Health and Care Act 2022

2022 CHAPTER 31

PART 4

THE HEALTH SERVICES SAFETY INVESTIGATIONS BODY

Introductory

109 Establishment of the HSSIB

(1) A body corporate called the Health Services Safety Investigations Body is established.

(2) In this Part that body is referred to as "the HSSIB".

(3) Schedule 13 contains further provision about the HSSIB.

Commencement Information

I1 S. 109 not in force at Royal Assent, see **s. 186(6)**

I2 S. 109 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Investigations

110 Investigation of incidents with safety implications

(1) The HSSIB has the function of investigating incidents that—

(a) occur in England during the provision of health care services, and

(b) have or may have implications for the safety of patients.

(2) The purpose of the investigations is to—

(a) identify risks to the safety of patients, and

(b) address those risks by facilitating the improvement of systems and practices in the provision of NHS services or other health care services in England.

(3) In particular, where an investigation relates to an incident that did not occur during the provision of NHS services, the HSSIB must consider whether, in relation to any risks identified, the systems and practices in the provision of NHS services could be improved.

(4) The purpose of the investigations does not include assessing or determining—
- (a) blame,
- (b) civil or criminal liability, or
- (c) whether action needs to be taken in respect of an individual by a regulatory body.

(5) In this Part, an incident within subsection (1) is called a "qualifying incident".

Commencement Information

I3 S. 110 not in force at Royal Assent, see **s. 186(6)**

I4 S. 110 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

111 Deciding which incidents to investigate

(1) The HSSIB's function under section 110 includes determining which qualifying incidents it will investigate, subject to subsection (2).

(2) The Secretary of State may direct the HSSIB to carry out an investigation of—
- (a) a particular qualifying incident that has occurred, or
- (b) qualifying incidents that have occurred and are of a particular description.

(3) A direction under subsection (2) may specify the date by which the HSSIB must publish its final report (see section 113).

(4) A direction under subsection (2)—
- (a) must be in writing;
- (b) may be varied or revoked by subsequent directions;
- (c) may provide for a person to exercise a discretion in dealing with any matter.

(5) Once the HSSIB has begun an investigation into a qualifying incident, it must, in such manner as it thinks appropriate, publish a statement which—
- (a) reports that it has begun the investigation,
- (b) contains a brief description of the incident, and
- (c) sets out, in general terms, the issues that the HSSIB expects to consider in the investigation.

(6) The HSSIB may give advance notice of a statement under subsection (5) to any person the HSSIB considers may be affected by the investigation.

(7) Where the HSSIB discontinues an investigation, it must, in such manner as it thinks appropriate, publish a statement which—
- (a) reports that it has discontinued the investigation, and
- (b) gives its reasons for doing so.

(8) Where the HSSIB determines not to investigate a qualifying incident, it may give notice of its determination to any person the HSSIB considers to have an interest in the determination.

(9) Notice under subsection (8) may include—
- (a) a brief description of the incident, and
- (b) the HSSIB's reasons for not investigating it.

Commencement Information

I5 S. 111 not in force at Royal Assent, see **s. 186(6)**

I6 S. 111 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

112 Criteria, principles and processes

(1) The HSSIB must determine and publish—
- (a) the criteria it will use in determining which 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.

(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.

(3) Different processes under subsection (1)(c) or (d) may be determined for different descriptions of investigation.

(4) Anything published under subsection (1)(d) must be—
- (a) easily accessible to patients and their families, and
- (b) capable of being easily understood by them.

(5) The HSSIB must review the criteria, principles and processes—
- (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.

(6) If the HSSIB revises the criteria, principles and processes it must publish them as revised.

(7) In determining or revising the criteria, principles and processes the HSSIB must consult—
- (a) the Secretary of State, and
- (b) any other persons the HSSIB considers appropriate.

