
STATUTORY INSTRUMENTS

1997 No. 527

**NATIONAL HEALTH
SERVICE, ENGLAND AND WALES**

**The National Health Service (Clinical Negligence
Scheme) (Amendment) Regulations 1997**

<i>Made</i>	- - - -	<i>27th February 1997</i>
<i>Laid before Parliament</i>		<i>27th February 1997</i>
<i>Coming into force</i>	- -	<i>21st March 1997</i>

The Secretary of State for Health, in exercise of powers conferred on him by section 126(4) of the National Health Service Act 1977(1) and section 21 of the National Health Service and Community Care Act 1990(2) and of all other powers enabling him in that behalf, and with the consent of the Treasury, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 1997 and shall come into force on 21st March 1997.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Clinical Negligence Scheme) Regulations 1996(3).

Amendment of regulation 1 of the principal Regulations

2. In regulation 1(2) of the principal Regulations (interpretation), for the definition of “relevant function” there shall be substituted the following:—

““relevant function” means the function of providing services in England for the purposes of the National Health Service Act 1977 or by virtue of section 7 of the Health and Medicines Act 1988(4) or under paragraph 14 or 15 of Schedule 2 to the Act;”.

(1) 1977 c. 49; section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”).
(2) 1990 c. 19. See, for the definition of “regulations”, section 128(1) of the 1977 Act, as amended by section 26(2)(i) of the 1990 Act. Section 21 of the 1990 Act was amended by paragraph 79 of Schedule 1 to the Health Authorities Act 1995 (c. 17).
(3) S.I. 1996/251.
(4) 1988 c. 49; section 7 was amended by paragraph 34 of Schedule 9 to the 1990 Act.

Amendment of regulation 3 of the principal Regulations

3. In regulation 3(1) of the principal Regulations (eligible bodies) the words from “whose functions” to the end of the paragraph shall be omitted.

Amendment of regulation 9 of the principal Regulations

4. In regulation 9 of the principal Regulations (payments under the Scheme)—

(a) in paragraph (1), for the words “a qualifying liability falls to be met by any member” there shall be substituted the words “a payment falls to be made by any member in connection with a claim in respect of a qualifying liability.”;

(b) in paragraph (2)(d)—

(i) after head (ii) there shall be inserted the following new head:—

“(iia) any payment which falls to be made by a member in consequence of that member having agreed, without the prior consent in writing of the Secretary of State, 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.”;

(ii) in head (iii), after the word “payment” there shall be inserted the words “, other than one to which head (iia) above applies.”;

(c) in paragraph (3) for sub-paragraph (d) there shall be substituted the following sub-paragraphs:—

“(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,

(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 the member in connection with the claim; or

(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 either party in connection with the claim.”.

21st February 1997

Gerald Malone
Minister of State,
Department of Health

We consent,

27th February 1997

Roger Knapman
Richard Ottaway
Two of the Lords Commissioners of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Clinical Negligence Scheme) Regulations 1996 (“the principal Regulations”) which established a Scheme whereby NHS trusts and certain other bodies providing services under the National Health Service Act 1977 may make provision for meeting liabilities to third parties in connection with personal injury arising out of negligence in the carrying out of the bodies' functions.

The definition of “relevant function” in regulation 1(2) of the principal Regulations (interpretation) is amended to include, among the services to which the Scheme applies, services provided in exercise of a member’s powers of income generation (regulation 2), and a consequential change is made in regulation 3 (eligible bodies). Regulation 9 of the principal Regulations (payments under the Scheme) is amended to make provision in relation to payments under the Scheme in connection with legal and other costs, and where a member has agreed to be bound by the decision of an arbitrator in connection with a claim against the member in relation to a qualifying liability (regulation 4).