
STATUTORY INSTRUMENTS

2018 No. 756

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

PART 2

Liabilities to which the Scheme applies

Liabilities of members

9.—(1) The Scheme applies to any liability which a member of the Scheme owes to any third party in respect of loss, damage or injury arising out of an act or omission in the course of the carrying out of any relevant function of that member which is a qualifying liability.

(2) A “qualifying liability” is—

- (a) a liability in respect of personal injury sustained by a relevant person arising out of and in the course of his or her employment or engagement by the member;
- (b) a liability in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care or breach of any statutory duty in each case owed by the member to any person in consequence of any act or omission to act on the part of any relevant person;
- (c) a contractual liability in respect of personal injury to any person or damage to any property of any third party;
- (d) a liability arising out of the act or omission to act on the part of a relevant person which is dishonest, fraudulent, criminal or malicious;
- (e) a liability arising out of the making or publishing of any defamatory statement (whether in written or oral form) by the member or a relevant person;
- (f) a contractual liability to make payment to any relevant person in connection with any personal injury sustained by the relevant person directly as a result of assault;
- (g) any legally enforceable liability in respect of or consequent upon personal injury or loss arising out of or in connection with any tortious or other wrongful act committed by any relevant person;
- (h) a liability arising out of any indemnity properly given by a member to any board member;
- (i) any liability in respect of any consequential or ancillary expense which arises in connection with any liability referred to in any of the above categories.

(3) For the purposes of paragraph (2)—

- (a) “board member” means, in respect of a member, any member of the board of that member whether or not that person is an employee of that member;
- (b) “personal injury” includes bodily injury, death, disease, illness and nervous shock and is to be treated as including wrongful arrest, detention, imprisonment and malicious prosecution;

Changes to legislation: *The National Health Service (Liabilities to Third Parties Scheme) (England) Regulations 2018, Section 9 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) “relevant person” means, in respect of a member, a person employed or engaged by that member and includes an employee or agent of the person so engaged.

(4) Where the liability meets the criteria in—

(a) paragraph (1); and

(b) regulation 5(1) of the National Health Service (Existing Liabilities Scheme) (England) Regulations 2018(1);

the Secretary of State must determine whether the Scheme or the scheme provided for in the Regulations referred to in sub-paragraph (b) is to apply.

(5) Where the liability meets the criteria in—

(a) paragraph (1); and

(b) regulation 8(1) of the National Health Service (Clinical Negligence Scheme) Regulations 2015(2),

the Secretary of State must determine whether the Scheme or the scheme provided for in the Regulations referred to in sub-paragraph (b) is to apply.

(6) The Secretary of State and a member may agree—

(a) a minimum level of liability which must arise before a payment or other provision in respect of such a liability may be made under the Scheme; and

(b) an amount which is to be the maximum amount of any payment or other provision in respect of such a liability which may be made under the Scheme.

Commencement Information

II [Reg. 9](#) in force at 1.8.2018, see [reg. 1\(2\)](#)

(1) [S.I. 2018/755](#).
(2) [S.I. 2015/559](#).

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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\(3\)](#)