Commencement Information

I7 S. 112 not in force at Royal Assent, see **s. 186(6)**

I8 S. 112 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Reports

113 Final reports

(1) When the HSSIB completes an investigation, it must publish a report on the outcome of the investigation (the "final report").

(2) The final report must—

(a) contain a statement of findings of fact made as a result of the investigation and an analysis of those findings,

(b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate, and

(c) set out the HSSIB's conclusions on the matters it considered in accordance with section 110(3) (but only if that provision is applicable to the investigation).

(3) The final report must focus on ascertaining risks to the safety of patients and any recommendations as to the action to be taken by any person must focus on addressing those risks (rather than on the activities of individuals involved in the incident).

(4) In particular, the final report may not include an assessment or determination of—

(a) blame,

(b) civil or criminal liability, or

(c) whether action needs to be taken in respect of an individual by a regulatory body.

(5) Information which is protected material (see section 122(2)) may be disclosed in a final report if the HSSIB determines that the benefits to the safety of patients served by the disclosure outweigh—

(a) any adverse impact on current or future investigations by deterring persons from providing information to the HSSIB, and

(b) any adverse impact on securing the improvement of the safety of health care services provided to patients in England.

(6) The final report may not, without their consent, include the name of any individual—

(a) who has provided information to the HSSIB for the purposes of the investigation, or

(b) who was involved in the incident being investigated.

(7) Where an investigation is carried out pursuant to a direction under section 111, the HSSIB must send a copy of the final report to the Secretary of State.

Commencement Information

I9 S. 113 not in force at Royal Assent, see **s. 186(6)**

I10 S. 113 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

114 Interim reports

(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—

(a) contain a statement of findings of fact made as a result of the investigation to date and an analysis of those findings,

(b) make such recommendations as to the action to be taken by any person as the HSSIB considers appropriate, and

(c) set out the HSSIB's conclusions to date on the matters it has considered in accordance with section 110(3).

(3) Subsections (3) to (7) of section 113 apply in relation to an interim report as they apply in relation to a final report.

Commencement Information

I11 S. 114 not in force at Royal Assent, see **s. 186(6)**

I12 S. 114 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

115 Draft reports

(1) Before it publishes a final or interim report, the HSSIB—

(a) must send a draft of the report to any person who the HSSIB reasonably believes could be adversely affected by the report, and

(b) may send a draft of the report to any other person who the HSSIB believes should be sent a draft.

(2) If a person who the HSSIB reasonably believes could have been adversely affected by the report 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.

(3) 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 by the HSSIB.

(4) If a person's comments on a draft report are not taken into account in the final or interim report as published, the HSSIB must explain to the person why that is.

Commencement Information

I13 S. 115 not in force at Royal Assent, see **s. 186(6)**

I14 S. 115 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

116 Response to reports

(1) This section applies where a final or interim report includes recommendations as to the action to be taken by any person.

(2) The HSSIB must, in such manner as it thinks appropriate, send the report to that person or make it available to them.

(3) The report must specify the deadline for that person to provide a written response.

(4) Before that deadline, the person must respond to the HSSIB in writing setting out the actions they propose to take in pursuance of the recommendations.

(5) The HSSIB may publish the response.

(6) Subsection (4) does not require a person to do anything that they could be required to do by an Act of Senedd Cymru made without the consent of a Minister of the Crown.

Commencement Information

I15 S. 116 not in force at Royal Assent, see **s. 186(6)**

I16 S. 116 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

117 Admissibility of reports

(1) A final report, an interim report and the draft of a final or interim report sent to a person under section 115 are not admissible in any proceedings within subsection (2).

(2) Those proceedings are—

(a) proceedings to determine civil or criminal liability in respect of any matter;

(b) proceedings before any employment tribunal;

(c) proceedings before a regulatory body (including proceedings for the purposes of investigating an allegation);

(d) proceedings to determine an appeal against a decision made in proceedings falling within paragraphs (a) to (c).

