

# **Health Service Safety Investigations Bill [HL]**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health and Social Care, have been ordered to be published separately as HL Bill 4—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Blackwood of North Oxford has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Health Service Safety Investigations Bill [HL] are compatible with the Convention rights.



# Health Service Safety Investigations Bill [HL]

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TO

Establish the Health Service Safety Investigations Body and to confer the function of carrying out investigations and other functions on that body; to make provision in connection with investigations carried out by that body; to make provision about medical examiners; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

**PART 1**

ESTABLISHMENT OF THE HEALTH SERVICE SAFETY INVESTIGATIONS BODY

**1 The Health Service Safety Investigations Body**

- (1) A body corporate called the Health Service Safety Investigations Body is established. 5
- (2) In this Act that body is referred to as “the HSSIB”.
- (3) Schedule 1 contains further provision about the HSSIB.

**PART 2**

THE INVESTIGATION FUNCTION OF THE HSSIB

**CHAPTER 1** 10

THE FUNCTION

**2 Investigation function**

- (1) The HSSIB has the function of investigating qualifying incidents that occur –
  - (a) during the provision of NHS services, or
  - (b) at premises at which NHS services are provided. 15

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- (2) The purpose of any such investigation is to identify risks to the safety of patients and to address those risks by facilitating the improvement of systems and practices in the provision of NHS services.
- (3) The function conferred by subsection (1) includes determining which qualifying incidents to investigate and in making that determination the HSSIB must apply the criteria published by it under section 3(1)(a). 5
- (4) In exercising the function conferred by subsection (1), the HSSIB may not assess or determine –
- (a) blame,
  - (b) civil or criminal liability, or 10
  - (c) whether action needs to be taken in respect of an individual by a regulatory body.
- (5) Nothing in subsection (4) affects –
- (a) the disclosure by the HSSIB of information, documents, equipment or other items under section 15, or 15
  - (b) the publication by the HSSIB of a report under section 22 or 24 or the sending of a draft of such a report to any person under section 23.
- (6) In this Part “regulatory body” means –
- (a) the General Medical Council,
  - (b) the General Dental Council, 20
  - (c) the General Optical Council,
  - (d) the General Osteopathic Council,
  - (e) the General Chiropractic Council,
  - (f) the General Pharmaceutical Council,
  - (g) the Nursing and Midwifery Council, 25
  - (h) the Health and Care Professions Council, or
  - (i) any other regulatory body (within the meaning of Schedule 3 to the Health Act 1999) established at any time by an Order in Council under section 60 of that Act.
- (7) In this Part – 30
- (a) “NHS services” means services provided in England for the purposes of the health service continued under section 1(1) of the 2006 Act,
  - (b) “patients” means individuals for whom NHS services are provided,
  - (c) references to qualifying incidents are to incidents that have (or may have) implications for the safety of patients, and 35
  - (d) references to investigations (except in section 12) are to investigations into qualifying incidents carried out under this Part and any related term is to be read accordingly.
- 3 Publication of criteria, principles and processes**
- (1) The HSSIB must determine and publish – 40
- (a) the criteria to be used by it for determining which qualifying incidents it investigates,
  - (b) the principles which are to govern investigations,
  - (c) the processes to be followed in carrying out investigations, and
  - (d) the processes for ensuring that, so far as reasonable and practicable, patients and their families are involved in investigations. 45

- (2) The processes determined under subsection (1)(c) must include—
    - (a) the procedures and methods to be used in investigations (including in the interviewing of persons), and
    - (b) the time periods within which the HSSIB aims to complete investigations. 5
  - (3) Different processes under subsection (1)(c) or (d) may be determined for different descriptions of investigation.
  - (4) If the HSSIB revises the criteria, principles and processes it must publish them as revised.
  - (5) In determining or revising the criteria, principles and processes the HSSIB must consult— 10
    - (a) the Secretary of State, and
    - (b) any other persons the HSSIB considers appropriate.
  - (6) The HSSIB must review the criteria, principles and processes— 15
    - (a) within the period of three years beginning with their publication under subsection (1), and
    - (b) subsequently within each period of five years beginning with the completion of the previous review.
  - (7) A document published under subsection (1)(d) must be capable of being easily understood by, and easily accessible to, patients and their families. 20
  - (8) The HSSIB must publish a list of investigations (both those in the process of being carried out and those that have been completed or discontinued) and keep that list up to date.
- 4 Representations and requests to investigate**
- (1) Before deciding whether or not to investigate a qualifying incident, the HSSIB must consider any representations that the HSSIB considers it appropriate to consider. 25
  - (2) The HSSIB must consider any request made to it by the Secretary of State to carry out an investigation into a particular qualifying incident or qualifying incidents falling within a particular description. 30

## CHAPTER 2

### CARRYING OUT INVESTIGATIONS

#### **5 Entry to premises, inspection and seizure**

- (1) A person authorised by the HSSIB to carry out functions in relation to investigations on its behalf (an “investigator”) may enter and inspect premises, other than excluded premises, if the investigator considers it necessary to do so for the purposes of an investigation. 35
- (2) Premises are “excluded premises” if they are used wholly or mainly as a private dwelling.
- (3) If the investigator considers it necessary for the purposes of the investigation, the investigator may— 40

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- (a) inspect and take copies of any document at, or capable of being viewed using equipment at, the premises;
- (b) inspect any equipment or other item at the premises;
- (c) seize and remove from the premises any document, equipment or other item (unless that would risk the safety of any patient). 5
- (4) In subsection (3)(a) the reference to inspecting and taking copies of any document includes requiring any document which is kept in electronic form to be produced in a form in which it is legible and can be taken away.
- (5) Where any document, equipment or other item is seized by an investigator, or any copy of a document is taken, it may be retained by the HSSIB for so long as is necessary for the purposes of the investigation. 10
- (6) An investigator exercising any power conferred by this section must, if asked, produce evidence of the investigator’s authority from the HSSIB to act on its behalf.
- 6 Section 5: Crown interests 15**
- (1) The powers conferred by section 5 may be exercised in relation to premises in which there is a Crown interest if the HSSIB gives reasonable notice to the occupier of the premises that the power in subsection (1) of that section will be exercised.
- (2) But if the Secretary of State certifies that it appears to the Secretary of State appropriate in the interests of national security that the powers conferred by section 5— 20
- (a) should not be exercisable in relation to any premises in which there is a Crown interest and which are specified in the certificate, or
- (b) should not be exercisable in relation to any such premises which are so specified except in circumstances specified in the certificate, 25
- those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable except in the circumstances specified.
- (3) In this section “Crown interest” means— 30
- (a) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department,
- (b) an interest belonging to Her Majesty in right of the Crown,
- (c) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or
- (d) an interest belonging to the Duchy of Cornwall. 35
- 7 Notices requiring the provision of information etc**
- (1) An investigator may by notice require any person—
- (a) to attend at a specified time and place and answer questions, or
- (b) otherwise to provide such information as is specified, or of a description specified. 40
- (2) An investigator may by notice (whether or not in addition to a notice given under subsection (1)) require any person to provide such document, equipment or other item as is specified or of a description specified.

