
STATUTORY INSTRUMENTS

2018 No. 755

**The National Health Service (Existing
Liabilities Scheme) (England) Regulations 2018**

PART 2

Payments out of the Scheme

Payments out of the Scheme

6.—(1) Where a payment falls to be made by an eligible body in connection with a claim in respect of a liability to which the Scheme applies, the Secretary of State may pay to that body or on that body's behalf an amount determined by the Secretary of State under regulation 7.

(2) Except to such extent as the Secretary of State may determine, no payment may be made under paragraph (1) in respect of the following—

- (a) any liability admitted by an eligible body without first obtaining the Secretary of State's written consent;
- (b) any liability determined by a Court in proceedings which are conducted by an eligible body otherwise than in consultation with the Secretary of State;
- (c) any payment falling to be made by an eligible body where the body has not complied with any condition imposed by the Secretary of State relating to a claim;
- (d) any payment falling to be made by an eligible body where, without first obtaining the Secretary of State's written consent, the eligible body agrees—
 - (i) to be bound by the determination of any person or body as to the making of a payment by that eligible body in respect of a liability; or
 - (ii) to make any other payment in respect of the liability otherwise than in the course of legal proceedings or in consequence of a settlement of legal proceedings agreed to by that eligible body.

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

7.—(1) In respect of each claim in respect of a liability to which the Scheme applies, the Secretary of State must determine the amount of any payment which is to be made under regulation 6(1).

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

(3) Where an award of damages has been made by a Court against the eligible body, those 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 eligible body.

(4) Where legal proceedings are the subject of a settlement agreed to by the eligible body, those 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 eligible body’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 eligible body.

(5) Where in any legal proceedings a Court has declined to award damages against the eligible body, those matters are the amount of any legal and associated costs incurred by or on behalf of the eligible body but only to 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 (costs in civil proceedings)(1).

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

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

(7) Where, otherwise than in the course of legal proceedings, an eligible body has agreed to make any contribution towards legal or associated costs incurred by a person in connection with that person’s claim against the eligible body in respect of a liability to which the Scheme applies, those matters are the amount of—

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

(8) Where an eligible body has agreed to be bound by the determination of any person or body as to the making of a payment by that eligible body in respect of a liability to which the Scheme applies, those 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 eligible body in connection with the claim.

Power to make payments on account

8.—(1) Where a payment falls to be made by an eligible body in connection with a claim in respect of which an amount may become payable by the Secretary of State under regulation 7, the Secretary of State may make a payment on account of any amount which may become payable.

(2) A payment on account may be made to, or on behalf of, the eligible body.

(3) Where the amount of any payment on account exceeds the amount subsequently determined under regulation 7 as being the amount of payment to be made in connection with the claim, the excess is recoverable from the eligible body.

(1) 2012 c. 10.