(3) But the High Court may order that a final or interim report is admissible in proceedings within subsection (2) on an application by a person who is a party to the proceedings or otherwise entitled to appear in them.

(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 providing information for the purposes of investigations, and

(b) any adverse impact on securing the improvement of the safety of health care services provided to patients in England.

Commencement Information

I17 S. 117 not in force at Royal Assent, see **s. 186(6)**

I18 S. 117 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Investigatory powers etc

118 Powers of entry, inspection and seizure

(1) If an investigator considers it necessary for the purposes of an investigation, the investigator may—

(a) enter and inspect premises in England, other than premises used wholly or mainly as a private dwelling;

(b) inspect and take copies of any document at, or capable of being viewed using equipment at, the premises;

(c) inspect any equipment or other item at the premises;

(d) seize and remove from the premises any document, equipment or other item (unless that would risk the safety of any patient).

(2) In subsection (1)(b) 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.

(3) 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.

(4) 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.

(5) The powers conferred by subsection (1) may be exercised in relation to premises in which there is a Crown interest, but only if the HSSIB gives reasonable notice to the occupier of the premises of its intention to enter and inspect the premises.

(6) 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 subsection (1)—

(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,

those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable except in the circumstances specified.

(7) In this section "Crown interest" means—

(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;

(d) an interest belonging to the Duchy of Cornwall.

Commencement Information

I19 S. 118 not in force at Royal Assent, see **s. 186(6)**

I20 S. 118 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Changes to legislation: *There are currently no known outstanding effects for the Health and Care Act 2022, PART 4. (See end of Document for details)*

119 Powers to require information etc

(1) An investigator may by notice require any person—
- (a) to attend at a specified time and place and to provide information by answering questions;
- (b) to provide specified information, or information of a specified description, by a specified date;
- (c) to provide specified documents, equipment or items, or documents, equipment or items of a specified description, by a specified date.

(2) 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;
- (b) in the case of a requirement under subsection (1)(b)—
  - (i) it is necessary to obtain the information for the purposes of an investigation, and
  - (ii) the person is able to provide it;
- (c) in the case of a requirement under subsection (1)(c)—
  - (i) it is necessary to obtain the document, equipment or other item for the purposes of the HSSIB's investigation function, and
  - (ii) the person is able to provide it.

(3) But a person is not required by virtue of subsection (1) to provide any information, document, equipment or other item where—
- (a) its provision would risk the safety of any patient,
- (b) its provision might incriminate the person, or
- (c) in the case of information or a document, 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.

(4) A notice must—
- (a) specify the grounds for the investigator believing the matters in subsection (2),
- (b) give an explanation of the consequences of failing to comply with the notice (see section 121), and
- (c) attach evidence of the investigator's authority from the HSSIB to exercise the powers conferred by this section.

(5) 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.

(6) An investigator may withdraw a notice under subsection (1) by giving notice of withdrawal to the person to whom the notice was given.

(7) 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 HSSIB's investigation function, unless its retention would risk the safety of any patient.

(8) Where a person attends to answer questions pursuant to a notice under subsection (1)(a), the HSSIB—
- (a) must reimburse the person the reasonable costs incurred in attending;

(b) may record, by any means, the answers given.

(9) In this section "specified" means specified in the notice.

Commencement Information

I21 S. 119 not in force at Royal Assent, see **s. 186(6)**

I22 S. 119 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

120 Voluntary provision of information etc

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 investigation function.

Commencement Information

I23 S. 120 not in force at Royal Assent, see **s. 186(6)**

I24 S. 120 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

121 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 118, or

(b) fails without reasonable excuse to comply with a notice given under section 119.

(2) A person commits an offence if the person provides information to the HSSIB for the purposes of the HSSIB's investigation function which the person knows or suspects is false or misleading in a material respect.

(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 investigation function, 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.

(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.

(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.

