
STATUTORY INSTRUMENTS

2015 No. 559

**The National Health Service (Clinical
Negligence Scheme) Regulations 2015**

Liabilities to which the Scheme applies

Liabilities of members

8.—(1) Subject to paragraph (4), the Scheme applies to any liability in tort under the law of England and Wales which a member of the Scheme owes to a third party in respect of or consequent upon personal injury or loss as specified in paragraph (2).

(2) The personal injury or loss referred to in paragraph (1) is personal injury or loss arising out of or in connection with any breach of a duty of care which—

- (a) the member owes to any person in connection with the diagnosis of any illness or the care or treatment of any patient; and
- (b) is in consequence of any act or omission specified in paragraph (3).

(3) The act or omission referred to in paragraph (2) is an act or omission to act on the part of—

- (a) a person employed or engaged by the member in connection with any relevant function of the member; or
- (b) an employee or agent of a person engaged by the member in connection with any such function.

(4) Where the member is a body falling within regulation 4(1)(l) (bodies providing relevant health services under certain arrangements to be eligible for membership), the Scheme only applies if the liability is in consequence of the arrangements described in regulation 4(2), (3) or (4) by means of which the body is eligible to be a member.

Liabilities of insolvent former members for which members are treated as liable

9.—(1) In this regulation, references to “an insolvent former member” are to a body falling within regulation 4(1)(l) which—

- (a) provided relevant health services under an arrangement described in regulation 4(2) (arrangement with the Board, a CCG or a special health authority) by means of which the body was eligible to be a member; and
- (b) ceased to be a member of the Scheme in circumstances specified in regulation 7(5)(a) (cancellation of membership by the Secretary of State on grounds of insolvency).

(2) The Scheme applies to the qualifying liabilities of an insolvent former member.

(3) Qualifying liabilities to which the Scheme applies under paragraph (2) are to be treated for the purposes of the Scheme and these Regulations as if they were liabilities of the Board, the CCG or the Special Health Authority which entered into the arrangement referred to in paragraph (1)(a).

(4) Qualifying liabilities of an insolvent former member are any liability in tort under the law of England and Wales which—

- (a) the former member owes to a third party in respect of or consequent upon personal injury or loss as specified in paragraph (5);
 - (b) was incurred before the date on which the former member's membership of the Scheme ceased but falls to be met after that date; and
 - (c) is in consequence of the arrangement referred to in paragraph (1)(a).
- (5) The personal injury or loss referred to in paragraph (4)(a) is personal injury or loss arising out of or in connection with any breach of a duty of care which—
- (a) the insolvent former member owes to any person in connection with the diagnosis of any illness or the care or treatment of any patient; and
 - (b) is in consequence of any act or omission specified in paragraph (6).
- (6) The act or omission referred to in paragraph (5)(b) is an act or omission to act in connection with the provision of relevant health services on the part of—
- (a) the insolvent former member;
 - (b) a person employed or engaged by the insolvent former member; or
 - (c) an employee or agent of a person engaged by the insolvent former member.

Other liabilities for which members are treated as liable

10.—(1) In this regulation, “health services provider” means an NHS trust, NHS foundation trust, local authority or other body which provides relevant health services.

(2) The Scheme applies to the qualifying liabilities of a health services provider (“the sub-contractor”) where its provision of relevant health services is the subject of—

- (a) an arrangement made between it and another health services provider; and
- (b) an arrangement made between—
 - (i) the Board, a CCG or a Special Health Authority; and
 - (ii) a health services provider which is a member of the Scheme.

(3) In determining whether paragraph (2) applies in any case, it does not matter whether the provision of relevant health services by the sub-contractor is the subject only of the arrangements referred to in paragraph (2)(a) and (b) or is also the subject of further arrangements made between health services providers.

(4) Qualifying liabilities to which the Scheme applies under paragraph (2) are to be treated for the purposes of the Scheme and these Regulations as if they were liabilities of the health services provider which entered into the arrangement referred to in paragraph (2)(b).

(5) Qualifying liabilities of a sub-contractor are any liability in tort under the law of England and Wales which—

- (a) the sub-contractor owes to a third party in respect of or consequent upon personal injury or loss as specified in paragraph (6); and
- (b) is in consequence of the arrangement referred to in paragraph (2)(a).

(6) The personal injury or loss referred to in paragraph (5)(a) is personal injury or loss arising out of or in connection with any breach of a duty of care which—

- (a) the sub-contractor owes to any person in connection with the diagnosis of any illness or the care or treatment of any patient; and
- (b) is in consequence of any act or omission specified in paragraph (7).

(7) The act or omission referred to in paragraph (6)(b) is an act or omission to act in connection with the provision of relevant health services on the part of—

- (a) the sub-contractor;
- (b) a person employed or engaged by the sub-contractor; or
- (c) an employee or agent of a person engaged by the sub-contractor.