

# HEALTH SERVICE SAFETY INVESTIGATIONS BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Health Service Safety Investigations Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 4).

- These Explanatory Notes have been prepared by the Department of Health and Social Care 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.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill makes provision in relation to two main subject matters:
  - First, the establishment of the Health Service Safety Investigations Body (“HSSIB”) as an independent statutory body with powers to conduct investigations into incidents during the provision of NHS services, or at premises at which these services are provided, which appear to evidence risks affecting safety of patients. The Bill creates a ‘safe space’ within which participants can provide information for the purposes of an investigation without fear that it will be disclosed to others by imposing a prohibition on the disclosure of information held by the HSSIB in connection with its investigatory function. Information held in safe space will only be disclosed by the HSSIB in certain limited circumstances.
  - Secondly, the Bill makes an amendment to the Coroners and Justice Act 2009 to give English NHS bodies the power to appoint Medical Examiners. Furthermore, it sets out a duty on the Secretary of State for Health and Social Care to ensure that enough Medical Examiners are appointed, that they are properly resourced and their performance is monitored.

## Policy background

- 2 The existing Healthcare Safety Investigation Branch (“the Investigation Branch”) was set up on 1 April 2017. The Investigation Branch is currently operational under Secretary of State directions as an organisational arm of the Trust Development Authority (which is part of NHS Improvement). The aim of this Bill is to establish a new statutory body which will replace the Investigation Branch.
- 3 The policy is to establish the Health Service Safety Investigations Body (HSSIB) as a new Executive Non-Departmental Public Body, with powers and independence to conduct investigations into incidents that occur during the provision of NHS services and have or may have implications for the safety of patients. Independence as a concept is fundamentally important to the HSSIB as it will be a major way of ensuring that patients, families and staff have trust in its processes and judgements.
- 4 Establishing the HSSIB as a new independent body aligns with the Department’s drive to improve patient safety.
- 5 The policy to establish the ‘safe space’ provision within the Bill is comparable to similar legal provisions for bodies that investigate air, rail and marine accidents. These investigation branches look to use ‘safe space’ principles to improve safety, by promoting learning and not attributing blame, and this is a founding principle behind establishing ‘safe space’ for health service investigations in this Bill.
- 6 The HSSIB will look to encourage the spread of a culture of learning within the NHS through promoting better standards for local investigations and improving their quality and effectiveness. To this end the HSSIB may provide advice, guidance and training to organisations.
- 7 These proposals align with the recommendations in [Learning not blaming: the Government response to the Freedom to Speak Up consultation; the Public Administration Select Committee report ‘Investigating Clinical Incidents in the NHS’ \(March 2015\); and the Morecambe Bay Investigation \(July 2015\)](#).

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- 8 The Bill will amend the Coroners and Justice Act 2009, setting out a power for English NHS bodies to appoint Medical Examiners and a duty on the Secretary of State for Health and Social Care to ensure that enough Medical Examiners are appointed in the healthcare system in England, that enough funds and resources are made available to medical examiners to enable them to carry out their functions of scrutiny to identify and deter poor practice, and to ensure that their performance is monitored. The system will ensure that every death is scrutinised, by either a coroner or a medical examiner. This means that any clinical issues and learning can quickly be identified and contribute to improving patient safety.

## Legal background

- 9 The relevant legal background is explained in the policy background section of these Notes.

## Territorial extent and application

- 10 Clause 40 sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. Clause 32 makes provision for the territorial limit of the exercise of functions conferred on the HSSIB.
- 11 The Bill extends to England and Wales only, save for clause 18 and Chapter 2 (Final Provisions), which extend to England, Wales, Scotland and Northern Ireland.
- 12 In addition to its core investigatory functions, the HSSIB has the function of disseminating information about best practice in carrying out investigations, developing standards to be adopted in carrying out investigations and giving advice, guidance or training to English NHS bodies under clause 28. Where requested to do so, the HSSIB may also give such advice or assistance to NHS and non-NHS bodies in Wales, Scotland and Northern Ireland, as well as to bodies outside the UK, and may charge for those services. The exercise of this function does not affect extent.
- 13 The HSSIB may also enter into agreement to carry out a qualifying investigation into patient safety incidents in Wales and Northern Ireland under a contract and for a fee under clause 29. A qualifying investigation is defined as an investigation into one or more incidents that have (or may have) implications for patient safety occurring in the United Kingdom during the provision of NHS services in Wales and Northern Ireland. The investigation must be for the same purpose as for other HSSIB investigations – i.e. for the purpose of identifying risks to the safety of patients and addressing those risks by facilitating improvement of systems and practices in the provision of NHS services and not to determine blame or civil or criminal liability. The HSSIB can charge for such investigations on a cost recovery basis.
- 14 The HSSIB's other functions are only exercisable in relation to England (clause 32). The only other exceptions are in relation to the function of making representations at a High Court district registry in Wales, in relation to an application for the disclosure of documents under clause 17(2) or on the admissibility of the HSSIB's reports under clause 25(4). The HSSIB may also disclose information to a coroner in accordance with clause 19, and a coroner may apply to the High Court district registry in Wales for an order that protected material disclosed under clause 19 may be disclosed during an inquest/investigation, in a report about action to prevent death or to another person, and the HSSIB may make representations to the Court about any such application.
- 15 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

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- 16 The Bill does not include provisions which are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: Establishment of the Health Service Safety Investigations Body

### Clause 1: The Health Service Safety Investigations Body

18 Clause 1 establishes the Health Service Safety Investigations Body (the HSSIB) as a body corporate. It also gives effect to Schedule 1.

