

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2015 No. 102**

**The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2015**

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

2.—(1) The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000(1) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2)—

(a) after the definition of “the Act”, insert—

““applicant” means a body which makes an application under regulation 3A;

“enactment” includes an Act of the Scottish Parliament and an instrument made under an Act of the Scottish Parliament;”;

(b) after the definition of “following year”, insert—

““integration joint board” means an integration joint board established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014(2);”;

(c) in the definition of “member”, after “3”, insert “or 3A(2)”;

(d) for the definition of “relevant function”, substitute—

““relevant function”—

(a) in the case of a Health Board means—

(i) a function providing services in Scotland for the purposes of the Act;

(ii) the power, conferred by section 7(2)(d) of the Health and Medicines Act 1988(3), to supply services to any person and to provide new services, to the extent that it is exercised for the purpose of providing forensic services in Scotland; and

(iii) a function which is an integration function within the meaning given by section 85B(2D)(4) of the Act, subject to the modification that references to “the authority” are to be read as references to the Health Board;

(b) in the case of an integration joint board means—

(i) a function conferred on the integration joint board by an enactment; and

---

(1) S.S.I. 2000/54, as amended by S.S.I. 2000/168; S.S.I. 2002/239; S.S.I. 2008/60 and S.S.I. 2011/211.

(2) 2014 asp 9.

(3) 1988 c.49. The powers conferred by section 7 may only be exercised in order to make more income available for improving the health service. Section 7 confers powers on the Secretary of State which are transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Directions under section 7(3) (HDL 2005/59) provide for the exercise of those powers by Health Boards constituted under the National Health Service (Scotland) Act 1978.

(4) Section 85B(2D) was inserted by the Public Bodies (Joint Working) (Scotland) Act 2014, Section 65.

- (ii) a function delegated to the integration joint board by virtue of an integration scheme prepared in pursuance of section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014;
  - (c) in the case of a local authority means a function which is an integration function within the meaning given by section 85B(2D) of the Act; and
  - (d) in the case of any other member a function providing services in Scotland for the purposes of the Act”.
- (3) After regulation 3 (members of the scheme) insert—

**“Applications by eligible bodies to be members of the Scheme**

**3A.—**(1) A body described in paragraph (2) may make an application to be a member of the Scheme (“an application”) in writing to the Scottish Ministers.

(2) The bodies are—

- (a) an integration joint board;
- (b) a local authority.

(3) An application must include information on—

- (a) the nature of the applicant’s relevant functions;
- (b) the number of employees of the applicant who are engaged in its performance of a relevant function, and the qualifications and experience of those employees; and
- (c) the nature and extent of any claims made against the applicant in the past 5 years (or, where the applicant has performed a relevant function for a period which is shorter than 5 years, that shorter period) in respect of personal injuries sustained by third parties as a result of the carrying out of any relevant function.

(4) In the case of an applicant which is an integration joint board, the reference to “employees” in paragraph (3)(b) includes the chief officer of the integration joint board.

(5) The Scottish Ministers may require an applicant to provide such further information as they consider necessary in order to notify the applicant of the information referred to in paragraph (6)(b).

(6) On receipt of an application, the Scottish Ministers must, at least 30 days before the date on which the applicant’s membership of the Scheme is to take effect, notify the applicant of—

- (a) the date on which the applicant’s membership of the Scheme is to take effect; and
- (b) the way in which the Scottish Ministers consider that the applicant’s contributions to the Scheme would be likely to be determined under regulation 7(2).

(7) The date notified under paragraph (6)(a) must be the 1st of April of the year following the calendar year in which the application is made.

(8) Paragraph (7) does not apply in the case of an application which is made before 31st October 2016.

(9) An applicant may withdraw an application by writing to the Scottish Ministers within 30 days of the notification under paragraph (6) being sent to the applicant.

**Termination of membership of the Scheme**

**3B.—**(1) This regulation applies to a body which is a member by virtue of regulation 3A.

(2) The Scottish Ministers may give notice in writing of their intention to terminate a body’s membership of the Scheme if any payment which the body is required to pay to the Scottish

Ministers by virtue of regulation 7 remains unpaid for a period of at least 30 days from the date on which the payment should have been made.

(3) If a payment referred to in paragraph (2) remains unpaid for 30 days after a notice under that paragraph is issued the Scottish Ministers may issue a notice of termination to the body.

(4) The effect of a notice under paragraph (3) is that the body will cease to be a member of the scheme on the day after the day on which the notice is issued.

(5) Subject to paragraph (6) a body to which this regulation applies may terminate its membership of the Scheme with effect from 31st March in any year by giving not less than 12 months' notice in writing to the Scottish Ministers.

(6) A body may not give notice under paragraph (5) unless it has been a member of the Scheme for at least 3 years.”.

(4) In regulation 4 (liabilities and financial losses to which the Scheme applies)—

(a) after paragraph (2) insert—

“(2A) Paragraph (2) applies, in respect of a body which is a member by virtue of regulation 3A, as if the reference to a “claim” was a reference to a claim arising in consequence of any act or omission taking place on or after the date on which the body became a member of the Scheme.”;

(b) after paragraph (4) insert—

“(4A) Paragraphs (3) and (4) apply, in respect of a body which becomes a member by virtue of regulation 3A, as if references to “1st April 2000” were references to the date on which the body became a member of the Scheme.”;

(c) in paragraph (5), in the definition of “board member” at the end insert “and in respect of a member which is a local authority, any councillor of that local authority.”.

(5) In regulation 7(2), (contributions to the Scheme) at the end insert—

“(e) in the case of a body which is a member by virtue of regulation 3A, the nature and extent of any claims not falling within the amount referred to in paragraph (a) made against the body in the past 5 years (or, where the body has performed a relevant function for a period which is shorter than 5 years, that shorter period) in respect of personal injuries sustained by third parties as a result of the carrying out of any relevant function.”.