- (3) An investigator may give a person a notice only if the investigator reasonably believes that—
  - (a) in the case of a requirement under subsection (1)(a), the person is able to provide information which is necessary for the purposes of an investigation, 5
  - (b) in the case of a requirement under subsection (1)(b), it is necessary for the purposes of an investigation to obtain the information and the person is able to provide it, and
  - (c) in the case of a requirement under subsection (2)—
    - (i) it is necessary to obtain the document, equipment or other item for the purposes of the carrying out of the HSSIB’s function under section 2(1), and 10
    - (ii) the person is able to provide it.
- (4) A notice must—
  - (a) state the grounds for the investigator believing the matters in subsection (3)(a), (b) or (c), 15
  - (b) give an explanation of the consequences of failing to comply with the notice (see section 10), and
  - (c) attach evidence of the investigator’s authority from the HSSIB to exercise the powers conferred by this section. 20
- (5) A notice containing a requirement under subsection (1)(b) or (2) must specify the date by which the information, document, equipment or other item must be provided.
- (6) If a notice requires a person to provide anything which is kept in electronic form, the notice may require it to be provided in a form in which it is legible. 25
- (7) In this section “specified” means specified in the notice.

## 8 Notices under section 7: safeguards

- (1) A person who attends to answer questions pursuant to a notice under section 7(1)(a) may not be required to answer questions where—
  - (a) the answers would risk the safety of any patient, 30
  - (b) the answers might incriminate the person, or
  - (c) if the answers were contained in a document, the person would be entitled to refuse to provide the document in any proceedings in any court on the grounds that it is the subject of legal professional privilege.
- (2) A person may not be required by a notice under section 7(1)(b) or (2) to provide any information, document, equipment or other item if—
  - (a) its provision would risk the safety of any patient,
  - (b) its provision might incriminate the person, or
  - (c) the person would be entitled to refuse to provide it in any proceedings in any court on the grounds that it is the subject of legal professional privilege. 40
- (3) Except as provided by subsection (4), the provision of any information, document, equipment or other item pursuant to a notice under section 7 does not breach—
  - (a) any obligation of confidence owed by the person providing it, or 45

- (b) any other restriction on the provision of information, documents, equipment or other items (however imposed).
- (4) Nothing in section 7 requires a person to provide information where, although the person does so in compliance with a requirement imposed by a notice under that section, doing so would contravene the data protection legislation. 5
- 9 Notices under section 7: supplementary**
- (1) An investigator may withdraw a notice under section 7 by giving notice of withdrawal to the person to whom the notice was given.
- (2) Where any document, equipment or other item is provided to an investigator pursuant to a notice, it may be retained by the HSSIB for so long as is necessary for the purposes of the investigation (unless its retention would risk the safety of any patient). 10
- (3) Where a person attends to answer questions pursuant to a notice under section 7(1)(a), the HSSIB must reimburse the person the reasonable costs incurred in attending. 15
- (4) Where a person attends to answer questions pursuant to a notice under section 7(1)(a), the HSSIB may record (by any means) the answers given.
- 10 Offences relating to investigations**
- (1) A person commits an offence if the person—
- (a) intentionally obstructs an investigator in the performance of functions conferred by section 5, or
- (b) fails without reasonable excuse to comply with a notice given under section 7. 20
- (2) A person commits an offence if the person provides information to the HSSIB for the purposes of the HSSIB’s function under section 2(1) which the person knows or suspects is false or misleading in a material respect. 25
- (3) It is a defence for a person charged with an offence under subsection (2) to show that—
- (a) the person reasonably believed that the information would assist the HSSIB in carrying out its function under section 2(1), and
- (b) at the time of providing the information the person informed the HSSIB that the person knew or suspected that it was false or misleading. 30
- (4) If a person charged with an offence under subsection (2) relies on the defence under subsection (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not. 35
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.
- (6) Subsections (1)(a) and (5) apply to persons in the public service of the Crown as they apply to other persons. 40

## 11 Power to disclose information etc to the HSSIB

- (1) A person may disclose any information, document, equipment or other item to the HSSIB if the person reasonably believes that the disclosure is necessary for the purpose of enabling the HSSIB to carry out its function under section 2(1).
- (2) Except as provided by subsection (3), the disclosure of any information, document, equipment or other item under subsection (1) does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on disclosure (however imposed).
- (3) Nothing in subsection (1) authorises a disclosure of information which, although made in the exercise of the power conferred by that subsection, would contravene the data protection legislation.
- (4) References in this section to disclosing information, documents, equipment or other items include permitting access to information, documents, equipment or other items.

## 12 Co-operation regarding logistical issues

- (1) This section applies where –
  - (a) the HSSIB is carrying out an investigation into a qualifying incident under this Part, and
  - (b) a listed person is also carrying out an investigation into the same or a related incident.
- (2) The HSSIB and the listed person must co-operate with each other regarding practical arrangements for co-ordinating those investigations.
- (3) The following are listed persons –
  - (a) an NHS foundation trust, an NHS trust or any other person providing NHS services;
  - (b) the National Health Service Commissioning Board;
  - (c) a clinical commissioning group;
  - (d) a Special Health Authority;
  - (e) the Care Quality Commission;
  - (f) Monitor;
  - (g) the Health Research Authority;
  - (h) the Human Tissue Authority;
  - (i) the Human Fertilisation and Embryology Authority;
  - (j) Health Education England;
  - (k) the Health Service Commissioner for England;
  - (l) the Parliamentary Commissioner for Administration;
  - (m) any regulatory body;
  - (n) the Health and Safety Executive.
- (4) The HSSIB must publish guidance about when an incident is to be regarded as related to another incident for the purposes of this section.
- (5) If the HSSIB revises the guidance the HSSIB must publish it as revised.