## Part 2: The Investigation Function of the Health Service Safety Investigations Body

### Chapter 1: The Function

#### Clause 2: Investigation function

- 19 Clause 2 gives the HSSIB the function of investigating qualifying incidents that occur during the provisions of NHS services or at premises at which NHS services are provided. A qualifying incident is any incident which has (or may have) implications for the safety of patients. NHS services means services provided in England for the purposes of the health service continued under section 1(1) of the National Health Services Act 2006. The HSSIB will determine and publish the criteria it will use to determine which qualifying incident it will investigate (under clause 3(1)(a)).
- 20 The HSSIB could investigate an incident that occurred during the provision of NHS services in a private hospital or privately-owned care home. The HSSIB could also investigate an incident such as an assault that occurred not during the provision of NHS care but on premises providing NHS care. However, the HSSIB can only investigate English NHS services.
- 21 The aim is that the HSSIB will gather general lessons from investigating patient safety incidents and share these with the NHS. The purpose is to identify risks to the safety of patients and address those risks by facilitating improvement of systems and practice in the provision of NHS services. The HSSIB's investigative function is not for the purposes of assessing or determining blame, civil or criminal liability, or action to be taken by a professional regulator in respect of an individual.

#### Clause 3: Publication of criteria, principles and processes

- 22 The HSSIB must develop and publish the criteria it will use to determine the incidents it will investigate, the principles that will govern investigations, the processes that will be used in carrying out investigations, and the processes for ensuring that patients and their families are involved in investigations. It is expected that this will include the process that will be used to determine how interested parties (e.g. patients, families, and staff, including those of NHS England, CCGs and those providing services to the NHS) will be involved in the investigations. The processes must include the procedures and methods to be used in investigations and the time periods within which the HSSIB will aim to complete investigations. The Department expects that the HSSIB will make all necessary efforts to involve patients and families in investigations. However, where individuals cannot be reached, despite efforts made by the HSSIB, or where they refuse to participate, this should not prevent the HSSIB from proceeding with its investigation.

- 23 In developing these criteria, principles and processes, the HSSIB must consult the Secretary of State and any other persons as they think appropriate.
- 24 The HSSIB must review the criteria, principles and processes once in the first three years after publication and at least once every five years after the first review, and if revising following review must consult the Secretary of State or other persons the HSSIB considers appropriate. The aim of these provisions is to encourage the HSSIB to change and improve its methods as it becomes more experienced in conducting safety investigations within the health service.
- 25 The HSSIB must also publish and maintain a list of ongoing, discontinued and completed HSSIB investigations.

#### Clause 4: Representations and requests to investigate

- 26 Clause 4 requires the HSSIB to consider any representations made by any person the HSSIB consider appropriate before deciding whether to investigate a qualifying incident. The HSSIB must consider any request made to it by the Secretary of State to carry out a particular investigation that meets the HSSIB's criteria. However, the final decision on what to investigate rests with the HSSIB.

## Chapter 2: Carrying out investigations

#### Clause 5: Entry to premises, inspection and seizure

- 27 In carrying out its function of investigating incidents, the HSSIB will engage with those providing the NHS care under investigation and managing the organisations where the investigation is taking place. It is expected that in most cases, the staff and organisation will co-operate with the HSSIB investigators, consent to the investigators' entry to premises and provide relevant documents. However, where consent is not given, clause 5 gives the HSSIB powers to enter and inspect premises.
- 28 These are similar powers to investigatory bodies in other safety-critical industries, such as the Air Accident Investigations Branch (AAIB).
- 29 The power of entry does not apply to premises which are used wholly or mainly as a "private dwelling". An investigator can therefore only enter a private dwelling with consent. This could apply, for example, where domiciliary care is provided to a patient and would mean that an investigator would need to obtain consent from the resident before entering their home.
- 30 If the HSSIB considers it necessary for the purpose of furthering the investigation, an HSSIB investigator may enter and inspect premises; inspect and take copies of documents at the premises, or capable of being viewed using equipment at the premises, for example if the document is stored on a cloud; inspect any physical piece of equipment or object; and remove any documents, equipment or items (unless doing so would put a patient's safety at risk).
- 31 If asked an investigator must show evidence that he or she is acting on behalf of the HSSIB. This will normally be a letter of authority from the Chief Investigator.

#### Clause 6: Crown interests

- 32 There are specific provisions which apply where the HSSIB wishes to enter premises in which there is a Crown interest. This may be for example, in prisons, other secure institutions and premises occupied by armed forces personnel, where NHS services are provided.
- 33 Clause 6 provides that the HSSIB must give reasonable notice in writing to the occupier of the premises before exercising its powers of entry in clause 5. This will allow arrangements to be made to ensure the safety of the HSSIB investigators and to maintain security at the premises being inspected, which could be a prison or premises occupied by armed forces personnel.

- 34 Where the Secretary of State considers it appropriate in the interest of national security, he or she could issue a certificate to prevent the HSSIB from exercising its power of entry, or to specify the circumstance in which that power may be exercised, in respect of any specified premises in which there is a Crown interest. The definition of “Crown interest” is set out at clause 6(3).

### Clause 7: Notices requiring the provision of information etc.

- 35 Clause 7 makes provision for an investigator to obtain information, documents, equipment or other items that are necessary for the purpose an investigation. An investigator may give a notice in writing asking someone to attend at a specified time to answers questions or to provide information, documents, equipment or other items as specified or of a description specified in the notice.
- 36 The clause sets out what must be specified in the notice.
- 37 In particular, the notice must explain the consequences associated with not complying with the notice, i.e. it is a criminal offence, as set out in clause 10. A person who commits this offence is liable on summary conviction to a fine.
- 38 Information held in an electronic form, may be required in a form in which it is legible, and this should be made clear in the notice.

### Clause 8: Notices under section 7: safeguards

- 39 Clause 8 sets out the safeguards that apply where a notice is served. A person who attends an interview to answer questions or who is asked to provide any information is not required to answer questions where the answer would risk the safety of any patient or if the information is protected by legal professional privilege, or if it might incriminate the person. Provision of information required by a notice would not breach any obligation of confidence owed by the person providing it or any other restriction on the provision of information, for example imposed by an employment contract. However, the clause does not authorise the provision of information in contravention of the data protection legislation.

