

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2000 No. 54**

**The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000**

**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 Scottish Ministers may, subject to paragraph (2), pay to that member an amount to be determined by them in accordance with paragraph (3).

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

(a) unless the Scottish Ministers are satisfied that, within 2 months of the date when the member paid the claim, the member or its agent informed the Scottish Ministers or the manager of the Scheme that the claim had been paid;

(b) except to such extent as the Scottish Ministers may determine, in respect of—

(i) any payment agreed by or made, or liability admitted by any member of an amount in excess of such sum as may from time to time be determined by the Scottish Ministers without their prior written consent;

(ii) subject to sub-paragraph (iii) any liability of an amount which is less than that for the time being agreed between the Scottish Ministers and the member as the minimum amount of any liability in respect of which a payment is to be made under the Scheme;

(iii) a cumulative amount which is less than that for the time being agreed between the Scottish Ministers and the member as the maximum cumulative amount which will not be payable in any period of one year under the Scheme for liabilities under paragraph (ii) and financial losses under regulation 9(4)(a); and

(iv) any liability where the member has not complied with any conditions imposed by the Scottish Ministers relating to that liability; and

(c) in respect of any liability which the Scottish Ministers determine is not eligible for payment under the Scheme.

(3) The amount of any payment to a member under paragraph (1) shall be determined by reference to—

(a) where an award of damages is made against the member by a Court, the amount of that award, together with the amounts of any legal and associated expenses awarded to the claimant and of any such reasonable expenses 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 by the member in relation to the claim;

(ii) the member's contribution towards any legal and associated expenses incurred by or on behalf of the claimant; and

(iii) any such reasonable expenses 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 expenses incurred by or on behalf of the

member, to the extent that such expenses are not recoverable from the claimant or from the Scottish Legal Aid Board under section 19 of the Legal Aid (Scotland) Act 1986(1);

- (d) where, otherwise than in the course of legal proceedings a member has agreed—
  - (i) to make a payment in settlement of a claim, the amount of that payment; and
  - (ii) to make any contribution towards the reasonable legal or associated expenses 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 reasonable 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 reasonable legal or associated expenses incurred by either party in connection with the claim.

(4) Where in any membership year, a member suffers a financial loss of a kind described in regulation 4(4), the Scottish Ministers may, subject to paragraph (5), pay to that member the amount of the financial loss.

(5) No payment shall be made under paragraph (4) except to such extent as the Scottish Ministers may determine, in respect of—

- (a) subject to sub-paragraph (b) any financial loss of an amount which is less than that for the time being agreed between the Scottish Ministers and the member as the minimum amount of any financial loss in respect of which a payment is to be made under the Scheme;
- (b) a cumulative amount which is less than that for the time being agreed between the Scottish Ministers and the member as the maximum cumulative amount which will not be payable in any period of one year under the Scheme for liabilities under regulation 9(2)(b)(ii) and financial losses under paragraph (a);
- (c) any financial loss where the member has not complied with any conditions imposed by the Scottish Ministers relating to that financial loss; and
- (d) any financial loss which the Scottish Ministers determine is not eligible for payment under the Scheme.