## CHAPTER 3

### PROHIBITION ON DISCLOSURE

#### 13 Prohibition on disclosure by the HSSIB

- (1) The HSSIB must not disclose to any person any information, document, equipment or other item which is held by the HSSIB in connection with its function under section 2(1). 5
- (2) Subsection (1) does not apply to any information, document, equipment or other item which has previously and lawfully been made available to the public.
- (3) Subsection (1) is subject to sections 14 to 17, 19 and 22(4). 10
- (4) Information, documents, equipment or other items to which subsection (1) applies are referred to in this Chapter as protected material.
- (5) In subsection (1) references to the HSSIB include –
  - (a) a member of the HSSIB,
  - (b) a member of a committee or sub-committee of the HSSIB, 15
  - (c) an investigator,
  - (d) a person (other than an investigator) who works for the HSSIB, and
  - (e) a person who has ceased to be a person within any of paragraphs (a) to (d).
- (6) For the purposes of subsection (5) a person works for the HSSIB if the person is an individual who works –
  - (a) under a contract of employment with the HSSIB,
  - (b) under a contract of apprenticeship with the HSSIB,
  - (c) under a contract under which the individual undertakes to do or perform personally any work or services for the HSSIB, or 25
  - (d) as an agency worker within the meaning of the Agency Workers Regulations 2010 (S.I. 2010/93) in circumstances where the HSSIB is the hirer within the meaning of those Regulations.
- (7) References to a contract in subsection (6) are to a contract whether express or implied and (if it is express) whether oral or in writing. 30
- (8) In this Chapter references to disclosing information, documents, equipment or other items include permitting access to information, documents, equipment or other items.

#### 14 Exceptions from prohibition: disclosure for purposes of investigation etc

- (1) The HSSIB may disclose any protected material to a person who falls within any of paragraphs (a) to (d) of section 13(5) if the HSSIB reasonably believes that the disclosure is necessary for the purposes of the carrying out of the HSSIB's function under section 2(1). 35
- (2) The HSSIB may disclose any protected material to a person who does not fall within any of paragraphs (a) to (d) of section 13(5) if the Chief Investigator reasonably believes that the disclosure is necessary for the purposes of the carrying out of the HSSIB's function under section 2(1). 40

- (3) The HSSIB may disclose any protected material if the Chief Investigator reasonably believes that the disclosure is necessary for the purposes of the prosecution or investigation of an offence under section 10 (offences relating to investigations) or 20 (unlawful disclosure).
- (4) In this section references to the HSSIB (other than to the HSSIB’s function under section 2(1)) include a person who falls within any of paragraphs (a) to (d) of section 13(5). 5

**15 Exceptions from prohibition: risk to safety**

- (1) This section applies if the Chief Investigator reasonably believes that disclosure of any protected material is necessary to address a serious and continuing risk to the safety of any patient or to the public. 10
- (2) The HSSIB may disclose the protected material to any person whom the Chief Investigator reasonably believes to be in a position to address the risk.
- (3) The HSSIB may disclose the protected material only to the extent necessary to enable the person to whom it is disclosed to take steps to address the risk. 15

**16 Further provisions about disclosure under section 14 or 15**

- (1) The Chief Investigator may arrange for the Chief Investigator’s functions under section 14 or 15 to be exercised by an investigator.
- (2) An arrangement under subsection (1) may relate to all cases or to a particular case or class of cases. 20
- (3) The HSSIB must publish guidance as to –
  - (a) the types of circumstances in which a power to disclose conferred by section 14(2) or (3) or 15 may be exercisable,
  - (b) the types of protected material in respect of which the power may be exercisable, and 25
  - (c) the processes which may be used for disclosing protected material in exercise of the power.
- (4) If the HSSIB revises the guidance the HSSIB must publish it as revised.

**17 Exceptions from prohibition: High Court order**

- (1) A person may apply to the High Court for an order that any protected material be disclosed by the HSSIB to the person for the purposes specified in the application. 30
- (2) The HSSIB may make representations to the High Court about any application under subsection (1).
- (3) The High Court may make an order on an application under subsection (1) only if it determines that the interests of justice served by disclosing the protected material outweigh –
  - (a) any adverse impact on current and future investigations by deterring persons from participating in them, and
  - (b) any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services. 40

## **18 Prevention of disclosure as a result of the exercise of other powers**

- (1) A power under any enactment (whenever passed or made) other than this Act to require the disclosure of, or to seize, any information, document, equipment or other item may not be used –
- (a) to require the disclosure of protected material by the HSSIB, or 5
  - (b) to seize protected material from the HSSIB.
- (2) Subsection (1) applies to a power to require disclosure, or to seize, however it is expressed (and, for example, it applies if the power is to require a person to give, supply, furnish or produce any information, document, equipment or other item). 10
- (3) Subsection (1) does not apply to a power to the extent that the provision conferring it is within the legislative competence of a devolved legislature.
- (4) A provision is within the legislative competence of a devolved legislature if –
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament 15
  - (b) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of that Assembly (including any provision that could only be made with the consent of a Minister of the Crown);
  - (c) the provision, if it were contained in an Act of the Northern Ireland Assembly – 20
    - (i) would be within the legislative competence of that Assembly, and
    - (ii) would not require the consent of the Secretary of State.
- (5) In this section – 25
- “devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;
  - “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975. 30
- (6) References to the HSSIB in subsection (1) include a person who falls within section 13(5).
- (7) This section is subject to section 19 (disclosure to coroners).

## **19 Disclosure to coroners**

- (1) A senior coroner may under paragraph 1(1)(b) or (c) or (2) of Schedule 5 to the Coroners and Justice Act 2009 (powers to require the production of evidence) require the disclosure of protected material by the HSSIB to the senior coroner in accordance with that Schedule. 35
- (2) The HSSIB may disclose protected material to a senior coroner for the purposes of complying with a requirement imposed under a provision mentioned in subsection (1). 40
- (3) The HSSIB may disclose protected material to a senior coroner if the Chief Investigator reasonably believes that the coroner could require the HSSIB to disclose the material under a provision mentioned in subsection (1). 45

- (4) The Chief Investigator may arrange for the Chief Investigator’s function under subsection (3) to be exercised by an investigator.
- (5) An arrangement under subsection (4) may relate to all cases or to a particular case or class of cases.
- (6) If protected material is disclosed to a senior coroner under or by virtue of this section, the senior coroner must not disclose that material to another person. This is subject to subsections (7) to (9). 5
- (7) A senior coroner may apply to the High Court for an order that protected material disclosed to the senior coroner under or by virtue of this section may, for the purposes specified in the application, be disclosed by the senior coroner – 10
  - (a) in the course of an investigation under Part 1 of the Coroners and Justice Act 2009,
  - (b) in a report made under paragraph 7 of Schedule 5 to that Act (reports about action to prevent deaths), or 15
  - (c) otherwise to another person.
- (8) The HSSIB may make representations to the High Court about any application under subsection (7).
- (9) The High Court may make an order on an application under subsection (7) only if it determines that the interests of justice served by allowing the disclosure outweigh – 20
  - (a) any adverse impact on current and future investigations by deterring persons from participating in them, and
  - (b) any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services. 25
- (10) In this section “senior coroner” means a person appointed as a senior coroner under paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009.

