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Explanatory Memorandum](#)

AN BILLE SLÁINTE 2004
HEALTH BILL 2004

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As initiated

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AN BILLE SLÁINTE 2004
HEALTH BILL 2004

BILL

entitled

5 AN ACT TO ESTABLISH THE HEALTH SERVICE EXECUTIVE AND TO PROVIDE FOR THE DISSOLUTION OF THE EASTERN REGIONAL HEALTH AUTHORITY, THE NORTHERN AREA HEALTH BOARD, THE EAST COAST AREA HEALTH BOARD, THE SOUTH-WESTERN AREA HEALTH BOARD, THE HEALTH BOARDS ESTABLISHED UNDER THE HEALTH ACT 1970 AND CERTAIN OTHER BODIES; TO PROVIDE FOR THE TRANSFER OF THE FUNCTIONS OF THE DISSOLVED BODIES AND THEIR EMPLOYEES TO THE HEALTH SERVICE EXECUTIVE; TO ESTABLISH MECHANISMS FOR INVOLVING PUBLIC REPRESENTATIVES, USERS OF HEALTH AND PERSONAL SOCIAL SERVICES AND OTHER MEMBERS OF THE PUBLIC IN MATTERS RELATING TO THOSE SERVICES; TO ESTABLISH A STATUTORY FRAMEWORK FOR HANDLING CERTAIN COMPLAINTS RELATING TO HEALTH AND PERSONAL SOCIAL SERVICES; TO ESTABLISH MECHANISMS FOR THE FUTURE DISSOLUTION OF CERTAIN OTHER HEALTH BODIES AND FOR THE TRANSFER OF THEIR FUNCTIONS AND EMPLOYEES TO THE HEALTH SERVICE EXECUTIVE; AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY MATTERS

1.—(1) This Act may be cited as the Health Act 2004.

Short title,
collective citation
and construction.

(2) The Health Acts 1947 to 2001 and this Act may be cited together as the Health Acts 1947 to 2004 and shall be construed together as one.

35 **2.—(1)** In this Act, unless the context otherwise requires—

Interpretation.

“Act of 1996” means the Health (Amendment) (No. 3) Act 1996;

“Act of 1999” means the Health (Eastern Regional Health Authority) Act 1999;

“annual report” means a report prepared under *section 42*;

“appointed member” means a member of the Board other than the chief executive officer; 5

“Area Health Board” has the same meaning as in the Act of 1999;

“Board” means the Board of the Executive;

“carer” means a person who provides care for another person, but who is not employed to do so by any body in the performance of its functions under an enactment; 10

“chairperson” means the chairperson of the Board;

“chief executive officer” means the chief executive officer of the Executive;

“clinical judgment” means a decision made or opinion formed in connection with the diagnosis, care or treatment of a patient; 15

“Eastern Regional Health Authority” means the body of that name established by section 7 of the Act of 1999;

“enactment” means a statute or an instrument made under a power conferred by a statute; 20

“establishment day” means the day appointed by the Minister under *section 4* to be the establishment day for the purposes of this Act;

“Executive” means the Health Service Executive established under *section 6*;

“functions” includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of duties; 25

“health board” means a health board established under section 4(1) of the Health Act 1970; 30

“health and personal social services” means services that immediately before the establishment day were provided under the Acts referred to in *Schedule 1* by a specified body as defined in *section 60* of this Act, and references in this Act to a health or personal social service are to be read as references to any of those services; 35

“Interim Health Service Executive” means the body of that name established under the Health (Corporate Bodies) Act 1961;

“local authority” has the same meaning as in the Local Government Act 2001;

“medical officer of health” means a registered medical practitioner who is an employee of the Executive and to whom the duties of a medical officer of health have been assigned; 40

“member” in relation to the Board includes the chairperson and the chief executive officer;

“Minister” means Minister for Health and Children;

“ordinary member” means a member of the Board other than the chairperson or the chief executive officer;

