

EXPLANATORY MEMORANDUM TO
THE HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2023

2023 No. 948

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to make certain amendments to secondary legislation consequential to the establishment of the Health Services Safety Investigations Body (“the HSSIB”) under section 109(1) of the Health and Care Act 2022 (“the 2022 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will come into force at the same time as section 134 of, and Schedule 15 to, the 2022 Act. Section 134 and Schedule 15, together with the rest of Part 4 of the 2022 Act (and Schedules 13 and 14 to that Act), will come into force on the day appointed by commencement regulations made under section 186(6) of the 2022 Act. The date for commencement of these provisions is anticipated to be 1st October 2023 (and will not be before that date). Therefore, this instrument will be laid in Parliament for more than 21 days before it is commenced.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction it forms part of the law of) is the same as the provisions being amended.
- 4.2 The territorial application of this instrument (that is, where it produces a practical effect) is the same as the provisions being amended.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 182 of the 2022 Act allows the Secretary of State to make provision consequential on that Act.
- 6.2 Part 4 of the 2022 Act, together with the related Schedules, provide for the establishment of the HSSIB. In particular, section 109(1) of the Act establishes the HSSIB and section 134, together with Schedule 15, makes consequential amendments to primary legislation.

- 6.3 The consequential amendments at Schedule 15 to the 2022 Act include (at paragraph 10) an amendment to add the HSSIB to Part 1 of Schedule 19 to the Equality Act 2010 (public authorities to which the public sector equality duty applies). Therefore, upon commencement of section 134 and paragraph 10 of Schedule 15, the HSSIB will be subject to the public sector equality duty. The current regulations add the HSSIB to Schedule 2 of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353) in order to ensure that the HSSIB will be subject to the specific duties provided in those regulations which relate to the performance of the public sector equality duty.
- 6.4 Paragraph 8(3) of Schedule 15 to the 2022 Act adds the HSSIB to section 71(2) of the National Health Service Act 2006 (schemes for meeting losses and liabilities etc of certain health service bodies: bodies eligible to participate). Once this provision is commenced, the HSSIB will be eligible to participate in the indemnity schemes established under section 71(1) of the National Health Service Act 2006.
- 6.5 The intention is that the consequential amendments to secondary legislation in regulations 2 to 5 of the Regulations come into force at the same time as Part 4 of, and Schedules 13 to 15 to, the 2022 Act are commenced.

7. Policy background

What is being done and why?

- 7.1 This instrument makes certain amendments to secondary legislation consequential to the establishment of the HSSIB.
- 7.2 The HSSIB will be a new Executive Non-Departmental Public Body, with powers and independence to conduct investigations into incidents that occur in England during the provision of health care services provided in the NHS and by the independent sector, and which have or may have implications for the safety of patients. Investigation reports will make recommendations and require organisations to publicly respond to these measures, within a specified timescale.
- 7.3 While Schedule 15 to the 2022 Act makes consequential amendments to primary legislation relating to the HSSIB, this instrument makes certain consequential amendments to the following four pieces of secondary legislation:
- The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353)*
- 7.4 The objective behind the public sector equality duty in section 149 of the Equality Act 2010 is to ensure that consideration of equality issues forms part of the routine, day-to-day decision making and operational delivery of public authorities. The purpose of the specific duties in the 2017/353 regs is to ensure better performance of the public sector equality duty. The HSSIB is being added to Schedule 2 to the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, which lists the public authorities on which those Regulations impose specific duties, which will require the HSSIB to perform its public sector equality duty.
- The National Health Service (Clinical Negligence Scheme) Regulations 2015 (S.I. 2015/559)*
- 7.5 Amendments are being made to regulation 4 (eligible bodies) and regulation 5 (membership of the Scheme) to provide that the HSSIB will be a member of the Clinical Negligence Scheme upon the body's establishment.

The National Health Service (Liabilities to Third Parties Scheme) (England) Regulations 2018 (S.I. 2018/756)

- 7.6 Amendments are being made to regulation 4 (eligible bodies) and regulation 5 (membership of the Scheme) to provide that the HSSIB will be a member of the Liabilities to Third Parties Scheme upon the body's establishment.

The National Health Service (Property Expenses Scheme) (England) Regulations 2018 (S.I. 2018/757)

- 7.7 Amendment is being made to regulation 4 (eligible bodies) to provide that the HSSIB is eligible to become a member of the Property Expenses Scheme. Unlike the two schemes mentioned above, the HSSIB will not be a member of this scheme upon the body's establishment. However, it will become eligible to become a member. If it considered it necessary, the HSSIB will be able to follow the process for membership set out in the National Health Service (Property Expenses Scheme) (England) Regulations 2018.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any other instrument.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on the amendments made by this instrument.

11. Guidance

- 11.1 There is no specific guidance for this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 A full Impact Assessment has not been prepared for this instrument because this instrument only introduces amendments that are consequential on the 2022 Act. Therefore, we rely on the impact assessment produced for the 2022 Act.

- 12.4 A full Impact Assessment has been produced in relation to the provisions of the 2022 Act and a copy is available at: <https://www.gov.uk/government/publications/health-and-care-act-2022-combined-impact-assessments>.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 No specific monitoring or review will be undertaken, beyond that which is already undertaken as part of the Department of Health and Social Care 's routine data collection.
- 14.2 The instrument does not include a statutory review clause because this instrument only introduces amendments provisions that are consequential on the 2022 Act.

15. Contact

- 15.1 Farah Imam at the Department of Health and Social Care, email: Farah.Imam@dhsc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Adam McMordie, Deputy Director for Quality, Patient Safety and Maternity, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Markham, Parliamentary Under Secretary of State, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.