2014 as if that definition had been in force before the loss, damage or injury occurred.

Regulation 4 reduces the termination period in the Principal Regulations from 12 months to 7. It also provides that if a member becomes insolvent or is no longer eligible to be a member of the scheme, the Secretary of State may terminate its membership with immediate effect.

Regulation 5 changes the date by which the Secretary of State must notify a member of the contributions payable under the scheme, in respect of the member’s third and subsequent years of membership, from 31st October to 31st December of the preceding year and makes further changes to do with making of payments in subsequent years. It also provides that the Secretary of State may have regard to certain factors in determining members’ contributions, instead of providing that the Secretary of State must have regard to those factors.

Regulation 6 amends regulation 9 of the Principal Regulations to enable the Secretary of State to agree with a member that that member can make a payment (or make future payments in instalments) prior to terminating its membership of the Scheme to cover liabilities which have been incurred prior to its membership terminating but have not yet fallen to be met. If there is such an agreement, and payment is also made or agreed to be made, then the Secretary of State may make payments out of the Scheme to cover any liabilities of that ex-member which fall to be met after its membership has terminated providing the other relevant conditions for payment in regulation 9 of the Principal Regulations are met.

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