## 20 Offences of unlawful disclosure

- (1) A person commits an offence if the person –
  - (a) breaches section 13(1) (prohibition on disclosure by the HSSIB) by disclosing any information, document, equipment or other item to another person, and 30
  - (b) knows or suspects that the disclosure is prohibited.
- (2) Subsection (3) applies to any protected material which –
  - (a) is disclosed to a person under section 14(2) or (3) (disclosure for purposes of an investigation etc), 35
  - (b) is disclosed to a person under section 15 (disclosure to address risk to safety), or
  - (c) is proposed to be included in a report by virtue of section 22(4) (disclosure in report) and is disclosed to a person by being included in a draft report sent to that person under section 23. 40
- (3) The person to whom the protected material is disclosed commits an offence if the person –
  - (a) discloses the protected material to another person without reasonable excuse, and 45

- (b) knows or suspects that it is protected material.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine.

## **21 Disclosure of protected material: supplementary**

- (1) This section applies to a disclosure of protected material under or by virtue of this Chapter. 5
- (2) Except as provided by subsection (3), the disclosure does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on disclosure (however imposed). 10
- (3) Nothing in this Chapter authorises a disclosure of information which, although made under or by virtue of it, would contravene the data protection legislation.

## **CHAPTER 4**

### REPORTS

## **22 Reports following investigation etc** 15

- (1) When the HSSIB completes an investigation, it must publish a report on the outcome of the investigation.
- (2) The report must –
  - (a) contain a statement of findings of fact made as a result of the investigation and an analysis of those findings, and 20
  - (b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate.
- (3) The report must focus on ascertaining risks to the safety of patients and any recommendations under subsection (2)(b) must focus on addressing those risks (rather than on the activities of individuals involved in the incident). 25
- (4) The report may include any information or document to which the prohibition on disclosure under section 13(1) applies, but only if the HSSIB makes a determination under subsection (5) in relation to the inclusion.
- (5) A determination under this subsection is a determination that the benefits to the safety of patients of the inclusion outweigh – 30
  - (a) any adverse impact on current or future investigations by deterring persons from participating in them, and
  - (b) any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services.
- (6) The report may not include the name of any participant in the investigation without the participant’s consent. 35
- (7) In subsection (6) “participant” means an individual who is or has been involved in the investigation other than –
  - (a) a person within section 13(5)(a) to (e), or

- (b) any other person who is providing or has provided services to the HSSIB in connection with the investigation pursuant to a contract with the HSSIB.
  - (8) If a report includes recommendations under subsection (2)(b), the report must – 5
    - (a) identify the person or persons who are to take the action specified in the report, and
    - (b) specify the deadline for those persons to provide a written response under section 26.
  - (9) Where an interim report under section 24 contained recommendations under subsection (2)(b) of that section, the references in this section to recommendations under subsection (2)(b) above are to any further recommendations. 10
- 23 Opportunity to comment on draft report**
- (1) Before it publishes a report under section 22, the HSSIB must send a draft of the report to any person who the HSSIB reasonably believes could be adversely affected by the report once published. 15
  - (2) If a person within subsection (1) has died, the draft report must be sent to the person (if any) who appears to the HSSIB to best represent the interests of the person who has died. 20
  - (3) Before it publishes a report under section 22, the HSSIB may send a draft of the report to any other person who the HSSIB believes should be provided with a draft.
  - (4) The HSSIB must notify every person to whom a draft report is sent that the person has an opportunity to comment on the draft report before the deadline specified in the notice. 25
  - (5) If a person’s comments on a draft report are not taken into account in the report published under section 22, the HSSIB must give the person an explanation of its reasons for not taking the comments into account.
- 24 Reports during investigation etc** 30
- (1) While the HSSIB is carrying out an investigation, it may publish a report on any matter relating to the investigation (an “interim report”).
  - (2) An interim report may – 35
    - (a) contain a statement of findings of fact made as a result of the investigation to date and an analysis of those findings, and
    - (b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate.
  - (3) Subsections (3) to (8) of section 22, and section 23, apply in relation to an interim report as they apply in relation to a report under section 22.
  - (4) In the application of section 22 to an interim report by virtue of subsection (3), references to a recommendation under subsection (2)(b) of that section are to a recommendation under subsection (2)(b) of this section. 40

## **25 Admissibility of reports under section 22 or 24**

- (1) Subject to subsection (3), the following are not admissible in any proceedings falling within subsection (2) –
- (a) a report under section 22 or 24, or
  - (b) a draft of such a report sent to a person under section 23. 5
- (2) The proceedings are –
- (a) proceedings to determine civil or criminal liability;
  - (b) proceedings before any employment tribunal;
  - (c) proceedings before a regulatory body (including proceedings for the purposes of investigating an allegation); 10
  - (d) proceedings to determine an appeal against a decision made in proceedings falling within paragraphs (a) to (c).
- (3) The High Court may order that a report under section 22 or 24 is admissible in the proceedings on an application by a person who is a party to the proceedings or otherwise entitled to appear in them. 15
- (4) The HSSIB may make representations to the High Court about any application under subsection (3).
- (5) The High Court may make an order under subsection (3) only if it determines that the interests of justice served by admitting the report outweigh –
- (a) any adverse impact on current or future investigations by deterring persons from participating in them, and
  - (b) any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services. 20

## **26 Response setting out action to be taken**

- (1) This section applies where – 25
- (a) a report under section 22 includes any recommendations under subsection (2)(b) of that section, or
  - (b) a report under section 24 includes any recommendations under subsection (2)(b) of that section.
- (2) Before the deadline specified under section 22(8)(b), each addressee of the report must provide a written response to the HSSIB setting out the actions they are to take in pursuance of the recommendations. 30
- (3) The HSSIB may publish a response provided under subsection (2).
- (4) In subsection (2) the reference to the addressees of the report is to the persons identified in it under section 22(8)(a). 35

## **CHAPTER 5**

### INTERPRETATION OF PART 2

## **27 Interpretation of Part 2**

In this Part –

“Chief Investigator” means the person appointed in accordance with paragraph 3 of Schedule 1; 40

- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- “documents” includes personal and medical records;
- “investigation” has the meaning given by section 2(7)(d);
- “investigator” has the meaning given by section 5(1); 5
- “NHS services” has the meaning given by section 2(7)(a);
- “notice” means notice in writing;
- “patients” has the meaning given by section 2(7)(b);
- “qualifying incident” has the meaning given by section 2(7)(c);
- “regulatory body” has the meaning given by section 2(6). 10

### PART 3

#### ADDITIONAL FUNCTIONS ETC

##### *Additional functions of the HSSIB*

#### 28 Function of giving assistance

- (1) If the condition in subsection (2) is met, the HSSIB must give assistance to a person falling within subsection (3) in connection with the carrying out of investigations into incidents occurring during the provision of NHS services or occurring at premises at which NHS services are provided. 15
- (2) The condition is that the HSSIB has been requested to provide the assistance by any of the following – 20
- (a) the person to whom the assistance is to be given;
  - (b) the Secretary of State;
  - (c) Monitor;
  - (d) a Special Health Authority whose functions include the oversight of the performance and governance of NHS trusts. 25
- (3) The following persons fall within this subsection – 30
- (a) an NHS foundation trust;
  - (b) an NHS trust;
  - (c) the National Health Service Commissioning Board;
  - (d) a clinical commissioning group.
- (4) For the purposes of this section giving assistance includes –
- (a) disseminating information about best practice,
  - (b) developing standards to be adopted, and
  - (c) giving advice, guidance or training.
- (5) Subsection (1) does not apply if – 35
- (a) the assistance requested is giving advice, guidance or training, and
  - (b) the HSSIB determines that it is impracticable for it to give the assistance.
- (6) The HSSIB may give assistance to any person not falling within subsection (3) in relation to any matter connected with the carrying out of investigations if the HSSIB has been requested to provide the assistance by the person to whom it is to be given. 40

- (7) But the HSSIB may give assistance under subsection (6) only to the extent that the assistance does not to any significant extent interfere with the exercise by the HSSIB of the function conferred on it by section 2(1).
- (8) The activities which the HSSIB may carry out in, or in connection with, giving assistance under subsection (6) are not restricted to activities carried out in the United Kingdom. 5
- (9) The HSSIB may impose charges for or in connection with giving assistance under subsection (6).
- (10) Charges under subsection (9) may be calculated on the basis that the HSSIB considers to be the appropriate commercial basis. 10
- (11) In this section, “NHS services” means services provided in England for the purposes of the health service continued under section 1(1) of the 2006 Act.

## 29 Investigations by agreement: Wales and Northern Ireland

- (1) The HSSIB may enter into an agreement with any person for the HSSIB to carry out a qualifying investigation. 15
- (2) For the purposes of subsection (1) an investigation is a “qualifying investigation” if –
- (a) it is an investigation into one or more relevant incidents that have occurred, or are occurring, in the United Kingdom –
    - (i) during the provision of any of the services mentioned in subsection (3), or 20
    - (ii) at premises at which any of those services are, or were, provided,
  - (b) it is carried out for the purpose of identifying risks to the safety of patients and addressing those risks by facilitating the improvement of systems and practices in the provision of any of the services mentioned in subsection (3), and 25
  - (c) it does not involve the assessment or determination of blame or civil or criminal liability.
- (3) Those services are – 30
- (a) services provided for the purposes of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006, or
  - (b) health care, within the meaning of the Health and Social Care (Reform) Act (Northern Ireland) 2009, provided for the purposes of the system promoted under section 2(1) of that Act. 35
- (4) The HSSIB may impose charges for providing services under an agreement under subsection (1).
- (5) Those charges must not exceed the costs incurred by the HSSIB in providing the services.
- (6) The HSSIB may enter into an agreement under subsection (1) only if it considers that the provision of the services under the agreement will not to any significant extent interfere with the exercise by the HSSIB of the function conferred on it by section 2(1). 40
- (7) In this section –

- (a) “relevant incident” means an incident that has (or may have) implications for the safety of patients, and
- (b) “patients” means individuals for whom any of the services mentioned in subsection (3) are provided.

*Functions: supplementary*

5

**30 Functions: supplementary**

- (1) The HSSIB may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on it by this Act.
- (2) The power under subsection (1) includes power for the HSSIB to do the following – 10
  - (a) enter into agreements;
  - (b) acquire and dispose of property;
  - (c) supply materials, facilities and services to any person;
  - (d) develop and exploit ideas and exploit intellectual property.
- (3) The HSSIB must exercise the functions conferred on it by this Act effectively, efficiently and economically. 15

**31 Failure to exercise functions**

- (1) This section applies if the Secretary of State considers that –
  - (a) the HSSIB is failing or has failed to exercise any of its functions, and
  - (b) the failure is significant. 20
- (2) The Secretary of State may direct the HSSIB to exercise such of its functions, in such manner and within such period, as the direction specifies.
- (3) But the Secretary of State may not give a direction under subsection (2) which directs the outcome of a particular investigation.
- (4) If the HSSIB fails to comply with a direction under this section, the Secretary of State may – 25
  - (a) exercise the functions specified in the direction, or
  - (b) make arrangements for some other person to exercise them on the Secretary of State’s behalf.
- (5) The reference in subsection (1)(a) to exercising a function includes a reference to exercising it properly. 30

**32 Territorial limit of exercise of functions**

- (1) The functions conferred on the HSSIB by this Act are exercisable only in relation to England.
- (2) Subsection (1) does not apply to any function under – 35
  - (a) section 17,
  - (b) section 19,
  - (c) section 25,
  - (d) section 28(6) or (9),
  - (e) section 29, or 40

- (f) section 30 so far as relating to any function under section 17, 19, 25, 28(6) or (9) or 29.

