STATUTORY INSTRUMENTS

1999 No. 874

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Property Expenses Scheme) Regulations 1999

Made - - - -	*17th March 1999*
Laid before Parliament	*18th March 1999*
Coming into force	*1st April 1999*

The Secretary of State for Health, in exercise of 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)** 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 (Property Expenses Scheme) Regulations 1999, and shall come into force on 1st April 1999.

(2) In these Regulations, unless the context otherwise requires–

"the Act" means the National Health Service and Community Care Act 1990;

"an eligible body" means a body of a kind described in regulation 3;

"member" means an eligible body which is a member of the Scheme;

"membership year" means, in relation to an eligible body, any period of 12 months beginning on 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 expense" means an expense of a kind described in regulation 4(1) and (2);

"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**(c)** or under paragraph 14 or 15 of Schedule 2 to the Act;

"the Scheme" means the Property Expenses Scheme established by regulation 2.

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

(a) 1977 c. 49 ("the 1977 Act"); section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act").

(b) 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 is amended by paragraph 79(a) of Schedule 1 to the Health Authorities Act 1995 (c. 17).

(c) 1988 c. 49.

Establishment of scheme

2. There is hereby established a scheme, to be known as the Property Expenses Scheme, whereby an eligible body may, in accordance with the following provisions of these Regulations, make provision to meet qualifying expenses.

Eligible bodies

3. A body is eligible to participate in the Scheme if it is–

(a) a National Health Service trust,

(b) a Health Authority whose area is situated in England, or

(c) a Special Health Authority.

Expenses to which the Scheme applies

4.—(1) The Scheme applies to any expense which is incurred by a member–

(a) arising from any loss or damage to its property; and

(b) which is not an expense arising from a liability which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996**(a)**, the National Health Service (Existing Liabilities Scheme) Regulations 1996**(b)** or the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999**(c)**.

(2) Without prejudice to the generality of paragraph (1), the expenses to which the Scheme applies include expenses arising from–

(a) loss of or damage to property of the member or for which the member was responsible in the course of a relevant function;

(b) loss of use of equipment or other property necessitating immediate repair or replacement of the same before the member can resume normal working;

(c) loss or damage to property arising from a deliberate act of fraud or dishonesty; and

(d) any consequential or ancillary expense which arises in connection with any expense referred to in any of the above categories or in paragraph (1).

(3) The Secretary of State and a member may agree–

(a) a minimum level of expense which must arise before a payment or other provision in respect of such an expense may be made under the Scheme; and

(b) an amount which is to be the maximum amount of any payment or other provision in respect of such an expense which may be made under the Scheme.

Administration of the Scheme

5. The Scheme shall be administered by the Secretary of State.

Membership of the Scheme

6.—(1) An eligible body which, before 31st March 1999, gave notice in writing to the Secretary of State of its wish to participate in the Scheme with effect from 1st April 1999, or such later date being not later than 31st March 2000 as the Secretary of State may determine, shall be a member of the Scheme with effect from 1st April 1999, or, as the case may be, such later date.

(2) An eligible body to which paragraph (1) does not apply which wishes to participate in the Scheme during any period beginning after 31st March 2000 shall apply to the Secretary of State to be admitted as a member.

(3) An application under paragraph (2) shall–

(a) be made in writing in such form as the Secretary of State may require; and

(b) be made no later than 1st October in the calendar year preceding that in which the eligible body wishes its first membership year to begin, or such later date as the Secretary of State may agree in relation to any specific eligible body.

(a) S.I. 1996/251, as amended by S.I. 1997/527.
(b) S.I. 1996/686, as amended by S.I. 1997/526.
(c) S.I. 1999/873.

(4) An applicant shall provide such information as the Secretary of State may in writing request it to provide, as respects–

(a) the nature of its relevant functions;

(b) the number of employees of the applicant who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees;

(c) the nature and extent of qualifying expenses incurred by the applicant and the date of that incurring; and

(d) such other information as he may request in connection with the application.

(5) The Secretary of State shall, having regard to the information provided by the applicant under this regulation, and to such other factors as he considers to be material to the application, determine whether or not the applicant should be admitted as a member, and shall notify the applicant of his decision in writing.

(6) Where the application of an eligible body has been successful under paragraph (2), that body shall be admitted as a member with effect from the beginning of the membership year next following the Secretary of State's decision.

