
STATUTORY INSTRUMENTS

1999 No. 873

**The National Health Service (Liabilities to
Third Parties Scheme) Regulations 1999**

Payments under the Scheme

9.—(1) Where, in any membership year, a payment falls to be made by any member in connection with a claim in respect of a qualifying liability, the Secretary of State may, subject to paragraph (2), pay to or on behalf of that member an amount determined by him in accordance with paragraph (3).

(2) No payment shall be made under paragraph (1)—

- (a) in respect of any liability which falls to be met after a member has given notice under regulation 7(1) to terminate its participation in the Scheme, unless the Secretary of State is satisfied that the liability would have fallen to be met at that time irrespective of the member's decision to give such notice;
- (b) in respect of any liability incurred by an eligible body before the beginning of its first membership year, unless—
 - (i) the claim by a third party against the member in respect of that liability was made after the beginning of the first membership year,
 - (ii) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, that the claim had been made,
 - (iii) the Secretary of State agreed, no later than the beginning of the first membership year, that this sub-paragraph shall not apply so as to preclude a payment under paragraph (1) in respect of any claim in relation to which heads (i) and (ii) above are satisfied, and
 - (iv) that agreement remains in force at the date on which the claim falls to be met by that member;
- (c) in respect of any liability which falls to be met after the date of the termination of the member's participation in the Scheme, unless—
 - (i) the claim by a third party against the member in respect of that liability was made prior to that date,
 - (ii) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, that the claim had been made,
 - (iii) prior to the date of termination of the member's participation in the Scheme, the Secretary of State agreed that this sub-paragraph shall not apply so as to preclude a payment under paragraph (1) in respect of any claim in relation to which heads (i) and (ii) above are satisfied, and
 - (iv) that agreement remained in force at the date of termination;
- (d) except to such extent as the Secretary of State may determine, in respect of—
 - (i) any payment made by or liability admitted by any member without the Secretary of State's consent;

- (ii) any liability of an amount which is less than that for the time being agreed between the Secretary of State and the Member as the minimum amount in respect of which payment is to be made under the Scheme;
 - (iii) 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
 - (iv) any liability where the member has not complied with any condition imposed by the Secretary of State relating to that liability;
- (e) 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.
- (3) The amount of any payment under paragraph (1) shall be determined by reference to—
- (a) where an award of damages is made against a member by a Court, the amount of that award, together with the amounts of the legal and associated costs awarded to the plaintiff and of any such costs incurred by or on behalf of the member;
 - (b) where legal proceedings have been compromised by the member, the amount of—
 - (i) any sum paid or payable where properly payable by the member in relation to the plaintiff's claim for damages, and
 - (ii) the member's contribution towards any legal and associated costs incurred by or on behalf of the plaintiff, and
 - (iii) any such costs incurred by the member;
 - (c) where in any legal proceedings a Court has declined to award damages against the member, the amount of any legal and associated costs incurred by or on behalf of the member to the extent that such costs are not recoverable from the plaintiff or from the Legal Aid Board under section 18 of the Legal Aid Act 1988(1);
 - (d) where, otherwise than in the course of legal proceedings—
 - (i) a member has agreed to make a payment in settlement of a claim, the amount of that payment, and
 - (ii) 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 qualifying liability, the amount of that contribution,
 and the amount of any legal or associated costs incurred by or on behalf of the member in connection with the claim;
 - (e) 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 qualifying liability, the amount of the payment and the amount of any legal or associated costs incurred by the person making the claim and any such costs incurred by or on behalf of the member in connection with the claim;
 - (f) where the member has decided to make a payment into the Court, the amount of that payment;
 - (g) in respect of any contractual obligation, the amount properly payable under the relevant contract including the amount of any legal or associated costs incurred by or on behalf of the member and by the other contracting party.

(4) Where in any membership year a payment (including a payment into court) falls to be made by a member in connection with a claim in respect of which a payment may become payable by the Secretary of State under this regulation, the Secretary of State may make a payment on account of any amount payable by him under this regulation.

(5) Where the amount of any payment on account under paragraph (4) exceeds the amount of any payment the Secretary of State subsequently determines to make under this regulation the excess shall be recoverable from the member.

(6) In this regulation—

- (a) “first membership year” means any membership year immediately following any period during which the eligible body was not a member;
- (b) “member” includes an eligible body whose participation in the Scheme has been terminated and in respect of whom the conditions specified in paragraph (2)(c)(iii) and (iv) are satisfied; and
- (c) “qualifying date” means the date falling 14 days after that on which the member became aware that a claim had been made, or after that on which, in the opinion of the Secretary of State, the member ought to have become aware of that fact, whichever is the later.