### Clause 9: Notices under section 7: supplementary

- 40 An investigator may withdraw a notice issued under clause 7.
- 41 Clause 9 allows the HSSIB to retain any document, equipment or other item provided to an investigator, for as long as is necessary, for the purposes of an investigation unless its retention would risk the safety of any patient.
- 42 A person attending to answer questions must be reimbursed by the HSSIB for any reasonable costs incurred.
- 43 The HSSIB may record, in writing or electronically, the answers given by a person for the purposes of an investigation.

### Clause 10: Offences relating to investigations

- 44 Clause 10 creates new criminal offences for obstructing an investigator in the performance of functions conferred under clause 5 (power of entry), for example, denying access to premises, or failing to comply with a notice under clause 7 without a reasonable excuse.
- 45 It is also a criminal offence to knowingly provide false or misleading information to an HSSIB investigator. But if a person discovers falsified information which they want to disclose to the HSSIB, they can do so, provided that they explain that they think the information is false.
- 46 A person who commits any of the offences will be subject to a summary conviction and a fine set by the courts.

## Clause 11: Power to disclose information etc to the HSSIB

- 47 Clause 11 allows a person to disclose information to the HSSIB if he or she reasonably believes that disclosure is necessary to enable the HSSIB to carry out its functions, set out in clause 2. In doing so, the person must comply with data protection legislation, but a disclosure made to the HSSIB under this clause will not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information.

## Clause 12: Co-operation regarding logistical issues

- 48 Clause 12 recognises that other health bodies may be investigating the same or a related incident to that being investigated by the HSSIB which could raise logistical issues. Both the HSSIB and the listed health bodies must co-operate with each other in respect of practical arrangements for co-ordinating those investigations such as appropriately sequencing investigations. The listed health bodies are:

- a) an NHS foundation trust, an NHS trust or any other person providing NHS services;
- b) the National Health Service Commissioning Board (known operationally as NHS England);
- 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

Clause 12 (4) and (5) requires the HSSIB to publish guidance clarifying when incidents should be regarded as related and must publish any revisions to the guidance.

## Chapter 3: Prohibition On Disclosure

### Clause 13: Prohibition on disclosure by the HSSIB

- 49 The Bill prohibits the disclosure of information held by the HSSIB in connection with its investigatory function (referred to as “protected material”) unless one of the exceptions set out in clauses 14, 15, 19 or 22 applies or the High Court makes an order for disclosure under clause 17. Any information, documents, equipment or other item which has previously and lawfully been made available to the public is not to be regarded as “protected material” for the purpose of this clause. The aim is to create a ‘safe space’ within which participants can provide information for the purposes of an investigation in confidence and therefore feel able to speak openly and candidly with the HSSIB.
- 50 Clause 13 prohibits the disclosure by the HSSIB of any protected material which includes information, document, equipment or other item held by the HSSIB in connection with its investigation function.
- 51 The safe space applies both to protected material obtained as part of a referral before the HSSIB decided whether to investigate as well as to material held in connection with an investigation already underway or completed (other than the published report – see chapter 4).
- 52 Clause 13(5) and (6) define who the main prohibition on disclosure applies to. These include past and present members of the HSSIB, including committee and sub-committee members,

investigators and administrators or other workers of the HSSIB including apprentices and agency workers.

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

- 53 The prohibition on disclosure does not prevent a person within the HSSIB as defined under 13(5) from sharing protected material with each other so far as necessary for the purposes of an investigation.
- 54 In addition, the HSSIB may share any protected material with a person who is not part of the HSSIB where the Chief Investigator reasonably believes that disclosure is necessary for the purposes of an investigation. For example, the HSSIB may share protected material with a participant to the investigation, if needed as part of the investigation.
- 55 Where the Chief Investigator reasonably believes that disclosure is necessary for the prosecution or investigation of an offence relating to investigations or unlawful disclosure, the HSSIB may disclose any protected material.

#### Clause 15: Exceptions from prohibition: risk to safety

- 56 The HSSIB may disclose protected material held by it in connection with an investigation where the Chief Investigator reasonably believes that disclosure is necessary to address a serious and continuing risk to the safety of any patient or to the public.
- 57 However, the HSSIB may disclose no more than is necessary, to enable the risk to be addressed and may only disclose the information to the person(s) whom the Chief Investigator reasonably believes is in a position to address that risk, for example, where the HSSIB have evidence of criminal behaviour, which may risk the safety of patients and wish to disclose that information to the police, they should only disclose sufficient information to enable the police to carry out their own investigation.

#### Clause 16: Further provisions about disclosure under section 14 or 15

- 58 Clause 16 gives the Chief Investigator the power to delegate functions under clauses 14 or 15 to an HSSIB investigator. The delegation of such functions may relate to all cases or to a particular case or certain type of cases. The HSSIB must publish guidance and any revisions to the guidance, setting out the circumstances in which the HSSIB may exercise its power to disclose and the processes it will follow when disclosing protected material.

#### Clause 17: Exceptions from prohibition: High Court Order

- 59 Clause 17 makes provision for any person to apply to the High Court for an order that protected material that is held by the HSSIB in connection with an investigation be disclosed to the person making the application for the reason set out in the application. The Court can order the disclosure for the purposes specified in the application, which may include admitting the protected material in legal proceedings.
- 60 The HSSIB may make representation to the High Court if an application for disclosure is made.
- 61 The Court may only allow the protected material to be disclosed if it determines that the interests of justice served by disclosing the protected material in question outweigh:
- any adverse impact on current and future investigations by the HSSIB by deterring persons from participating in them, and
  - any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services.

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

- 62 Clause 18 prevents a power in any other legislation being used to require disclosure of, or to seize, any protected material from the HSSIB. This clause does not apply to coroners in some circumstances. Clause 18(3) ensures that the clause will not impact on any provision that is within the competence of a devolved legislature.

