
STATUTORY INSTRUMENTS

2018 No. 756

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

PART 2

Payments out of the Scheme

Payments out of the Scheme: liabilities of members

13.—(1) Where a payment falls to be made by a member of the Scheme in connection with a claim in respect of a liability to which the Scheme applies, the Secretary of State may pay to the member or on the member's behalf an amount determined by the Secretary of State under regulation 16.

(2) No payment may be made under paragraph (1) 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 is not eligible for payment under the Scheme.

(3) No payment may be made under paragraph (1)—

- (a) in respect of any liability of the member which is excluded from the Scheme by any of paragraphs (4) to (7); or
- (b) in respect of any liability of, or payment by, the member which is excluded from the Scheme by regulation 15 (exclusions from the Scheme).

(4) Any liability which was incurred by an eligible body before it became a member of the Scheme is excluded from the Scheme unless—

- (a) the claim by a third party against the eligible body in respect of the liability was made after the start of its membership of the Scheme;
- (b) the Secretary of State is satisfied that the eligible body informed the Secretary of State before the end of the qualifying period that the claim had been made;
- (c) the Secretary of State agreed before the start of the eligible body's membership that any liability of the body that results from a claim to which sub-paragraphs (a) and (b) apply should not be excluded from the Scheme; and
- (d) that agreement remains in force at the date on which the claim against the eligible body falls to be met.

(5) Any liability of a member which falls to be met after the member gives notice of cancellation under regulation 6(2) (cancellation of membership by a member) but before its membership has ceased is excluded from 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 a notice.

(6) Any liability of a member which falls to be met after the Secretary of State gives notice of cancellation under regulation 7(1) (cancellation of membership by the Secretary of State) but before its membership has ceased is excluded from the Scheme unless the Secretary of State is satisfied that the liability would have fallen to be met at that time irrespective of its decision to give such a notice.

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(7) Any liability of a body (“B”) which falls to be met after its membership of the Scheme has ceased is excluded from the Scheme unless—

- (a) the claim by a third party against B in respect of the liability was made before B’s membership ceased;
- (b) the Secretary of State is satisfied that B informed the Secretary of State before the end of the qualifying period that the claim had been made;
- (c) the Secretary of State agreed before B’s membership ceased that any liability of B that results from a claim to which sub-paragraphs (a) and (b) apply should not be excluded from the Scheme; and
- (d) that agreement remained in force on the date on which B’s membership ceased.

(8) In paragraph (4)(b) and (6)(b), the “qualifying period” is the period of 14 days starting with the date on which the member became aware that the claim had been made or, if earlier, the date on which the Secretary of State considers that the member ought to have become aware that a claim had been made.

Commencement Information

II [Reg. 13](#) in force at 1.8.2018, see [reg. 1\(2\)](#)

Payments out of the Scheme: liabilities of former members

14.—(1) Where—

- (a) a payment falls to be made by a former member which has previously been a member of the Scheme in connection with a claim in respect of a liability to which the Scheme applies; and
- (b) the claim related to a breach of the duty of care by the former member whilst it was a member of the Scheme,

the Secretary of State may, if the conditions specified in paragraph (2) are met, pay to the former member or on the former member’s behalf an amount determined by the Secretary of State under regulation 16.

(2) The conditions are that—

- (a) before the former member’s membership of the Scheme ceased, the Secretary of State agreed with the former member that the former member would pay an additional amount determined for the purposes of this regulation;
- (b) that amount was determined by the Secretary of State as being sufficient to meet any liabilities of the former member falling within paragraph (1) which were incurred whilst the former member was a member but fall to be met after the date on which the former member’s membership ceases; and
- (c) before that date, the former member either paid the additional amount in full or entered into an agreement with the Secretary of State to pay it in instalments.

(3) No payment may be made under paragraph (1) in respect of any liability of, or payment by, B which is excluded from the Scheme by regulation 15 (exclusions from the Scheme).

Commencement Information

I2 [Reg. 14](#) in force at 1.8.2018, see [reg. 1\(2\)](#)

Exclusions

15.—(1) Except to such extent as the Secretary of State may determine, the following are excluded from the Scheme—

- (a) any liability to which the Scheme applies in respect of which a member has made an admission of liability without first obtaining the Secretary of State’s written consent;
- (b) any liability to which the Scheme applies in respect of which the liability of a member has been determined by a Court in proceedings conducted by a member otherwise than in consultation with the Secretary of State;
- (c) any payment falling to be made by a member where the member has not complied with any condition imposed by the Secretary of State relating to a claim;
- (d) any payment falling to be made by a member where, without first obtaining the Secretary of State’s written consent, the member agrees—
 - (i) 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; 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 the member;
- (e) any amount payable by a member, in respect of a liability to which the Scheme applies, that is less than the amount agreed by the member and the Secretary of State as being the minimum amount payable under the Scheme; and
- (f) any amount payable by a member, in respect of a liability to which the Scheme applies, to the extent that the amount exceeds the amount agreed by the member and the Secretary of State as being the maximum amount payable under the Scheme.

(2) In paragraph (1), references to “member” include a former member of the Scheme—

- (a) in respect of which the requirements of regulation 13(7)(c) and (d) are met (agreement that Scheme to cover existing claim not met before membership ceases); or
- (b) to which regulation 14 applies (liabilities of former members).

Commencement Information

I3 Reg. 15 in force at 1.8.2018, see [reg. 1\(2\)](#)

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

16.—(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 13(1) or 14(1) (payments out of the Scheme in respect of members and former members).

(2) In determining the amount of the payment to be made in the circumstances specified in each of paragraphs (3) to (9), 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 member, 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 member.

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(4) Where legal proceedings are the subject of a settlement agreed to by the member, 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 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, those matters are the amount of any legal and associated costs incurred by or on behalf of the member 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 a member 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 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, those 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.

(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, 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 member in connection with the claim.

(9) In respect of any contract under which a member has obligations, those matters are the amount—

- (a) payable by the member under that contract; and
- (b) of any legal or associated costs incurred by or on behalf of the member and by the other contracting party.

(10) In this regulation “member” has the same meaning as in regulation 15(2).

Commencement Information

I4 [Reg. 16](#) in force at 1.8.2018, see [reg. 1\(2\)](#)

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Power to make payments on account

17.—(1) Where, in any membership year, a payment falls to be made by a member in connection with a claim in respect of which an amount may become payable by the Secretary of State under regulation 16 (determining the amount of any payment to be made out of the Scheme), the Secretary of State may make a payment on account of that amount.

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

(3) Where the amount of any payment on account exceeds the amount subsequently determined under regulation 16 as being the amount of payment to be made in connection with the claim, the excess is recoverable from the member.

Commencement Information

I5 [Reg. 17](#) in force at 1.8.2018, see [reg. 1\(2\)](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 4(1)(m) and word inserted by [S.I. 2023/948 reg. 4\(2\)\(b\)](#)
- reg. 5(B1) inserted by [S.I. 2023/948 reg. 4\(3\)](#)