Commencement Information

I25 S. 121 not in force at Royal Assent, see **s. 186(6)**

I26 S. 121 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Protection of material held by the HSSIB

122 Prohibition on disclosure of HSSIB material

(1) The HSSIB, or an individual connected with the HSSIB, must not disclose protected material to any person.

(2) In this Part "protected material" means any information, document, equipment or other item which—
- (a) is held by the HSSIB, or an individual connected with the HSSIB, for the purposes of the HSSIB's investigation function,
- (b) relates to a qualifying incident (whether or not investigated by the HSSIB), and
- (c) has not already been lawfully made available to the public.

(3) In this Part "individual connected with the HSSIB" means—
- (a) a member of the HSSIB,
- (b) a member of a committee or sub-committee of the HSSIB,
- (c) an investigator, or
- (d) an individual (other than an investigator) who works for the HSSIB.

(4) For the purposes of subsection (3)(d) an individual "works for" the HSSIB if the individual 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
- (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.

(5) An individual who was, but has ceased to be, connected with the HSSIB must not disclose to any person, other than the HSSIB or an individual connected with the HSSIB, any information, document, equipment or other item held by that individual—
- (a) which the individual obtained because they were connected with the HSSIB,
- (b) which, at the time they ceased to be connected with the HSSIB, was protected material, and
- (c) which has not already been lawfully made available to the public.

Commencement Information

I27 S. 122 not in force at Royal Assent, see **s. 186(6)**

I28 S. 122 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

123 Exceptions to prohibition on disclosure

(1) Section 122(1) does not apply to a disclosure which is required or authorised by—

(a) Schedule 14,
(b) any other provision of this Part, or
(c) regulations made by the Secretary of State.

(2) Regulations under subsection (1)(c) may, for example, require or authorise disclosures of protected material by reference to—
(a) the kind of material that it is (for example, a particular kind of equipment),
(b) the matters to which it relates,
(c) the person from whom it was obtained,
(d) the purpose for which it was produced or is held, or
(e) the purpose for which it is disclosed.

(3) But regulations under subsection (1)(c) may not require or authorise disclosures of protected material by reference to the qualifying incident to which the material relates.

(4) Regulations under subsection (1)(c) may provide for a person to exercise a discretion in dealing with any matter.

(5) Subject to subsection (6), regulations under subsection (1)(c) may provide that disclosures which are required or authorised by the regulations do not breach—
(a) obligations of confidence owed by the person making the disclosure, or
(b) any other restrictions on disclosure.

(6) Nothing in regulations under subsection (1)(c) operates to require or authorise disclosures which would contravene the data protection legislation (but, for the purposes of this subsection, in determining whether any disclosure required or authorised by the regulations would do so, take the requirement or authorisation into account).

Commencement Information
I29 S. 123 not in force at Royal Assent, see **s. 186(6)**
I30 S. 123 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

124 Offences of unlawful disclosure

(1) A person commits an offence if the person—
(a) breaches the prohibition in section 122(1) by knowingly or recklessly disclosing protected material to another person, and
(b) knows or suspects that the disclosure is prohibited.

(2) An individual who was, but has ceased to be, connected with the HSSIB commits an offence if the individual—
(a) breaches the prohibition in section 122(5) by knowingly or recklessly disclosing any information, document, equipment or other thing to another person, and
(b) knows or suspects that the disclosure is prohibited.

(3) Subsection (4) applies where protected material is disclosed to a person not connected with the HSSIB—
(a) in a draft report sent to the person under section 115(1),

(b) under paragraph 2, 3 or 4 of Schedule 14 (disclosures for purposes of an investigation, offence or safety risk), or

(c) under regulations under section 123(1)(c).

(4) The person not connected with the HSSIB to whom protected material is disclosed as specified in subsection (3) commits an offence if the person—

(a) knowingly or recklessly discloses the protected material to another person without reasonable excuse, and

(b) knows or suspects that it is protected material.

