SCOTTISH STATUTORY INSTRUMENTS

2000 No. 54

NATIONAL HEALTH SERVICE

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

Made - - - -	*9th March 2000*
Laid before the Scottish Parliament - - - -	*10th March 2000*
Coming into force - -	*1st April 2000*

The Scottish Ministers, in exercise of powers conferred upon them by sections 2(5), 85B, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(**1**), hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 and shall come into force on 1st April 2000.

(2) In these Regulations–

"the Act" means the National Health Service (Scotland) Act 1978;

"member" means a body listed in regulation 3 which is a member of the Scheme;

"membership year" means any period of 12 months beginning 1st April during any part of which that body is a member of the Scheme;

"preceding year" means, in relation to a membership year, the period of 12 months immediately preceding that membership year;

"qualifying liability" means a liability of a clinical kind described in regulation 4(2) or a non-clinical kind described in regulation 4(3);

"relevant function" means a function providing services in Scotland for the purposes of the National Health Service (Scotland) Act 1978;

(**1**) 1978 c. 29; section 85B was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 41 and was amended by the Health Act 1999 (c. 8), ("the 1999 Act") Schedule 4, paragraph 56; section 105(7), which contains provisions relevant to the making of Regulations, was amended by the Health Service Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and by the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

"the Scheme" means the Clinical Negligence and Other Risks Indemnity Scheme established by regulation 2;

"Special Health Boards" means the Clinical Standards Board for Scotland, the Health Education Board for Scotland, the Health Technology Board for Scotland, the Scottish Ambulance Service Board and the State Hospitals Board for Scotland and any other body established as a Special Health Board by order under the Act;

(3) In these Regulations, a reference to a numbered regulation is a reference to the regulation which bears that number. A reference in a regulation to a numbered paragraph is a reference to the paragraph which bears the number in that regulation.

Establishment of the Scheme

2. There is hereby established the Clinical Negligence and Other Risks Indemnity Scheme where a member shall in accordance with the following provisions of these Regulations, make provision to meet qualifying liabilities and financial losses.

Members of the Scheme

3. The following bodies shall be members of the Scheme:

(a) National Health Service Trusts;

(b) Health Boards;

(c) Special Health Boards;

(d) the Common Services Agency;

(e) the Mental Welfare Commission for Scotland; and

(f) the Scottish Council for Postgraduate Medical and Dental Education.

Liabilities to which the Scheme applies

4.—(1) The Scheme applies in accordance with the following provisions of this regulation.

(2) Any liability to any person arising from a claim to which a member is subject in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care owed by that body to any person in connection with the diagnosis of any illness, or the care or treatment of any person, in consequence of any act or omission to act on the part of a person employed or engaged by a member in connection with any relevant function of that member.

(3) Any liability to any person arising from an incident occurring–

(a) before 1st April 2000 except where the member had before that date a policy of insurance covering liability in respect of that incident;

(b) after 1st April 2000 to which a member or relevant person is subject in respect of loss, damage or injury which arises out of or in connection with any breach arising from–

(i) a liability in respect of personal injury and any consequential loss sustained by a relevant person arising out of and in the course of his or her employment or engagement by the member;

(ii) 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 or breach of a duty under the Occupiers' Liability (Scotland) Act 1960(**2**) 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;

(**2**) 1960 c. 30.

(iii) a liability in respect of personal injury and any consequential loss to any person or damage to any property of any person or other wrongful act committed by any relevant person;

(iv) 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;

(v) a liability arising out of the making or publishing of any defamatory statement by the member or a relevant person;

(4) Any direct financial loss sustained at any time after 1st April 2000 following a single act or omission or series of related acts of fraud or dishonesty committed by a relevant person acting alone or with others, or of theft committed by any other person.

(5) In this regulation–

"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;

"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;

"relevant person" means, in respect of a member, a person employed or engaged by that member acting in the course of their employment or engagement.

Administration and management of the Scheme

5. The Scheme shall be administered by the Scottish Ministers who shall from time to time appoint, on such terms and conditions as they may determine, such person or body to manage the Scheme and such person or body so appointed shall be known as the manager of the Scheme.

Provision of information

6. A member or its agents shall at such time and in such manner as Scottish Ministers or the manager of the Scheme may require, provide the Scottish Ministers or the manager of the Scheme with such information as they may request in writing concerning–

(a) the nature of any relevant function;

(b) the number of employees who are engaged in the performance of any relevant function, or such part of any relevant function;

(c) the nature and extent of any claims made against the member in respect of personal injuries sustained by third parties as a result of the carrying out by the member any relevant function;

(d) the nature and extent of any claims made against the member; and

(e) any event of which the member is aware which it considers might give rise to a qualifying liability;

(f) such other information as may be requested.

Contributions to the Scheme

7.—(1) A member shall pay to the Scottish Ministers in respect of each membership year such amount as shall be determined in relation to that member, and notified to it, in accordance with this regulation.

(2) When determining in relation to any member the amount of the payment to be made under paragraph (1), the Scottish Ministers shall have regard to–