### 33 Review

- (1) Before the end of the period mentioned in subsection (2), the Secretary of State must – 5
- (a) review the effectiveness of the exercise by the HSSIB of the function conferred on it by section 2(1),
  - (b) prepare and publish a report of the review, and
  - (c) lay the report before Parliament.
- (2) The period is 4 years beginning with the day on which section 2 comes into force. 10

## PART 4

### MEDICAL EXAMINERS

### 34 Medical examiners

- (1) Section 19 of the Coroners and Justice Act 2009 (medical examiners) is amended in accordance with subsections (2) to (6). 15
- (2) Before subsection (1) insert –
- “(A1) An English NHS body may appoint persons as medical examiners to discharge in England the functions conferred on medical examiners by or under this Chapter. 20
- (A2) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of ensuring –
- (a) that enough medical examiners are appointed under subsection (A1) to enable those functions to be discharged in England,
  - (b) that the funds and other resources that are made available to such medical examiners are enough to enable those functions to be discharged in England, and 25
  - (c) that the performance of such medical examiners is monitored by reference to any standards or levels of performance that they are expected to attain. 30
- (A3) For the purposes of discharging the duty in subsection (A2), the Secretary of State may give a direction to an English NHS body –
- (a) requiring the body to appoint or arrange for the appointment of one or more medical examiners,
  - (b) about the funds or other resources to be made available to a medical examiner employed by an English NHS body, 35
  - (c) about the steps to be taken by the body to monitor the performance of such a medical examiner, or
  - (d) about the steps to be taken by the body to monitor the performance of functions by an English NHS body in relation to such a medical examiner.” 40
- (3) In subsection (1) –

- (a) for “Local authorities (in England) and Local Health Boards (in Wales)” substitute “Local Health Boards”, and
  - (b) after “discharge” insert “in Wales”.
- (4) In subsection (2) –
  - (a) in the words before paragraph (a), for “local authority or Board” substitute “Local Health Board”, and 5
  - (b) in paragraph (b), for “local authority or Board” substitute “Local Health Board”.
- (5) In subsection (5), for “a local authority” substitute “an English NHS body”.
- (6) After subsection (5) insert – 10
  - “(5A) In this section “English NHS body” means –
    - (a) the National Health Service Commissioning Board,
    - (b) a clinical commissioning group established under section 14D of the National Health Service Act 2006,
    - (c) a National Health Service trust established under section 25 of that Act, 15
    - (d) a Special Health Authority established under section 28 of that Act,
    - (e) an NHS foundation trust within the meaning of section 30 of that Act, or 20
    - (f) Monitor.
  - (5B) Subsection (5A)(c) is repealed on the coming into force of section 179 of the Health and Social Care Act 2012 (abolition of NHS trusts in England).”
- (7) Section 20 of the Coroners and Justice Act 2009 (medical certificate of cause of death) is amended in accordance with subsections (8) and (9). 25
- (8) In subsection (5), for “a local authority” substitute “an English NHS body”.
- (9) In subsection (7), at the appropriate place insert –  
““English NHS body” has the same meaning as in section 19;”.
- (10) In the Health and Social Care Act 2012 omit section 54 (which inserted references to local authorities into sections 19 and 20 of the Coroners and Justice Act 2009). 30

## PART 5

### SUPPLEMENTARY AND FINAL PROVISIONS

#### CHAPTER 1

35

#### SUPPLEMENTARY PROVISIONS

### 35 Interpretation

In this Act –

- “the 2006 Act” means the National Health Service Act 2006;
- “clinical commissioning group” means a clinical commissioning group established under section 14D of the 2006 Act; 40

<p>“the HSSIB” has the meaning given by section 1(2);</p> <p>“NHS foundation trust” has the meaning given by section 30 of the 2006 Act;</p> <p>“NHS trust” means a National Health Service trust established under section 25 of the 2006 Act;</p> <p>“premises” includes a vehicle;</p> <p>“Special Health Authority” means a Special Health Authority established under section 28 of the 2006 Act.</p>	5
<b>36 Consequential amendments</b>	
Schedule 2 contains amendments consequential on this Act.	10
<b>37 Offences by bodies corporate</b>	
(1) Where an offence under this Act is committed by a body corporate and is proved –	
(a) to have been committed with the consent or connivance of an officer of the body corporate, or	15
(b) to be attributable to any neglect on the part of an officer of the body corporate,	
the officer (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly.	
(2) In subsection (1) “officer”, in relation to a body corporate, means –	20
(a) a director, manager, secretary or other similar officer, or	
(b) any person purporting to act in any such capacity.	
In paragraph (a) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.	
<b>38 Offences by partnerships</b>	25
(1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.	
(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.	
(3) For the purposes of such proceedings Schedule 3 to the Magistrates’ Courts Act 1980 applies as it applies in relation to a body corporate.	30
(4) A fine imposed on a partnership on its conviction for an offence must be paid out of the partnership assets.	
(5) Where an offence is committed by a partnership and is proved –	
(a) to have been committed with the consent or connivance of a partner, or	35
(b) to be attributable to any neglect on the part of a partner,	
the partner (as well as the partnership) commits the offence and is liable to be proceeded against and punished accordingly.	
(6) In this section –	
“offence” means an offence under this Act;	40
“partner” includes a person purporting to act as a partner.	

**39 Abolition of NHS trusts in England: consequential amendments**

- (1) On the coming into force of section 179 of the Health and Social Care Act 2012 (abolition of NHS trusts in England), this Act is amended as follows.
- (2) In section 12(3)(a) omit “, an NHS trust”.
- (3) In section 28 omit subsections (2)(d) and (3)(b). 5
- (4) In section 35 omit the definition of “NHS trust”.

**CHAPTER 2**

**FINAL PROVISIONS**

**40 Extent**

- (1) Subject to subsections (2) and (3), this Act extends to England and Wales only. 10
- (2) Section 18 and this Chapter extend to England and Wales, Scotland and Northern Ireland.
- (3) Any amendment or repeal made by this Act has the same extent as the provision to which it relates.

**41 Commencement**

15

- (1) Section 39 and this Chapter come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes. 20
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) The power to make regulations under subsection (4) includes power to make different provision for different purposes.
- (6) Regulations under this section are to be made by statutory instrument. 25

**42 Short title**

This Act may be cited as the Health Service Safety Investigations Act 2019.

## SCHEDULES

## SCHEDULE 1

Section 1

## THE HEALTH SERVICE SAFETY INVESTIGATIONS BODY

## PART 1

## CONSTITUTION

5

*Status*

- 1 (1) The HSSIB is not to be regarded –
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The HSSIB’s property is not to be regarded – 10
  - (a) as the property of the Crown, or
  - (b) as property held on behalf of the Crown.