(5) A person who commits an offence under this section is liable on summary conviction to a fine.

Commencement Information

I31 S. 124 not in force at Royal Assent, see **s. 186(6)**

I32 S. 124 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

125 Restriction of statutory powers requiring disclosure

(1) A power under any enactment (whenever passed or made) other than this Part 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

(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).

(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;

(b) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (including any provision that could only be made with the consent of a Minister of the Crown);

(c) the provision—

(i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and

(ii) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

(5) In this section "enactment" includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

(6) References to the HSSIB in subsection (1) include—

(a) an individual connected with the HSSIB, and

(b) an individual who was, but has ceased to be, connected with the HSSIB.

Commencement Information

I33 S. 125 not in force at Royal Assent, see **s. 186(6)**

I34 S. 125 in force at 1.10.2023 for E.W. by S.I. 2023/1035, **reg. 2(a)**

Relationship with other bodies

126 Co-operation

(1) This section applies where—

(a) the HSSIB is carrying out an investigation into a qualifying incident, 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) NHS England;

(c) an integrated care board;

(d) a Special Health Authority;

(e) the Care Quality Commission;

(f) the Health Research Authority;

(g) the Human Tissue Authority;

(h) the Human Fertilisation and Embryology Authority;

[F1](i) . . . . . .

(j) the Health Service Commissioner for England;

(k) the Parliamentary Commissioner for Administration;

(l) any regulatory body;

(m) the Health and Safety Executive;

(n) the Commissioner for Patient Safety.

(4) The HSSIB must publish guidance about when a qualifying 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.

Textual Amendments

F1 S. 126(3)(i) omitted (1.10.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(3), **Sch. 1 para. 14** (with reg. 7); S.I. 2023/1035, reg. 2(a)

Commencement Information

I35 S. 126 not in force at Royal Assent, see **s. 186(6)**

I36 S. 126 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

127 Assistance of NHS bodies

(1) The HSSIB must comply with—

(a) any request by a relevant NHS body to provide it with assistance 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;

(b) any request by NHS England to provide any other relevant NHS body with such assistance;

(c) any request by the Secretary of State to provide a relevant NHS body with such assistance.

(2) In subsection (1) "relevant NHS body" means—

(a) an NHS foundation trust;

(b) an NHS trust;

(c) NHS England;

(d) an integrated care board.

(3) 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.

(4) Subsection (1) does not apply if—

(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.

(5) The HSSIB may give assistance to a person other than a relevant NHS body 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.

(6) But the HSSIB may give assistance under subsection (5) only to the extent that the assistance does not to any significant extent interfere with the exercise by the HSSIB of its investigation function.

(7) The activities which the HSSIB may carry out in, or in connection with, giving assistance under subsection (5) are not restricted to activities carried out in the United Kingdom.

(8) The HSSIB may impose charges for or in connection with giving assistance under subsection (5).

(9) Charges under subsection (8) may be calculated on the basis that the HSSIB considers to be the appropriate commercial basis.

Commencement Information

I37 S. 127 not in force at Royal Assent, see **s. 186(6)**

I38 S. 127 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

128 Investigations relating to Wales and Northern Ireland

(1) The HSSIB may enter into an agreement with any person for the HSSIB to carry out an investigation falling within subsection (2).

(2) An investigation falls within this subsection if—

(a) it is an investigation into one or more 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

(ii) at premises at which any of those services are, or were, provided,

(b) the incident or incidents have or may have implications for the safety of persons for whom those services are provided,

(c) the investigation is carried out for the purpose of identifying risks to the safety of such persons 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

(d) the investigation does not involve the assessment or determination of blame or civil or criminal liability.

(3) The services referred to in subsection (2) are—

(a) services provided for the purposes of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006, and

(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.

(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 its investigation function.

Commencement Information

I39 S. 128 not in force at Royal Assent, see **s. 186(6)**

I40 S. 128 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Oversight of functions

129 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.