## Clause 19: Disclosure to coroners

- 63 A coroner must conduct an inquest into a death that he or she suspects was violent or unnatural, where for example, the deceased might have been murdered or taken his or her own life, or if the cause of death is unknown or if the person dies in custody or otherwise in state detention. Coroners have powers under the Coroners and Justice Act 2009 to compel the production of evidence for the purposes of an investigation.
- 64 Notwithstanding clause 18, a coroner may require the disclosure of protected material by the HSSIB pursuant to paragraph 1(1)(b) or (c) or (2) of Schedule 5 to the Coroners and Justice Act 2009.
- 65 The HSSIB may disclose protected information to a coroner for the purpose of complying with a notice issued in accordance with Schedule 5 of the Coroners and Justice Act 2009. The HSSIB may also disclose information to a coroner if the Chief Investigator reasonably believes that the coroner could require the HSSIB to disclose the material if they issued a notice pursuant to Schedule 5 (where a notice is not in fact issued).
- 66 A coroner who receives protected material from the HSSIB will not be able to disclose the protected material to any other person, including using it during an inquest.
- 67 A coroner may apply to the High Court for an order that protected material may be disclosed in the course of proceedings at an inquest, which is held in public, in reports about action to prevent deaths, or otherwise to another person.
- 68 The Court may only allow the protected material to be disclosed if it determines that the interests of justice served by disclosing the protected material in question outweigh:
- any adverse impact on current and future investigations by the HSSIB by deterring persons from participating in them, and
  - any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services.

## Clause 20: Offence of unlawful disclosure

- 69 A person commits an offence if they breach the prohibition on disclosure of protected material held by the HSSIB (clause 13) and they know or suspect that disclosure is prohibited. This applies to the persons who fall within the definition of the HSSIB in clause 13(5).
- 70 A person who receives protected material from the HSSIB in accordance with clauses 14, 15 or 22, for example, for the purposes of addressing a risk to patient safety, to enable them to participate fully in the investigation or to comment on a draft report, commits an offence if they:
- disclose protected material to any other person without a reasonable excuse; and
  - know or suspect that it is protected material.

The person who commits an offence under this clause is liable on summary conviction to a fine.

## Clause 21: Disclosure of information: supplementary

- 71 Any disclosure of information permissible under the exceptions to safe space in Chapter 3 of the Bill must not contravene the data protection legislation but will not be considered in breach of any obligation of confidence owed by the person making the disclosure or any other restriction on disclosure.

## Chapter 4: Reports

### Clause 22: Reports following investigations etc

- 72 The HSSIB must publish a report on the outcome of its investigations. The report must include facts and an analysis of the investigation's findings together with any recommendations as to the action to be taken by any person(s) that the HSSIB considers is best placed to take such actions forward.
- 73 Names of individual participants in an investigation must not be included in the report, unless the HSSIB has sought permission of the participant.

### Clause 23: Opportunity to comment on draft report

- 74 Before publishing a report, the HSSIB:
- must circulate a draft report to any person who the HSSIB reasonably believes could be adversely affected by the report once published or where that person has died to the person who best represents their interest;
  - may send a draft report to any other person who the HSSIB believes should be provided with a draft;
  - must set a deadline for comments and where applicable, explain why these comments have not been taken into account in the final report.

### Clause 24: Reports during investigation etc

- 75 Clause 24 outlines how the HSSIB can publish interim reports during an investigation. These may contain findings of fact and recommendations for action. The aim is to address urgent risks to the safety of patients quickly, or issues that are known early in an investigation, so that swift action can be taken and lessons learned across the NHS.
- 76 Interim reports are subject to the same conditions as final reports, as set out in clause 22(3) to (8) and clause 23.

### Clause 25: Admissibility of reports under section 22 or 24

- 77 Unless the High Court makes an order to the contrary, published final and interim reports prepared by the HSSIB following an investigation (including drafts of those reports) are not admissible in certain types of proceedings, including:
- proceedings to determine civil or criminal liability;
  - proceedings before any employment tribunal;
  - proceedings before a regulatory body (including proceedings for the purposes of investigating an allegation);
  - proceedings to determine an appeal against a decision made in any of the above types of proceedings.

- 78 The High Court may order that a report by the HSSIB is admissible in proceedings in response to an application to the Court by a person who is a party to proceedings or otherwise entitled to appear in them. The HSSIB would be able to make representations to the Court about any application, for example to explain its reasons for not wanting the report to be considered as evidence in the proceedings.
- 79 The Court may only make an order that a report of the HSSIB is admissible if it determines that the interests of justice served by admitting the report outweigh:
- any adverse impact on current and future investigations by the HSSIB by deterring persons from participating in them, and
  - any adverse impact on the ability of the Secretary of State to secure the improvement of the safety of NHS services.

### Clause 26: Response setting out action to be taken

- 80 Clause 26 sets out what should happen when a report from the HSSIB makes recommendations for future action. The addressees of the report must, by the HSSIB's deadline, provide a written response to the HSSIB setting out the action it will take in relation to the recommendations. The HSSIB may publish the response.

## Chapter 5: Interpretation of Part

### Clause 27: Interpretation of Part

- 81 Clause 27 provides definitions that apply throughout Part 2 of the Bill.

## Part 3: Additional Functions etc

### Additional functions of the HSSIB

#### Clause 28: Function of giving assistance

- 82 In addition to its core investigatory functions, the HSSIB has the function of disseminating information about best practice in carrying out investigations, developing standards to be adopted in carrying out investigations and providing advice, guidance or training. Where requested to do so, the HSSIB must give assistance to the following NHS bodies in England relating to the carrying out of investigations into incidents occurring during the provision of NHS services: NHS trusts, NHS foundation trusts, and the National Health Service Commissioning Board (which uses the operational title NHS England) and clinical commissioning groups. The Secretary of State, Monitor, or a Special Health Authority responsible for the oversight of the performance and governance of NHS trusts (currently the NHS Trust Development Authority, which operates under the umbrella of NHS Improvement) or the body itself may request the assistance. If the assistance sought is the provision of advice, guidance or training, the HSSIB would not be bound to provide this assistance if it decided it was impracticable for it to do so.
- 83 The HSSIB may also give assistance to other bodies not listed in this clause. The HSSIB may only give assistance to such bodies where requested to do so by the bodies themselves. The HSSIB may only provide assistance in these circumstances where the assistance does not significantly interfere with the HSSIB's exercise of its functions.
- 84 Except in the case of the listed NHS bodies in England, the HSSIB may charge a fee for sharing its expertise on a commercial basis.

