
STATUTORY INSTRUMENTS

2018 No. 756

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

PART 2

Payments out of the Scheme

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.

(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.

Changes to legislation: *The National Health Service (Liabilities to Third Parties Scheme) (England) Regulations 2018, Section 16 is up to date with all changes known to be in force on or before 05 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*

(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

II [Reg. 16](#) 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\(3\)](#)