(7) In this regulation "applicant" means an eligible body which has applied under paragraph (1) or (2) to be admitted as a member, and "application" shall be construed accordingly.

Termination of membership

7.—(1) Subject to paragraph (2), a member may terminate its participation in the Scheme on 31st March in any year by giving not less than 12 months' notice in writing to that effect to the Secretary of State.

(2) A member's participation in the Scheme may not be terminated, by notice under paragraph (1)–

(a) where its membership takes effect on a date on or after 1st April 1999 and not later than 31st March 2000, before 31st March 2002; and

(b) in any other case, before the expiry of three consecutive membership years beginning on the date on which, by virtue of regulation 6(6), its membership takes effect.

(3) Where–

(a) any payment which a member is, by virtue of regulation 8 (contributions under the Scheme), liable to make to the Secretary of State has remained unpaid for a period of not less than 28 days beginning on the date on which the payment should have been made;

(b) a member has failed to provide, within 28 days, or such further period as the Secretary of State may in writing allow, of being requested to do so, any information which it is required by virtue of regulation 10 (provision of information) to provide; or

(c) the continued membership of any member would, in the opinion of the Secretary of State, be detrimental to the efficient administration of the Scheme or to the interests of other members,

the Secretary of State may give notice in writing to that member that its participation in the Scheme is to cease on a date falling not less than 28 days after that on which the notice is given, and that member's participation in the Scheme shall, unless the Secretary of State in writing withdraws the notice before that date, be terminated on that date.

Members' contributions to the Scheme

8.—(1) A member shall pay to the Secretary of State 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 Secretary of State shall have regard to–

(a) his estimate of the total amount which will, by virtue of regulation 9 (payments under the Scheme), fall to be paid during that membership year in respect of all qualifying expenses under the Scheme;

(b) the nature of the member's relevant functions;

(c) the number of employees of the member who are engaged in its performance of a relevant function, or any part of such a function, and the qualifications and experience of those employees;

(d) any agreement between the Secretary of State and the member that regulation 9(2)(b) or (c) is not to apply in relation to certain expenses incurred by the member; and

(e) his assessment of–

(i) the likely effectiveness of any steps being taken, or to be taken, by the member, as respects the manner in which it exercises any relevant function, with a view to reducing the incidence of qualifying expenses in connection with that function, and

(ii) the effectiveness of any such steps which may previously have been taken;

and may have regard to any other factor concerning that or any other member or the Scheme which he considers to be material to his determination.

(3) The Secretary of State shall give notice in writing to each member–

(a) as respects the membership year beginning on 1st April 1999, by no later than 31st May 1999; and

(b) as respects any other membership year, by no later than 31st October in the preceding year;

of the amount of the payment which it is to make under paragraph (1).

(4) Where, after notice has been given to a member in accordance with paragraph (3) in relation to any membership year, it appears to the Secretary of State that–

(a) the amount specified in the notice was–

(i) incorrectly calculated, or

(ii) determined by reference to information which was incorrect, or

(b) in the light of further information which has become available to him, the determination of that amount ought to be reconsidered,

he shall reconsider the determination and may, at any time before the end of the membership year to which it relates, revise the amount of the payment to be made under paragraph (1).

(5) Where an amount is revised under paragraph (4), the Secretary of State shall give to the member notice in writing of the revised amount, and that paragraph shall have effect in relation to that amount as if the notice had been given under paragraph (3).

(6) Any amount which falls to be paid by a member under paragraph (1) shall be paid by the member to the Secretary of State–

(a) in relation to the membership year beginning on 1st April 1999, by 30th June 1999 or by such later date as the Secretary of State may allow; and

(b) in relation to any other membership year, at such time, or in such instalments at such times, and in such manner–

(i) as the Secretary of State and the member may, by no later than 1st March immediately preceding the membership year in question, agree, or

(ii) in default of such agreement by that date, as the Secretary of State shall determine.

Payments under the Scheme

9.—(1) Where, in any membership year, a qualifying expense arises, the Secretary of State may, subject to paragraph (2)–

(a) make a payment in respect of that expense to the member, or

(b) make any other provision towards meeting that expense as he considers appropriate,

and the making, and the manner of making, of such payment or provision shall be agreed between the member and the Secretary of State or in default of such agreement determined by the Secretary of State.