## Clause 29: Investigations by agreement: Wales and Northern Ireland

- 85 The HSSIB may enter into agreements to carry out a qualifying investigation. A qualifying investigation is defined as one or more incident that has (or may have) implications for patient safety occurring in the United Kingdom during the provision of Welsh or Northern Irish NHS services. The investigation must be for the same purpose as for other HSSIB investigations – i.e. for the purpose of identifying risks to the safety of patients and addressing those risks by facilitating improvement of systems and practices in the provision of NHS services and not to determine blame or civil or criminal liability. The HSSIB cannot contract to provide such investigations in respect of Scottish NHS services but bodies in Scotland may request expertise from HSSIB under clause 28 during the course of its own investigation.
- 86 The HSSIB can charge for such investigations on a cost recovery basis.
- 87 The HSSIB may only enter into such an agreement if it considers that providing the services as set out in the agreement will not significantly interfere with the exercise of its investigation functions.

## HSSIB's functions: supplementary

### Clause 30: Functions: supplementary

- 88 Clause 30 enables the HSSIB to carry out the corporate activities that are likely to be necessary in order for it to carry out its statutory work and function as an organisation. This includes powers to enter into agreements, buy or sell property, supply goods and services and develop, own and exploit intellectual property.
- 89 The clause places the HSSIB under the same duty of economy and efficiency as other public bodies in the health service.

### Clause 31: Failure to exercise functions

- 90 Clause 31 provides for intervention by the Secretary of State should the HSSIB fail significantly to carry out its functions or fail to carry them out properly. In that event, the clause confers on the Secretary of State a power to direct the HSSIB as to the exercise of its functions, setting a time frame if appropriate. In the event that the HSSIB failed to comply with such directions, the Secretary of State may exercise the functions in question or arrange for another party to do so. Subsection(3) means the Secretary of State cannot direct the HSSIB about the outcome of a particular investigation, including on the content of its reports or recommendations.

### Clause 32: Territorial limit of exercise of functions

- 91 Clause 32 provides that the HSSIB's functions are only exercisable in relation to England, apart from the following:
- the function of giving advice and providing assistance to bodies outside England in accordance with clause 28(6) and (9);
  - undertaking investigations by agreement and for a fee into patient safety incidents in Wales and Northern Ireland in accordance with clause 29;
  - the function of making representations at a High Court district registry in Wales in relation to an application for the disclosure of documents under clause 17 or the admissibility of the HSSIB's reports under clause 25;
  - the function of disclosing protected material to coroners and making representations at a High Court district registry in Wales in relation to further disclosure, as provided for by clause 19;

- the function of doing anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the HSSIB's functions under section 17, 19, 25, 28(6) or (9) or 29.

### Clause 33: Review

- 92 Clause 33 confers a duty on the Secretary of State to review the effectiveness of the HSSIB and publish a report of that review, before the end of four years of clause 2 of the Act coming into force. The report must be laid in Parliament. Clause 2 confers on the HSSIB the function of carrying out investigations.

## Part 4: Medical Examiners

### Clause 34: Medical examiners

- 93 Clause 34 amends sections 19 and 20 of the Coroners and Justice Act 2009 to set out a power for English NHS bodies to appoint Medical Examiners and a duty on the Secretary of State to ensure that enough Medical Examiners are appointed in the healthcare system in England, that enough funds and resources are made available to Medical Examiners to enable them to carry out their functions of scrutiny, to identify and deter poor practice, and to ensure that their performance is monitored.
- 94 The purpose of the amendment is to introduce a statutory scheme of Medical Examiners within the NHS rather than Local Authorities in England. Following a death that is not being referred to a coroner, Medical Examiners, who will be registered medical practitioners, will scrutinise the Medical Certificate of Cause of Death produced by the attending Doctor, and can hold discussions with families. Medical Examiners will introduce an additional level of scrutiny to those deaths not reviewed by a coroner. It will improve engagement with the bereaved in the process of death certification and offer them an opportunity to raise any concerns as well as improving the quality and accuracy of Medical Certificates of Cause of Death. The level of scrutiny will be proportionate so as not to impose undue delays on the bereaved or undue burdens on medical practitioners and others involved in the process.
- 95 Clause 34 will amend the existing provision in section 20(5) of the Coroners and Justice Act 2009, which provides a power to make regulations requiring a fee to be payable for all adult deaths not referred to a coroner that are scrutinised by a Medical Examiner. The amendment will require any such fee to be payable to an English NHS body rather than a local authority. The introduction of regulations will be dependent on wider reforms around existing requirements for cremations and will be subject to further parliamentary scrutiny.

## Part 5: Supplementary and Final Provisions

### Chapter 1: Supplementary Provisions

#### Clause 35: Interpretation

- 96 Clause 35 provides definitions that apply throughout the Bill. A number of the definitions rely on terms used in the National Health Service Act 2006.

#### Clause 36: Consequential amendments

- 97 This clause gives effect to Schedule 2 which contains amendments to other legislation made in consequence of this Bill.

#### Clause 37: Offences by bodies corporate

- 98 Clause 37 deals with corporate liability. If an offence under the Bill is proved to have been committed with the consent or connivance of an officer of a body corporate or is attributable to any negligence on the part of an officer, then the individual officer as well as the body

corporate, are guilty of the offence. An officer of a body corporate means a director, manager, secretary or other similar officer or person acting in any such capacity or anyone purporting to act in any such capacity.

### Clause 38: Offences by partnerships

99 Clause 38 provides for when an offence has been committed by a partnership, such as a GP partnership, and allows proceedings to be brought in the name of the partnerships as well as the individual partners.

