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STATUTORY INSTRUMENTS

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**2015 No. 559**

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

*Payments out of the Scheme*

**Determining the amount of any payment to be made out of the Scheme**

**18.**—(1) In respect of each liability to which the Scheme applies, the Secretary of State must determine the amount of any payment which is to be made under regulation 14(1) or 15(1) (payments out of the Scheme in respect of liabilities of members and former members).

(2) In determining the amount of the payment to be made in circumstances specified in each of paragraphs (3) to (8), the Secretary of State must have regard to the relevant matters specified in that paragraph.

(3) Where an award of damages has been made by a Court against the member, the relevant matters are the amount of—

- (a) the award;
- (b) the legal and associated costs awarded to the claimant; and
- (c) any legal and associated costs incurred by or on behalf of the member.

(4) Where legal proceedings are the subject of a settlement agreed to by the member, the relevant matters are the amount of—

- (a) any sum paid or payable by the member in relation to the claimant's claim for damages;
- (b) the member's contribution towards any legal and associated costs incurred by the claimant; and
- (c) any legal and associated costs incurred by or on behalf of the member.

(5) Where, in any legal proceedings, a Court has declined to award damages against the member, the relevant matters are—

- (a) the amount of any legal and associated costs incurred by or on behalf of the member; and
- (b) the extent to which those costs are not recoverable either from the claimant or from the Legal Aid Agency under regulations made by virtue of section 26(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(1) (costs in civil proceedings).

(6) Where a member has, otherwise than in the course of legal proceedings, agreed to make a payment in settlement of a claim, the relevant matters are the amount of—

- (a) the payment agreed; and
- (b) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(7) Where, otherwise than in the course of legal proceedings, a member has agreed to make any contribution towards legal or associated costs incurred by a person in connection with that person's

claim against the member in respect of a liability to which the Scheme applies, the relevant matters are the amount of—

- (a) that contribution; and
- (b) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(8) Where a member has agreed to be bound by the determination of any person or body as to the making of a payment by that member in respect of a liability to which the Scheme applies, the relevant matters are the amount of—

- (a) the payment;
- (b) any legal or associated costs incurred by the claimant in connection with the claim; and
- (c) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(9) In this regulation, references to “member” are to be construed in accordance with regulation 16(2).