*Membership*

- 2 (1) The HSSIB is to consist of – 15
  - (a) a Chief Investigator appointed in accordance with paragraph 3,
  - (b) other members appointed in accordance with paragraph 4, and
  - (c) a chair and at least four other members appointed by the Secretary of State.
- (2) The Chief Investigator is to be the chief executive of the HSSIB.
- (3) The number of executive members must be less than the number of non-executive members. 20
- (4) In this Schedule –
  - (a) references to executive members of the HSSIB are references to the members mentioned in sub-paragraph (1)(a) and (b), and
  - (b) references to non-executive members of the HSSIB are references to the members mentioned in sub-paragraph (1)(c). 25

*The Chief Investigator: appointment and status*

- 3 (1) The Chief Investigator is to be appointed by the non-executive members with the consent of the Secretary of State.
- (2) The Chief Investigator is to be an employee of the HSSIB. 30

*Other executive members: appointment and status*

- 4 (1) The other executive members of the HSSIB are to be appointed by the non-executive members.
- (2) The non-executive members may not appoint more than five other executive members without the consent of the Secretary of State. 5
- (3) The other executive members are to be employees of the HSSIB.

*Non-executive members: tenure*

- 5 (1) A person holds and vacates office as a non-executive member of the HSSIB in accordance with that person's terms of appointment (subject to the following provisions of this paragraph). 10
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds – 15
- (a) incapacity,
- (b) misbehaviour, or
- (c) failure to carry out the person's duties as a non-executive member.
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3). 20
- (5) A person may be appointed as a non-executive member for an initial term of up to three years.
- (6) A person who has been appointed as a non-executive member for an initial term may be re-appointed, but only for one further term of up to three years.
- (7) The further term must begin at the end of the initial term. 25

*Non-executive members: suspension from office*

- 6 (1) This paragraph applies where a person is suspended under paragraph 5(4).
- (2) The Secretary of State must give notice of the decision to suspend to the person.
- (3) The suspension takes effect on receipt by the person of the notice. 30
- (4) The notice may be –
- (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
- (b) sent by first class post to the person's last known address (in which case the person is taken to receive it on the third day after the day on which it is posted). 35
- (5) The initial period of suspension must not exceed six months.
- (6) The Secretary of State may review the suspension at any time .
- (7) The Secretary of State –

- 
- (a) must review the suspension if requested in writing by the person to do so, but
- (b) is not required to review the suspension before the end of the period of three months beginning with the start of the initial period of suspension. 5
- (8) Following a review during a period of suspension, the Secretary of State may –
- (a) confirm the suspension,
- (b) revoke the suspension, or
- (c) suspend the person for another period of not more than six months beginning with the expiry of the current period. 10
- (9) The Secretary of State must revoke the suspension if the Secretary of State –
- (a) decides that there are no grounds to remove the person from office under paragraph 5(3), or
- (b) decides that there are grounds to do so but does not remove the person from office under that provision. 15
- 7 (1) Where a person is suspended from office as the chair under paragraph 5(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of – 20
- (a) the period ending with either –
- (i) the appointment of a new chair, or
- (ii) the revocation or expiry of the existing chair’s suspension, and
- (b) the remainder of the interim chair’s term as a non-executive member. 25
- (3) Sub-paragraph (4) applies if –
- (a) a person’s initial term as interim chair is to cease as a result of the expiry of the person’s initial term as a non-executive member, and
- (b) that person is to be re-appointed as a non-executive member.
- (4) The person may be re-appointed as interim chair for a further term determined in accordance with sub-paragraph (2). 30
- (5) That further term must begin at the end of the person’s initial term as interim chair.

*Non-executive members: payment*

- 8 (1) The HSSIB must pay to the non-executive members such remuneration as the Secretary of State may determine. 35
- (2) The HSSIB must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member.
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the HSSIB must pay compensation to the person of such amount as the Secretary of State may determine. 40

*Staff*

- 9 (1) The HSSIB may appoint such persons to be employees of the HSSIB as it considers appropriate.
- (2) Employees of the HSSIB are to be paid such remuneration as the HSSIB may determine. 5
- (3) Employees of the HSSIB are to be appointed on such other terms and conditions as the HSSIB may determine.
- (4) The HSSIB may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the HSSIB. 10
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), the HSSIB must obtain the approval of the Secretary of State to its policy on that matter.

*Procedure*

- 10 (1) The HSSIB may regulate its own procedure. 15
- (2) The validity of any act of the HSSIB is not affected by any vacancy among the members or by any defect in the appointment of any member.

*Committees*

- 11 (1) The HSSIB may appoint such committees and sub-committees as it considers appropriate. 20
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the HSSIB.
- (3) The HSSIB may pay such remuneration and allowances as it may determine to any person who— 25
- (a) is a member of a committee or a sub-committee, but
- (b) is not an employee of the HSSIB,
- whether or not that person is a non-executive member of the HSSIB.
- (4) Before making a determination as to remuneration or allowances for the purposes of sub-paragraph (3), the HSSIB must consult the Secretary of State. 30

*Exercise of functions*

- 12 The HSSIB may arrange for the exercise of any of its functions on its behalf by—
- (a) any non-executive member,
- (b) any employee (including any executive member), or 35
- (c) a committee or sub-committee.

*Assistance in exercise of functions*

- 13 (1) The HSSIB may arrange for persons to assist it in the exercise of its functions in relation to—
- (a) a particular case, or 40

(b) cases of a particular description.

- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

*Funding*

- 14 (1) The Secretary of State may make payments to the HSSIB out of money provided by Parliament of such amounts as the Secretary of State considers appropriate. 5
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate.

*Borrowing* 10

- 15 The HSSIB may, with the consent of the Secretary of State, borrow money temporarily by way of overdraft.

*Use of income from charges*

- 16 Where the HSSIB receives income from imposing charges under section 28(9) or 29(4), it must ensure that the income is used for exercising its functions. 15

*Losses and liabilities etc*

- 17 (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if the HSSIB were an authority of the kind referred to in that section. 20
- (2) In its application to the HSSIB as a result of sub-paragraph (1), section 265 of that Act has effect as if the references in that section to that Act were references to this Act.

*Accounts*

- 18 (1) The HSSIB must keep proper accounts and proper records in relation to the accounts. 25
- (2) The Secretary of State may give directions to the HSSIB as to—
- (a) the content and form of its accounts, and
  - (b) the methods and principles to be applied in the preparation of its accounts. 30
- 19 (1) The HSSIB must prepare annual accounts in respect of each financial year.
- (2) The HSSIB must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct. 35
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and
  - (b) lay copies of them and the report before Parliament.

- (4) In this paragraph and paragraph 20, “financial year” means a period of 12 months ending with 31 March.

