These Notes refer to the Medical Innovation Bill [HL]
as introduced in the House of Lords on 5th June 2014 [HL Bill 4]

MEDICAL INNOVATION BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Medical Innovation Bill [HL] as introduced in the House of Lords on 5th June 2014. They have been prepared by Lord Saatchi in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

BACKGROUND AND SUMMARY

3. The Bill is designed to codify existing best practice in relation to decisions by medical practitioners to depart from standard practice and to administer innovative treatment. It allows the test of whether innovation is negligent to be applied at the time when the doctor is deciding whether to innovate. The existing common-law test of the support of a responsible body of medical opinion is expressly preserved. The Bill states that it is not negligent for a doctor to depart from standard practice where he or she does so by applying an accountable and transparent procedure that allows full consideration of all relevant matters.

COMMENTARY ON CLAUSES

Clause 1 – Responsible Innovation

4. Subsection (1) sets out the purpose of the Act: to encourage responsible innovation and to deter irresponsible innovation.

5. Subsection (2) declares that it is not in itself negligent for a doctor to depart from standard practice where the decision to innovate is taken in accordance with a process which is accountable, transparent and allows full consideration of all relevant matters.

6. Subsection (3) requires the process to include consultation with appropriately qualified colleagues, including a multi-disciplinary team if there is one. It also requires the doctor's responsible officer to be notified. The process must involve considering the patient's wishes and obtaining the informed consent required by law; it must also include substantive consideration of all relevant factors, including a risk-assessment.

7. Subsection (4)(a) clarifies that nothing in the clause allows a doctor to administer treatment to a patient for any purpose, including research, other than the best interests of that patient.

8. Subsection (4)(b) preserves the existing common law test in accordance with which the question whether a decision to innovate was negligent will be tested by the courts by reference to whether the decision would have been supported by a responsible body of medical opinion. The effect of the clause is therefore not to replace the common law test, but to provide an alternative statutory route that in effect applies the responsible-body test at the time when the doctor decides whether to innovate.

Clause 2 – Technical Provision

9. Clause 2 makes provision to commence the Bill immediately upon Royal Assent and to apply the Bill's provisions to England and Wales only.

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Ordered to be Printed,
5th June 2014

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by The Stationery Office Limited

£x.00

HL Bill 4–EN 55/4