(2) The Secretary of State shall not meet any expense of a member under paragraph (1)–

(a) which falls to be met after a member has given notice under regulation 7(1) to terminate its participation in the Scheme, unless the Secretary of State is satisfied that the expense would have fallen to be met at that time irrespective of the member's decision to give such notice;

(b) which has been incurred by an eligible body before the beginning of its first membership year, unless–

(i) some part of that expense was to be met by the member after the beginning of the first membership year,

(ii) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, of the relevant expense,

(iii) the Secretary of State agreed, no later than the beginning of the first membership year, that this sub-paragraph shall not apply so as to preclude the operation of paragraph (1) in respect of any particular expense in relation to which heads (i) and (ii) above are satisfied, and

(iv) that agreement remains in force at the date on which the relevant expense falls to be met by the member;

(c) which falls to be met after the date of the termination of the member's participation in the Scheme, unless–

(i) the relevant expense was incurred by the member prior to that date,

(ii) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, of the expense,

(iii) prior to the date of termination of the member's participation in the Scheme, the Secretary of State agreed that this sub-paragraph shall not apply so as to preclude the operation of paragraph (1) in respect of any expense in relation to which heads (i) and (ii) above are satisfied, and

(iv) that agreement remained in force at the date of termination;

(d) except to such extent as the Secretary of State may determine, in respect of–

(i) any expense of an amount which is less than that for the time being agreed between the Secretary of State and the Member as the minimum amount in respect of which payment may be made under the Scheme,

(ii) any expense to the extent that it exceeds such amount for the time being agreed by the Secretary of State and the Member as the maximum amount in respect of which a payment in respect of such an expense may be made under the Scheme, and

(iii) where the member has not complied with any condition imposed by the Secretary of State relating to that expense;

(e) which is of a nature in respect of which the Secretary of State has, in respect of all members and in respect of the relevant membership year, determined is not to be eligible for payment under the Scheme.

(3) In this regulation–

(a) "first membership year" means any membership year immediately following any period during which the eligible body was not a member;

(b) "member" includes an eligible body whose participation in the Scheme has been terminated and in respect of whom the conditions specified in paragraph (2)(c)(iii) and (iv) are satisfied; and

(c) "qualifying date" means the date falling 14 days after that on which the member became aware that a qualifying expense had arisen, or after that on which, in the opinion of the Secretary of State, the member ought to have become aware of that fact, whichever is the later.

Provision of information

10. A member shall, at such times and in such manner as the Secretary of State may require, furnish to the Secretary of State such information as he may request, about–

(a) the nature of any relevant function being carried on, or to be carried on, by the member in any membership year which the Secretary of State may specify;

(b) the number of employees of the member who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees; and

(c) any event of which the member is aware which it considers might give rise to a qualifying expense.

Availability of directions and guidance

11. The Secretary of State shall make available to eligible bodies, in such form and at such times as he may consider appropriate–

(a) any directions**(a)** he may give, to any body directed under section 21(4)(b) of the Act**(b)** to carry out functions in connection with the administration of the Scheme, with respect to the discharge by that body of those functions;

(b) any guidance he may give to that body as to the manner in which the Scheme is to be administered.

Signed by authority of the Secretary of State for Health

John Denham
Minister of State,
Department of Health

15th March 1999

We consent,

Clive Betts
David Jamieson
Two of the Lords Commissioners of
Her Majesty's Treasury

17th March 1999

(a) *See* section 17 of the National Health Service Act 1977 (c. 49), as substituted by paragraph 2 of Schedule 3 to the Health and Social Security Act 1984 (c. 48) and amended by sections 3(4) and 12(2) of the National Health Service and Community Care Act 1990 (c. 19); *see also* paragraph 8 of Schedule 1 to the Health Authorities Act 1995 (c. 17).

(b) *See* S.I. 1995/2800.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a Scheme (to be known as the "Property Expenses Scheme") whereby NHS trusts and certain other bodies providing services under the National Health Service Act 1977 may make provision for claiming reimbursement for expenses arising from any loss of or damage to their property (regulations 2, 3 and 4).

The Scheme is to be administered by the Secretary of State (regulation 5). Provision is also made for the admission of members to, and their withdrawal and expulsion from, the Scheme (regulations 6 and 7), for payments to members by the Secretary of State under the Scheme (regulations 8 and 9), for the provision of information by members to the Secretary of State for the purposes of the Scheme (regulation 10) and for the provision by the Secretary of State of certain information to members (regulation 11).

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The National Health Service (Property Expenses Scheme) Regulations 1999

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