100 If an offence under the Bill is proved to have been committed with the consent or connivance of a partner or is attributable to any negligence on the part of a partner, then the individual partner (which includes a person purporting to act as a partner), as well as the partnership is guilty of the offence.

101 A fine imposed on a partnership must be paid out of the partnership assets. If an individual partner is convicted of an offence the fine would be paid by the partner as an individual.

### Clause 39: Abolition of NHS trusts in England: consequential amendments

102 Clause 39 sets out consequential amendments to this Bill relating specifically to the abolition of NHS trusts as a result of section 179 of the Health and Social Care Act 2012 coming into force. Section 306(4) of the 2012 Act provides that section 179 is to come into force on such date as the Secretary of State may by order appoint. There is at present no order appointing a date for the coming into force of section 179 of the 2012 Act.

## Chapter 2: Final Provisions

### Clause 40: Extent

103 Clause 40 sets out the territorial extent of the Bill, that is the jurisdictions within which the Bill forms part of the law.

104 The Bill extends to England and Wales only, save for clause 18 and Chapter 2, which extends to England, Wales, Scotland and Northern Ireland.

### Clause 41: Commencement

105 This clause provides that certain provisions of the Bill come into force on the day that this Act is passed. These are the Final Provisions (Chapter 2 of Part 5 dealing with extent, commencement and the Act's title) and Clause 39 (which makes consequential amendments on the coming into force of section 179 of the Health and Social Care Act 2012). The remaining provisions of the Act come into force on the day or days specified by the Secretary of State in regulations. There is a power to make regulations which include transitional or saving provisions in connection with the coming into force of any provision of the Bill.

### Clause 42: Short title

106 This clause states the Bill's short title as 'The Health Service Safety Investigations Act 2019'.

## Schedules

### Schedule 1: The Health Service Safety Investigations Body

#### Part 1 – The Constitution

##### *Status*

107 The Schedule provides for the HSSIB's governance arrangements. It includes details of the membership of the HSSIB and the process for appointments, including the appointment of the chief executive, and sets out the HSSIB's financial and reporting obligations.

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108 The HSSIB's status is confirmed as a non-Crown organisation, in line with the status of other non-Departmental Public Bodies. The HSSIB is not to be regarded as a servant or agent of the Crown and will not enjoy any status, immunity or privilege of the Crown. The HSSIB's property will not be regarded as property of, or property held on behalf of, the Crown.

#### *Membership*

109 The Schedule sets out the requirements for the membership of the Board of the HSSIB. It provides that the Board must consist of the chair, the chief executive and other members of the HSSIB. The chair and at least four other non-executive members must be appointed by the Secretary of State.

#### *The Chief Investigator: appointment and status*

110 The chief executive is also known as the Chief Investigator. The Chief Investigator is appointed by the non-executive members, with the consent of the Secretary of State.

#### *Other executive members: appointment and status*

111 The number of non-executive members must exceed the number of executive members. The executive members are appointed by the non-executive members of the HSSIB and no more than five executive members (in addition to the Chief Investigator) can be appointed without the consent of the Secretary of State. This is intended to ensure that the HSSIB's board remains at an appropriate size and composition and to ensure that the appointment of any additional members is justified. The executive members are to be employees of the HSSIB.

#### *Non-executive members: tenure*

112 The schedule makes provision for the terms and conditions of appointment and tenure of office for the HSSIB's non-executive members. The maximum term of office for non-executive members is six years (the initial appointment can be for three years plus possible reappointment for a further three). The Secretary of State may suspend or remove a non-executive member from office, on the grounds of incapacity, misbehaviour, or failure to carry out duties properly.

#### *Non-executive members: suspension from office*

113 The Secretary of State must provide the individual with notice of the suspension, and there is a process for review of the suspension. The suspension must be for an initial period of not more than six months. It may be reviewed by the Secretary of State at any time and must be reviewed if the person suspended requests this. There is also provision for the Secretary of State to appoint an interim chair when a chair is suspended.

#### *Non-executive members: payment*

114 It is required that the HSSIB must pay to non-executive members such remuneration and allowances as the Secretary of State may decide. The HSSIB can make arrangements for pensions, allowances and gratuities to be paid to non-executive members or former non-executive members. These arrangements would be for the HSSIB to determine with the approval of the Secretary of State.

#### *Staff*

115 The HSSIB is provided with powers to employ staff on such pay, terms and conditions as it may determine, following Secretary of State's approval of its policy on the remuneration, pensions etc. of employees.

#### *Procedure*

116 The HSSIB has the power to regulate its own procedure and any vacancy amongst the members does not affect the validity of its actions.

### *Committees*

117 The HSSIB may appoint committees and sub-committees and pay remuneration and allowances to committee members if they are not members or employees of the HSSIB.

### *Exercise of functions*

118 The HSSIB can delegate authority to carry out its functions to non-executive members, employees or a committee or sub-committee.

### *Assistance in exercise of functions*

119 The HSSIB can obtain assistance from other persons, for example experts, in exercising its functions.

### *Funding*

120 The Secretary of State may fund the HSSIB's activities to the extent that the Secretary of State considers appropriate.

### *Borrowing*

121 The HSSIB holds the power to temporarily borrow money by overdraft with the consent of the Secretary of State.

### *Use of income from charges*

122 Any income that the HSSIB generates in connection with the exercise of its functions must be re-invested in carrying out those functions.

### *Losses and liabilities etc*

123 The HSSIB is included in the list of authorities covered by section 265 of the Public Health Act 1875. The effect of this is to protect members and officers of the HSSIB from personal liability in certain circumstances.

### *Accounts*

124 As a non-Departmental Public Body, the HSSIB is required to keep proper accounts and prepare a set of accounts in each financial year. The HSSIB is required to prepare these accounts in the form, and with the content, and using methods and principles determined by the Secretary of State. The HSSIB must send its annual accounts to the Secretary of State and the Comptroller and Auditor General who is responsible for examining, certifying and reporting on the accounts and for laying copies of the audited accounts (and his report on them) before Parliament.