“prescribed” means prescribed by regulation made by the Minister;

5 “public authority” means any of the following:

(a) a Minister of the Government;

(b) the Commissioners of Public Works in Ireland;

(c) a local authority;

10 (d) a harbour authority within the meaning of the Harbours Act 1946;

(e) a board or other body (but not a company) established by or under statute;

15 (f) a company in which all the shares are held by or on behalf of, or by directors appointed by, a Minister of the Government;

(g) a company in which all the shares are held by a board, company or other body referred to in *paragraph (e)* or *(f)*;

20 (h) such other body, if any, as is prescribed for the purpose of any provision of this Act;

“registered medical practitioner” means a person whose name is entered in the General Register of Medical Practitioners established under the Medical Practitioners Act 1978;

25 “service provider” means a person who enters into an arrangement under *section 43* to provide a health or personal social service on behalf of the Executive;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

(2) In this Act—

30 (a) a reference to a section, Part or Schedule is a reference to a section or Part of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended,

35 (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other enactment is intended, and

40 (c) a reference to an enactment includes a reference to that enactment as amended, adapted or extended at any time by any enactment.

3.—(1) This Act comes into operation on such day or days as the Minister may, by order, appoint. Commencement.

(2) Different days may be appointed under this section for different purposes or different provisions of this Act and for the repeal or revocation of different enactments by *section 76* and *Schedule 4*.

Establishment day.

4.—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

5

Expenses.

5.—The expenses incurred by the Minister in administering this Act are, to such extent as may be sanctioned by the Minister for Finance, payable out of money provided by the Oireachtas.

PART 2

ESTABLISHMENT AND FUNCTIONS OF THE HEALTH SERVICE EXECUTIVE 10

Establishment of Executive.

6.—(1) On the establishment day a body to be known as Feidhmeannacht na Seirbhíse Sláinte or in the English language as the Health Service Executive is, by this Act, established to perform the functions assigned to it by this Act.

(2) The Executive is a body corporate with perpetual succession 15 and a seal and may—

- (a) sue and be sued in its corporate name,
- (b) subject to the Health Acts 1947 to 2001, acquire, hold and dispose of land or an interest in land, and
- (c) acquire, hold and dispose of any other kind of property. 20

(3) *Paragraph 1 of Schedule 2* applies in relation to the seal of the Executive.

Object and functions of Executive.

7.—(1) The object of the Executive is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. 25

(2) Subject to this Act, the Executive shall, to the extent practicable, further its object.

(3) Without limiting the Executive's responsibilities under *subsection (2)* or *(4)*, it has—

- (a) the functions transferred to it by *section 62* or by an order 30 under *section 73*, and
- (b) such other functions as are assigned to it by this Act or any other enactment.

(4) The Executive shall manage and shall deliver, or arrange to be delivered on its behalf, health and personal social services in accordance with this Act and shall— 35

- (a) integrate the delivery of health and personal social services,

(b) to the extent practicable and necessary to enable the Executive to perform its functions, facilitate the education and training of its employees and the employees of service providers, and

5 (c) provide advice to the Minister in relation to its functions as the Minister may request.

(5) In performing its functions, the Executive shall have regard to—

10 (a) services provided by voluntary and other bodies that are similar or ancillary to the services the Executive is authorised to provide,

15 (b) the need to co-operate with, and co-ordinate its activities with those of, other public authorities if the performance of their functions affects or could affect the health of the public,

(c) the policies and objectives of the Government or any Minister of the Government to the extent that those policies and objectives may affect or relate to the functions of the Executive,

20 (d) the resources, wherever originating, that are available to it for the purpose of performing its functions, and

(e) the need to secure the most beneficial, effective and efficient use of those resources.

25 (6) The Executive may undertake, commission or collaborate in research projects on issues relating to health and personal social services, but, in considering whether to do so, it shall have regard to any decision by another body or person within the State to undertake, commission or collaborate in such projects.