*Reports and other information*

- 20 (1) As soon as practicable after the end of each financial year, the HSSIB must prepare an annual report on how it has exercised its functions during the financial year to which the report relates. 5
- (2) The report must, among other things, set out the measures that the HSSIB has taken to ensure that its functions are exercised effectively, efficiently and economically.
- (3) The HSSIB must send a copy of the report to the Secretary of State. 10
- (4) The Secretary of State must lay a copy of the report before Parliament.
- (5) The HSSIB must publish the report once it has been laid before Parliament.
- (6) Subject to sub-paragraph (7), the Secretary of State may require the HSSIB to provide to the Secretary of State such other reports and information relating to the exercise of its functions as the Secretary of State may request. 15
- (7) The Secretary of State may not require the HSSIB to provide any reports or information that relate to an investigation that the HSSIB is carrying out or has carried out.

*Seal and signature*

- 21 (1) The application of the HSSIB’s seal must be authenticated by the signature of any member of the HSSIB or any other person who has been authorised (generally or specially) for that purpose. 20
- (2) A document purporting to be duly executed under the HSSIB’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 25

PART 2

TRANSFER SCHEMES

*Transfer schemes*

- 22 (1) The Secretary of State may make one or more property transfer schemes or staff transfer schemes in connection with the establishment of the HSSIB by this Act. 30
- (2) A “property transfer scheme” is a scheme for the transfer to the HSSIB of any property, rights or liabilities of the National Health Service Trust Development Authority relating to the discharge of the Authority’s functions pursuant to the Directions. 35  
But this does not include any rights or liabilities under or in connection with a contract of employment.
- (3) A “staff transfer scheme” is a scheme for the transfer to the HSSIB of any rights or liabilities – 40
- (a) under or in connection with a contract of employment entered into by the National Health Service Trust Development Authority, and

- (b) which relate to the discharge of the Authority’s functions pursuant to the Directions.

*Supplementary*

- 23 (1) The things that may be transferred under a property transfer scheme or a staff transfer scheme include – 5
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities. 10
- (2) A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional or consequential provision and may, for example –
- (a) create rights, or impose liabilities, in relation to property or rights transferred; 15
  - (b) make provision about the continuing effect of things done by, or on behalf of, the National Health Service Trust Development Authority or the Healthcare Safety Investigation Branch in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, or on behalf of, or in relation to, the National Health Service Trust Development Authority or the Healthcare Safety Investigation Branch in respect of anything transferred; 20
  - (d) make provision for references to the National Health Service Trust Development Authority or the Healthcare Safety Investigation Branch in an instrument or other document in respect of anything transferred to be treated as references to the HSSIB. 25
- (3) A property transfer scheme may make provision for the shared ownership or use of property. 30
- (4) A staff transfer scheme may make provision which is the same as or similar to the TUPE regulations.
- (5) A property transfer scheme or a staff transfer scheme may provide for the scheme to be modified by agreement.

*Interpretation* 35

- 24 (1) For the purposes of this Part of this Schedule –
- (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment. 40
- (2) In this Part of this Schedule –
- (a) “Directions” means the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016 made under section 7 of the 2006 Act; 45

- (b) “Healthcare Safety Investigation Branch” means the division of the National Health Service Trust Development Authority established pursuant to paragraph 2(1) of the Directions;
- (c) “National Health Service Trust Development Authority” means the Special Health Authority established under the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (S.I. 2012/901); 5
- (d) “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
- (e) references to the transfer of property include references to the grant of a lease. 10

## SCHEDULE 2

Section 36

### CONSEQUENTIAL AMENDMENTS

#### *Public Records Act 1958 (c. 51)*

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records) in Part 2 of the table in paragraph 3, at the appropriate place insert – 15  
“Health Service Safety Investigations Body (except for any record that is prohibited from being disclosed by section 13 of the Health Service Safety Investigations Act 2019).”

#### *Public Bodies (Admission to Meetings) Act 1960 (c. 67)* 20

- 2 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (public authorities to which that Act applies) in paragraph 1, after paragraph (o) insert –  
“(p) the Health Service Safety Investigations Body.”

#### *Parliamentary Commissioner Act 1967 (c. 13)* 25

- 3 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) at the appropriate place insert –  
“The Health Service Safety Investigations Body.”

#### *House of Commons Disqualification Act 1975 (c. 24)*

- 4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert – 30  
“Chief Investigator, chair or other member of the Health Service Safety Investigations Body.”

#### *Copyright, Designs and Patents Act 1988 (c. 48)*

- 5 In section 48(6) of the Copyright, Designs and Patents Act 1988 (material communicated to the Crown in the course of public business) after “the Care Quality Commission,” insert “the Health Service Safety Investigations Body,”. 35

*Employment Rights Act 1996 (c. 18)*

- 6 (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 49B(7) (regulations prohibiting discrimination because of protected disclosure) after paragraph (g) insert—  
“(ga) the Health Service Safety Investigations Body;” 5
- (3) In section 50(8) (right to time off for public duties) after paragraph (ad) insert—  
“(ae) the Health Service Safety Investigations Body;”
- (4) In section 218(10) (change of employer) after paragraph (cd) insert—  
“(ce) the Health Service Safety Investigations Body.” 10

*Freedom of Information Act 2000 (c. 36)*

- 7 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies) at the appropriate place insert—  
“The Health Service Safety Investigations Body.”

*National Health Service Act 2006 (c. 41)* 15

- 8 (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 9(4) (NHS contracts) after paragraph (kc) insert—  
“(kd) the Health Service Safety Investigations Body;”
- (3) In section 71(2) (schemes for meeting losses and liabilities etc of certain health service bodies: bodies eligible to participate) after paragraph (fa) insert—  
“(fb) the Health Service Safety Investigations Body;” 20
- (4) In section 247C(2) (Secretary of State’s duty to keep health service functions under review) after paragraph (ea) insert—  
“(eb) the Health Service Safety Investigations Body;” 25
- (5) In section 253(1A) (emergency powers) after paragraph (c) insert—  
“(ca) the Health Service Safety Investigations Body;”

*Health Act 2009 (c. 21)*

- 9 In section 2(2) of the Health Act 2009 (duty to have regard to NHS Constitution) after paragraph (h) insert—  
“(i) the Health Service Safety Investigations Body.” 30

*Equality Act 2010 (c. 15)*

- 10 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities to which the public sector equality duty applies) under the heading “Health, social care and social security”, after the entry relating to the Health and Social Care Information Centre insert—  
“The Health Service Safety Investigations Body.” 35



# **Health Service Safety Investigations Bill [HL]**

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## **B I L L**

To establish the Health Service Safety Investigations Body and to confer the function of carrying out investigations and other functions on that body; to make provision in connection with investigations carried out by that body; to make provision about medical examiners; and for connected purposes.

*Baroness Blackwood of North Oxford*

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