STATUTORY INSTRUMENTS

2006 No. 2390

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2006

Made - - - -	*6th September 2006*
Laid before Parliament	*8th September 2006*
Coming into force - -	*1st October 2006*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 126(4) of the National Health Service Act 1977(**a**) and section 21 of the National Health Service and Community Care Act 1990(**b**) ("the 1990 Act"). In accordance with section 21(1) of the 1990 Act, the consent of the Treasury to the making of the regulations has been given.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2006 and shall come into force on [1st October] 2006.

(2) These Regulations apply in relation to England only.

(3) In these Regulations, "the CNST Regulations" means the National Health Service (Clinical Negligence Scheme) Regulations 1996(**c**).

Amendment of regulation 4 of the CNST Regulations

2. In regulation 4 (liabilities to which the Scheme applies) of the CNST Regulations, at the end add—

"(3) The Scheme also applies to any liability in tort under the law of England and Wales owed to a third party by a person specified in paragraph (6) ("X") in respect of or consequent upon personal injury or loss as specified in paragraph (4).

(4) The personal injury or loss referred to in paragraph (3) is personal injury or loss arising out of or in connection with any breach of a duty of care owed by X to any person, in consequence of any act or omission to act specified in paragraph (5), in connection with—

(a) the diagnosis of any illness; or

(**a**) 1977 c.49. Section 126(4) was amended by the National Health Service and Community Care Act 1990 (c.19), section 65(2), the Health Act 1999 (c.8) ("the 1999 Act"), Schedule 4, paragraph 37, the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 13(b), the National Health Service Reform and Healthcare Professions Act 2002 (c.17) ("the 2002 Act"), section 6(3)(c) and Schedule 8, paragraph 10(a) and the Health and Social Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act"), Schedule 11, paragraph 38 and Schedule 14, Part 4.

(**b**) 1990 c.19. Section 21 was amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 79, the 1999 Act, Schedule 4, paragraph 81, the 2002 Act, Schedule 1, paragraph 43 and Schedule 5, paragraph 33, the 2003 Act, Schedule 4, paragraph 84, Schedule 13, paragraph 6 and Schedule 14, Part 7, the Health Protection Agency Act 2004 (c.??), Schedule 3, paragraph 11 and S.I. 2001/3649 and 2004/2987.

(**c**) S.I. 1996/251, amended by S.I. 2002/1073; there are other amending instruments but none is relevant.

(b) the care or treatment of any patient.

(5) The act or omission referred to in paragraph (4) is an act or omission to act in connection with the provision of services under the 1977 Act on the part of—

(a) X; or

(b) a person employed or engaged by X.

(6) Subject to paragraph (7), the person referred to in paragraph (3) is a person—

(a) engaged by a Primary Care Trust to provide services under the 1977 Act which, immediately before that engagement, the Primary Care Trust was providing itself; and

(b) which has satisfied the Secretary of State that, were it a body falling within regulation 3 (eligible bodies), it would meet the requirements to be admitted as a member of the Scheme.

(7) Paragraph (6) does not apply in the case of primary medical or dental services which, immediately before the engagement referred to in that paragraph, the Primary Care Trust was providing under section 16CA(2) (primary dental services), 16CC(2)(a) (primary medical services) or 28C (personal medical or dental services) of the 1977 Act.

(8) For the purposes of the Scheme and these Regulations, the liabilities of a Primary Care Trust shall be taken to include the liabilities referred to in paragraph (3) of a person referred to in paragraph (6) whom that Primary Care Trust has engaged to provide services and references in these regulations to the liabilities of a member or eligible body shall be construed accordingly.

(9) In this regulation, "the 1977 Act" means the National Health Service Act 1977.".

Amendment of regulation 9 of the CNST Regulations

3. In regulation 9 (payments under the Scheme) of the CNST Regulations, at the end add—

"(5) In this regulation, any references to—

(a) payments made or falling to be made or sums payable by, to or on behalf of a member;

(b) claims made against or falling to be met by a member;

(c) proceedings conducted by a member;

(d) admissions, agreements or compromises made by a member;

(e) compliance by a member with conditions imposed by the Secretary of State;

(f) the award of damages against a member;

(g) legal and associated costs incurred by or on behalf of a member;

(h) the contribution of a member towards legal costs; or

(i) a decision by a member to make a payment into court,

shall, in appropriate cases, be construed as including a reference to all such matters in respect of a person referred to in regulation 4(6).".

Signed by authority of the Secretary of State for Health

Andrew Burnham
Minister of State
Department of Health

6th September 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further 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 NHS services may make provision for meeting liabilities to third parties in connection with personal injury arising out of negligence in the carrying out of their functions.

Regulation 2 amends regulation 4 of the principal Regulations to extend the liabilities to which the scheme applies to include certain liabilities incurred by third parties whom a PCT has engaged to provide services under the National Health Service Act 1977 which, immediately before that engagement, it was providing itself. It further provides that for the purposes of the Scheme, such liabilities shall be treated as if they were liabilities of the PCT which has engaged the person.

Regulation 3 makes consequential amendments to the regulation relating to payments under the Scheme to allow such payments to be made in cases relating to the liabilities to which the Scheme is extended by these Regulations.

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