### *Reports and other information*

125 The HSSIB must publish an annual report on how it has exercised its functions. The annual report must be sent to the Secretary of State and laid before Parliament. The HSSIB is also required to provide further reports and information about its own functions to the Secretary of State as required in so far as they relate to the exercise of their functions in the round, but not the details of specific investigations.

126 Examples of the information that might be requested are:

- Information about salaries for auditing;
- Performance data for parliamentary scrutiny;
- Costing data for budget setting;
- Employee data for equalities monitoring.

### *Seal and signature*

127 The HSSIB's seal must be signed by any member of the HSSIB or any other person authorised for that purpose for it to be authenticated.

## **Part 2: Transfer Schemes**

### *Transfer Schemes*

128 This part contains provision about schemes for the transfer of staff, property, rights and liabilities from the NHS Trust Development Authority to the HSSIB.

129 This makes provision for a property transfer scheme or staff transfer scheme in connection with the establishment of the HSSIB.

### *Supplementary*

130 This will allow for the transfer to the HSSIB of any property, rights or liabilities of the NHS Trust Development Authority connected with the discharge of the HSSIB's functions under the Directions which established the Healthcare Safety Investigation Branch (the Investigation Branch) as part of NHS Improvement in April 2016.

131 In particular, this provision provides that a staff transfer scheme may require that employees of the NHS Trust Development Authority who are employed for the purposes of carrying out functions of the Investigation Branch are transferred to the HSSIB, under terms which are the same as, or similar to, those provided for by the Transfer of Undertakings (Protection of Employment) Regulations 2006, which includes certain protections of employment rights for transferred staff.

### *Interpretation*

132 This part sets out the meaning of terms used in the Schedule.

## **Schedule 2 – Consequential amendments**

133 This Schedule makes consequential amendments to the following Acts to include references to the HSSIB where appropriate:

- Public Records Act 1958
- Public Bodies (Admission to Meetings) Act 1960
- Parliamentary Commissioner Act 1967
- House of Commons Disqualification Act 1975
- Copyright, Designs and Patents Act 1988
- Employment Rights Act 1996
- Freedom of Information Act 2000
- National Health Service Act 2006
- Health Act 2009
- Equality Act 2010.

## Financial implications of the Bill

- 134 A full impact assessment has been carried out to assess the impact of setting up the HSSIB as an independent body corporate.
- 135 The Bill will result in two types of effect (costs and savings):
- First-order effects that relate directly to the independent investigations undertaken by the HSSIB
  - Second order effects: for other parts of the system, to respond to the recommendations and guidance, and implement them amongst NHS providers. Since these impacts depend on the decisions of others, they are categorised as second order effects.
- 136 Four first-order costs have been identified: to the HSSIB, the NHS and the public involved, and the Courts.
- 137 The Healthcare Safety Investigation Branch, the “Investigation Branch”, established as a branch of the NHS Trust Development Authority, a special health authority forming part of NHS Improvement, has an agreed annual budget of £3.8million. The Bill will establish the HSSIB to take over the core functions of the Investigation Branch. This will require a small executive function and additional services. This will increase the total annual budget from £3.8million to £4.3million.
- 138 It is estimated that the other public costs of the HSSIB’s investigations will be around £30,000. The combined direct costs of different NHS providers participating in 30 HSSIB investigations for NHS providers are estimated at around £24,000. The estimated costs to the public of participating in the HSSIB investigations could amount to £3,800 per annum. Costs incurred by public bodies other than the HSSIB making an application to court for access to protected material are estimated at £1,275 per year.
- 139 DHSC has agreed to meet the additional costs associated with any applications to the High Court by coroners to enable them to use safe space information during an inquest or to disclose it to other parties.
- 140 The primary second-order cost to the setup of the HSSIB would be the cost of implementing the HSSIB recommendations. NHS Improvement (the umbrella body comprising the NHS Trust Development Authority, as mentioned above, and Monitor) will have a key role in ensuring many of the HSSIB recommendations are implemented and will need to reach a view on the affordability and sustainability of those measures. NHS Improvement will be expected to challenge NHS trusts and NHS foundation trusts where their proposals for meeting the HSSIB’s recommendations are costly, inefficient, or ineffective.
- 141 A full impact assessment for the Medical Examiners scheme was published in June 2018 and can be found [here](#).

## Parliamentary approval for financial costs or for charges imposed

- 142 This section will be completed when the Bill transfers to the House of Commons.

## Compatibility with the European Convention on Human Rights

- 143 Baroness Blackwood of North Oxford has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the European Convention on Human Rights (“ECHR”) on introduction of the Bill in the Lords. References to Articles below refer to articles of the ECHR.
- 144 Article 2 safeguards the right to life. The HSSIB will not conduct an Article 2 investigation into a death; those investigations will be conducted by another body such as a coroner. Any public body conducting an Article 2 investigation will have its own powers to obtain information that is relevant to its investigation and the HSSIB will not hinder or impact on that separate process.
- 145 In limited situations, Article 2 may be engaged during the HSSIB investigations, for example where a HSSIB investigation identifies systemic failures which have or may have caused or contributed to a death. However, the Department considers that the provisions in the Bill are compliant with Article 2. If an HSSIB investigation were to uncover a serious and continuing risk to the safety of any patient or the public, the HSSIB is permitted to disclose protected material to any person who it reasonably believes is in a position to address the risk. This will ensure that steps are taken to address any immediate risk to patients’ lives and in doing so will meet the State’s obligation to take steps to protect the lives of citizens
- 146 Article 6 provides that everyone, in the determination of their civil rights and obligations or of any criminal charge against them, is entitled to a fair and public hearing. The Department considers that the ability of an individual to make an application to the High Court to ask for an order to release protected material ensures that the operation of safe space is compliant with Article 6 should such information be needed in connection with a determination of civil rights or in respect of a criminal charge. The HSSIB’s function of investigating is expressly not exercisable to determine civil or criminal liability and so the engagement of participants in the HSSIB investigations does not engage Article 6.
- 147 To the extent that the HSSIB’s operation of the safe space provisions, its power of entry and its power to disclose information engages Article 8 (respect of private and family life) rights, any interference will be compatible with Article 8. This is because it is done in accordance with the law, is in pursuit of a legitimate aim, and necessary in a democratic society (i.e. it is proportionate). The purpose of the provisions is to facilitate high quality investigations which aim to facilitate improvement of systems and practices in the provision of NHS Services. There are also adequate safeguards, for example, the HSSIB will hold and process confidential information in accordance with the law including data protection legislation as well as the safe space provisions.
- 148 Should Article 1 of Protocol 1 (right to peaceful enjoyment of property and possession) be engaged in respect of the HSSIB’s power of entry and powers to inspect and seize and issue a notice to provide a document, information or other item, any potential interference would be considered justified based on the public interest aims of the power of entry and notice procedure which are necessary in order for the HSSIB to carry out its investigations.