(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 subsection (2), the Secretary of State may—

(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.

(6) A direction under subsection (2)—

(a) must be in writing;

(b) may be varied or revoked by subsequent directions.

Commencement Information

I41 S. 129 not in force at Royal Assent, see **s. 186(6)**

I42 S. 129 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

130 Review

(1) Before the end of the period mentioned in subsection (2), the Secretary of State must—

(a) review the effectiveness of the exercise by the HSSIB of its investigation function,

(b) prepare and publish a report of the review, and

(c) lay the report before Parliament.

(2) The period is four years beginning with the day on which section 110 comes into force.

Commencement Information

I43 S. 130 not in force at Royal Assent, see **s. 186(6)**

I44 S. 130 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Offences: supplementary

131 Offences by bodies corporate

(1) Where an offence under this Part 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

(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—

(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.

Commencement Information

I45 S. 131 not in force at Royal Assent, see **s. 186(6)**

I46 S. 131 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

132 Offences by partnerships

(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.

(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

(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 Part;

"partner" includes a person purporting to act as a partner.

Commencement Information

I47 S. 132 not in force at Royal Assent, see **s. 186(6)**

I48 S. 132 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Supplementary

133 Obligations of confidence etc

(1) Subject to subsection (2), a disclosure of any information, document, equipment or other item which is required or authorised by or under section 119 or 120 or Schedule 14 does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on disclosure.

(2) Nothing in this Part operates to require or authorise a disclosure of information which would contravene the data protection legislation (but, for the purposes of this

subsection, in determining whether a disclosure required or authorised by or under this Part would do so, take the requirement or authorisation into account).

Commencement Information

I49 S. 133 not in force at Royal Assent, see **s. 186(6)**

I50 S. 133 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

134 Consequential amendments relating to Part 4

Schedule 15 contains amendments consequential on this Part.

Commencement Information

I51 S. 134 not in force at Royal Assent, see **s. 186(6)**

I52 S. 134 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

135 Interpretation of Part 4

In this Part—

"the 2006 Act" means the National Health Service Act 2006;

"Chief Investigator" means the person appointed in accordance with paragraph 3 of Schedule 13;

"data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

to "disclose", in relation to information, documents, equipment and other items includes to permit access to such things;

"documents" includes personal and medical records;

"final report" means a report under section 113;

"health care services" means—

(a) all forms of health care services provided for individuals, whether relating to physical or mental health, and

(b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;

"the HSSIB" has the meaning given by section 109(2);

"interim report" means a report under section 114;

"investigation", except in the case of an investigation mentioned in section 126(1)(b), 127 or 128, means an investigation carried out by the HSSIB under section 110(1) and any related term is to be read accordingly;

the "investigation function" of the HSSIB is its function under section 110(1) (and see also section 111(1));

"investigator" means a person authorised by the HSSIB to carry out functions in relation to investigations on its behalf;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"NHS foundation trust" has the meaning given by section 30 of the 2006 Act;

"NHS services" means health care services provided in England for the purposes of the health service continued under section 1(1) of the 2006 Act;

"NHS trust" means a National Health Service trust established under section 25 of the 2006 Act;

"notice" means notice in writing;

"patients" means individuals for whom health care services are provided;

"premises" includes a vehicle;

"protected material" has the meaning given by section 122(2);

"qualifying incident" has the meaning given by section 110(5);

"regulatory body" means—

(a) the General Medical Council,

(b) the General Dental Council,

(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,

(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;

"Special Health Authority" means a Special Health Authority established under section 28 of the 2006 Act.

Commencement Information

I53 S. 135 not in force at Royal Assent, see **s. 186(6)**

I54 S. 135 in force at 1.10.2023 by S.I. 2023/1035, **reg. 2(a)**

Changes to legislation:
There are currently no known outstanding effects for the Health and Care Act 2022, PART 4.