STATUTORY INSTRUMENTS

2014 No. 933

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2014

Made - - - -	*3rd April 2014*
Laid before Parliament	*9th April 2014*
Coming into force - -	*1st May 2014*

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 71 and 272(7) and (8) of the National Health Service Act 2006(**a**).

These Regulations are made with the consent of the Treasury in accordance with section 71(1) of that Act.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2014 and come into force on 1st May 2014.

(2) These Regulations apply to England only.

(3) In these Regulations "the Principal Regulations" means the National Health Service (Clinical Negligence Scheme) Regulations 1996(**b**).

Amendment of regulation 1 of the Principal Regulations

2. In Regulation 1 (citation, commencement and interpretation) of the Principal Regulations, in paragraph (2)—

(a) after the definition of "the 2006 Act" insert—

""the 2012 Act" means the Health and Social Care Act 2012;"(**c**);

(b) for the definition of "relevant function", substitute—

""relevant function" means—

(a) arranging for the provision of, or providing services for the purposes of, or exercising functions in relation to, the health service;

(**a**) 2006 c.41. Relevant amendments to section 71 were made by sections 95 and 142 of, and paragraph 85 of Schedule 5 to, the Health and Social Care Act 2008 (c.14) and sections 55(1), 56(4), 249(1) and 277 of, and paragraph 18 of Schedule 4, paragraphs 17 and 19 of Schedule 7, paragraph 10 of Schedule 17, and paragraph 9 of Schedule 19 to, the Health and Social Care Act 2012 (c.7) ("the 2012 Act").

(**b**) S.I 1996/251, relevant amendments were made by S.I. 1997/527, 1999/1274, 2000/2341, 2002/1073 and 2469, 2004/696, 2005/604, 2006/3087, 2012/1641 and 2013/497.

(**c**) 2012 c.7.

(b) exercising powers under, or by virtue of, section 7 of the Health and Medicines Act 1988(**a**);

(c) exercising powers under section 13W, 14Z5, 43(3) or 44 of, or paragraphs 19 and 20 of Schedule 4 to, the 2006 Act(**b**);

(d) exercising powers under section 243 or 270 of the 2012 Act;

(e) exercising powers by virtue of section 240(1)(a) or (b) of the 2012 Act;".

Amendment of regulation 3 of the Principal Regulations

3. In Regulation 3(1) (eligible bodies) of the Principal Regulations, omit sub-paragraph (e)(**c**).

Amendment of regulation 4 of the Principal Regulations

4. In Regulation 4 (liabilities to which the Scheme applies) of the Principal Regulations, after paragraph (1A) insert—

"(1B) For the purposes of paragraph (1) (and with effect from 1st May 2014), tortious liability owed by a member, arising on or after 1st March 1996 and before 1st May 2014 and which—

(a) before 1st May 2014 was not tortious liability arising in connection with a relevant function of that member; but

(b) would have been tortious liability owed by a member arising in connection with a relevant function of that member, had the change to the definition of "relevant function" in regulation 1(2) that was made on 1st May 2014 been made before the tortious liability arose,

is tortious liability owed by a member arising in connection with any relevant function of that member.".

Signed by authority of the Secretary of State for Health.

Dan Poulter
Parliamentary Under-Secretary of State
Department of Health

18th March 2014

We consent,

Mark Lancaster
David Evennett
Two of the Lords Commissioners of Her Majesty's Treasury

3rd April 2014

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 certain bodies as set out in the Regulations may make provision for meeting liabilities to third parties in connection with personal injury or loss arising out of negligence in the carrying out of their functions.

(**a**) 1988 c.49. Relevant amendments to section 7 were made by section 66(1) of, and paragraph 34 of Schedule 9 to, the National Health Service and Community Care Act 1990 (c.19), section 5 of the Health and Social Care Act 2001 (c.15), section 2 of, and paragraphs 115 and 116 of Schedule 1 to, the National Health Service (Consequential Provisions) Act 2006 (c.43), section 55(2) of, and paragraph 45 of Schedule 5 to, the 2012 Act, and article 2(1) of, and paragraph 99 of Schedule 1 to S.I. 2009/1941.

(**b**) Sections 13W and 14Z5 of the National Health Service Act 2006 were inserted by sections 23(1) and 26 (respectively) of the 2012 Act. Section 43(3) was amended by section 164 of the 2012 Act and relevant amendments to section 44 were made by section 165(1) and (2) of the 2012 Act.

(**c**) The Health Protection Agency was abolished by section 56 of the 2012 Act.

Regulation 2 amends the Principal Regulations by updating the definition of relevant function. The new definition corresponds to how services are now commissioned or provided for the purposes of the health service and covers the activities of bodies exercising other functions in relation to the health service and other powers to generate income.

Regulation 3 amends the Principal Regulations to remove the Health Protection Agency from the list as that Agency has been abolished.

Regulation 4 amends the Principal Regulations to provide that where qualifying liabilities arise in connection with a member's relevant function before the coming into force of the new definition of 'relevant function' contained in these Regulations, they will be treated with effect from 1st May 2014 as if the new definition had been in force before the liabilities arose.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK2014040710 04/2014 19585

http://www.legislation.gov.uk/id/uksi/2014/933

ISBN 978-0-11-111391-2

9 780111 113912