## Annex A – Territorial extent and application in the United Kingdom

149 The Bill extends to England and Wales only save in relation to clause 18 and chapter 2 which extend to England Wales, Scotland and Northern Ireland.

150 The HSSIB’s functions are exercisable only in England, except:

- Its ability under clause 28(6) to give assistance (on request) about carrying out investigations and to charge for those services under clause 28(9).
- Its ability under clause 29(1) to enter into agreement with any person for the HSSIB to carry out a qualifying investigation into health services in Wales or Northern Ireland and to charge for those services under clause 29(4).
- The HSSIB may make representations to the High Court in Wales if an application for disclosure of information it holds is made to that Court (clause 17(2)).
- The HSSIB may disclose information to a coroner in Wales in accordance with clause 19 and a coroner may apply to the High Court in Wales for an order that protected material disclosed to the coroner under clause 19 may be disclosed during an inquest/investigation, in a report about action to prevent death or to another person, and the HSSIB may make representation to the High Court in Wales about any such application.
- The HSSIB may also make representations to the High Court in Wales about the admissibility of their report in any proceedings (clause 25 (4)).

151 See the table below for a summary of the position regarding territorial extent and application in the United Kingdom.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
<b>PART 1</b>								
<b>Establishment of the HSSIB</b>								
Clause 1	Yes	No	No	No	Yes	Yes	Yes	No

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
<b>PART 2</b>								
<b>The Function</b> Clauses 2 to 4	Yes	No	No	No	Yes	Yes	Yes	No
<b>Carrying out investigations</b> Clauses 5 to 12	Yes	No	No	No	Yes	Yes	Yes	No
<b>Prohibition on disclosure</b> Clauses 13 to 16	Yes	No	No	No	Yes	Yes	Yes	No
Clause 17	Yes	In Part	No	No	N/A	N/A	N/A	No
Clause 18	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 19	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 20 to 21	Yes	No	No	No	Yes	Yes	Yes	No
<b>Reports</b>								
Clauses 22 to 24	Yes	No	No	No	Yes	Yes	Yes	No
Clause 25	Yes	In Part	No	No	N/A	N/A	N/A	No
Clause 26	Yes	No	No	No	Yes	Yes	Yes	No
<b>Interpretation of Part</b>								
Clause 27	Yes	No	No	No	Yes	Yes	Yes	No
<b>PART 3</b>								
<b>Additional Functions of the HSSIB</b>								
Clause 28*	Yes	Yes	No	No	Yes	Yes	Yes	No
Clause 29*	Yes	Yes	No	No	Yes	Yes	Yes	No

*These Explanatory Notes relate to the Health Service Safety Investigations Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 4)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
<b>Functions: supplementary</b>								
Clause 30	Yes	No	No	No	Yes	Yes	Yes	No
Clause 31	Yes	No	No	No	Yes	Yes	Yes	No
Clause 32 & 33	Yes	No	No	No	Yes	Yes	Yes	No
<b>PART 4</b>								
<b>Medical examiners</b>								
Clause 34	Yes	No	No	No	Yes	Yes	Yes	No
<b>PART 5</b>								
<b>Supplementary and Final provisions</b>								
Clauses 35 to 39	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 40 -42	Yes	In part	In part	In part	N/A	N/A	N/A	No
Schedule 1 Parts 1 & 2	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	No	No	No	Yes	Yes	Yes	No

## Minor or consequential effects

152 The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

### Clause 2: Function of investigating

153 There may be cross-border implications where individuals not residing or working in England receive care from an English NHS provider, and that care is then the subject of an investigation.

### Clause 34: Medical Examiners

154 This clause amends sections 19 and 20 of the Coroners and Justice Act 2009. Those sections do have application in Wales but the amendments only have practical effect in England. There is some change to the wording of the sections to reflect the fact that some sub-sections will now only apply in Wales.

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## Subject matter and legislative competence of devolved legislatures

155 In the opinion of the UK Government, the subject matter of the Bill is within the devolved competence of the Welsh, Scottish and Northern Irish legislatures because it relates to health. Health policy and funding is controlled by the respective Devolved Administrations.

156 Health is within the competence of the National Assembly of Wales because it is not a reserved matter under Schedule 7A of the Government of Wales Act 2006. It is within the competence of the Scottish Parliament because it is not a reserved matter under Schedule 5 of the Scotland Act 1998. It is within the competence of the Northern Ireland Executive because it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 nor excepted under Schedule 2 to that Act.

157 The exceptions are clause 18 and clause 19. Clause 18, which has UK-wide extent, prevents a UK wide power relating to reserved areas being used to require disclosure of, or to seize, any protected material from the HSSIB and therefore would be outside the legislative competence of the devolved legislatures. Clause 19 will apply to coroners' access to protected material, which is a matter outside the legislative competence of the National Assembly for Wales but is not considered outside the legislative competence of the Scottish Parliament or the Northern Ireland Assembly.



# HEALTH SERVICE SAFETY INVESTIGATIONS BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Health Service Safety Investigations Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 4).

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