
STATUTORY INSTRUMENTS

2018 No. 756

The National Health Service (Liabilities to Third Parties Scheme) (England) Regulations 2018

PART 2

The Scheme

Liabilities to Third Parties Scheme

3.—(1) The Liabilities to Third Parties Scheme (“the Scheme”)(**1**) established under the 1999 Regulations shall continue to exist in accordance with, and as if it had been established under, these Regulations.

(2) An eligible body may participate in the Scheme only if it is a member of the Scheme.

(3) The Secretary of State is to continue to administer the Scheme.

Eligible Bodies

4.—(1) The bodies which are eligible to be members of the Scheme are—

- (a) the Board(**2**),
- (b) a clinical commissioning group,
- (c) an NHS Trust,
- (d) a Special Health Authority,
- (e) NICE(**3**),
- (f) the Health and Social Care Information Centre,
- (g) Health Education England,
- (h) an NHS foundation trust,
- (i) the Care Quality Commission,
- (j) the Health Research Authority, and

(1) The 1999 Regulations were made in exercise of powers conferred by section 126(4) of the National Health Service Act 1977 (c. 49) and powers conferred by section 21 of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”). Section 21 of the 1990 Act was re-enacted by section 71 of the National Health Service Act 2006. By virtue of paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, anything done under a provision repealed by the NHS Act 2006 continues to have effect as if done under any re-enactment of the repealed provision. These Regulations are made in exercise of the powers conferred by sections 71 and 272(7) and (8) of the National Health Service Act 2006.

(2) “The Board” is defined in Section 275(1) of the 2006 Act as the National Health Service Commissioning Board. This definition was inserted by section 55(1) of, and paragraph 138(2) of Schedule 4 to, the 2012 Act. The Board is a body corporate established under section 1H of the 2006 Act and is also known as NHS England. Section 1H was inserted by section 9(1) of the 2012 Act.

(3) “NICE” is the National Institute for Health and Care Excellence is a body corporate established under section 232 of the 2012 Act.

- (k) a company formed under section 223 of the 2006 Act and wholly owned by the Secretary of State.

Membership of the Scheme

- 5.**—(1) Any eligible body may apply to the Secretary of State to become a member of the Scheme.
- (2) An application under paragraph (1) must—
- (a) be in writing;
 - (b) be made in such form and submitted in such manner as the Secretary of State may require;
 - (c) specify a date on which the eligible body proposes that its membership should start; and
 - (d) if required by the Secretary of State, contain, or be accompanied by the information specified in paragraph (4).
- (3) At any time before determining an application, the Secretary of State may in writing require the applicant to provide such further information as the Secretary of State considers necessary for the purposes of that determination.
- (4) Information that may be required under paragraph (2) is—
- (a) the nature of the applicant’s relevant functions;
 - (b) the number of employees of the applicant who are engaged in the performance by the applicant of any relevant function specified by the Secretary of State, or any part of such a function;
 - (c) the qualifications and experience of such employees; and
 - (d) the details of any claim made against the applicant in respect of any qualifying liability arising from loss, damage or injury sustained by third parties as a result of the exercise by the applicant of any relevant function.
- (5) The Secretary of State must—
- (a) within six weeks of receiving an application made in accordance with requirements under paragraph (1), determine whether or not to grant it; and
 - (b) as soon as reasonably practicable, inform the applicant of the determination by a notice in writing which, if the application is granted, must specify the date on which the applicant’s membership is to start.
- (6) In determining whether to grant an application, the Secretary of State must have regard to—
- (a) the information provided by the applicant; and
 - (b) such other factors as the Secretary of State considers relevant.
- (7) Where an eligible body’s application is granted, the body’s membership of the Scheme starts on the date specified in the notice under paragraph (5)(b).

Cancellation of membership by a member

- 6.**—(1) This regulation applies only in relation to a member which has been a member of the Scheme for at least three consecutive membership years.
- (2) The member may cancel its membership of the Scheme by giving the Secretary of State notice in writing of the cancellation.
- (3) Where a notice under paragraph (2)—
- (a) is given before 1st September in a membership year, the notice takes effect at the end of that membership year;

- (b) is given on or after 1st September in a membership year, the notice takes effect at the end of the following membership year.

Cancellation of membership by the Secretary of State

7.—(1) The Secretary of State may cancel a member's membership of the Scheme where any of paragraphs (2) to (4) apply.

(2) This paragraph applies where the member is liable to make a payment to the Secretary of State under regulation 11 (duty of members to make contributions to the Scheme) and that payment remains unpaid for a period of 28 days or more which starts on the date on which the payment becomes due.

(3) This paragraph applies where the member has failed to provide any information required under regulation 18 (duty of members to provide information)—

- (a) before the end of the period of 28 days which starts on the date on which the Secretary of State requests the information; or
- (b) if the Secretary of State in writing allows a further period for providing such information, before the end of that further period.

(4) This paragraph applies where the Secretary of State considers that it would be detrimental to the efficient administration of the Scheme or the interests of other members for the member to remain a member of the Scheme.

(5) Where the Secretary of State cancels a member's membership under paragraph (1) the Secretary of State must inform the member by notice in writing that its membership of the Scheme is to cease with effect from a date specified in the notice and that date must not be earlier than the 28th day after the day on which the notice is sent.

(6) The Secretary of State may determine not to cancel the membership by giving the member a further notice in writing to that effect.

(7) A notice given under paragraph (6) must be given before the date on which membership was to cease as specified in the notice given under paragraph (5).

Automatic termination of membership

- 8. Where a member ceases to be an eligible body, its membership ceases immediately.