30 (7) The power given by *subsection (6)* includes the power to collaborate in research projects involving parties from outside the State.

(8) Subject to this or any other enactment, the Executive has all powers necessary or expedient for it to perform its functions.

35 **8.—**(1) If any function of a public authority should, in its opinion, be performed (whether generally or in a particular case) by the Executive and the Executive is able and willing to perform the function, the Executive and that authority may enter into an agreement for the Executive to perform the function on the authority's behalf.

Agreements between Executive and public authorities concerning performance of functions.

(2) If an agreement is entered into for the Executive to perform a function of a public authority, the Executive may—

40 (a) perform the function on behalf of the public authority in accordance with the agreement, and

(b) do any act or thing relating to the performance of that function that the public authority would be authorised by law to do if it performed the function.

45 (3) If any function of the Executive should, in its opinion, be performed (whether generally or in a particular case) by a public authority and that authority is able and willing to perform the function,

the authority and the Executive may enter into an agreement for the authority to perform the function on the Executive's behalf.

(4) If an agreement is entered into for a public authority to perform a function of the Executive, the public authority may—

(a) perform the function on the Executive's behalf in accordance with the agreement, and 5

(b) do any act or thing relating to the performance of that function that the Executive would be authorised by law to do if it performed the function.

(5) An agreement under this section may contain terms and conditions relating to— 10

(a) the extent to which and the period for which a party to the agreement is authorised to perform the function of the other party to the agreement,

(b) the making of payments or the transfer of financial responsibility, and 15

(c) such other matters as are considered necessary to give effect to the agreement.

(6) An agreement under this section may provide for charges payable by the party on whose behalf the function is to be performed to the other party to the agreement. 20

(7) The power of a local authority to enter into an agreement under this section is a reserved function of the local authority.

Informal arrangements between Executive and local authorities concerning performance of functions.

9.—(1) If a local authority is of the opinion that it would be convenient if duties relating to its functions were carried out by an employee of the Executive, those duties may, without an agreement being entered into under *section 8*, be assigned by the Executive to any of its employees in the same way as duties relating to its functions. 25

(2) If the Executive is of the opinion that it would be convenient if duties relating to its functions were carried out by an employee of a local authority, those duties may, without an agreement being entered into under *section 8*, be assigned by the local authority to any of its employees in the same way as duties relating to the functions of the local authority. 30 35

(3) Duties assigned in accordance with this section may be carried out by the employees to whom they are so assigned.

Directions from Minister.

10.—(1) The Minister may issue general written directions to the Executive—

(a) for any purpose relating to this Act or any other enactment, and 40

(b) concerning any matter or thing referred to in this Act as specified or to be specified, or as determined or to be determined, by the Minister.

(2) In addition, the Minister may issue specific written directions to the Executive concerning the submission to the Minister, in such manner and within such period as the Minister may specify, of—

5 (a) reports on any matter relating to *Part 7* or relating in any other way to the performance of the Executive's functions, even though such reports are the subject of a direction under *subsection (1)*, and

 (b) any information or statistics relating to the performance of the Executive's functions.

10 (3) *Subsections (1) and (2)* are not to be taken to limit a power to issue directions conferred on the Minister by any other provision of this Act.

 (4) The Minister may, by written direction, amend or revoke any direction issued by the Minister under this Act.

15 (5) The Executive shall comply with a direction issued by the Minister under this Act.

PART 3

THE BOARD OF THE HEALTH SERVICE EXECUTIVE

11.—(1) The Executive is to have a Board consisting of—

Membership of
Board.

20 (a) 11 members (including the chairperson and 10 ordinary members) appointed by the Minister in accordance with this section, and

 (b) the person holding the position of chief executive officer who, by virtue of that position, is a member of the Board.

25 (2) Appointments to the Board under *subsection (1)(a)* or *paragraph 3(2) of Schedule 2* are to be made from among persons who, in the Minister's opinion, have sufficient experience and expertise relating to matters connected with the Executive's functions to enable them to make a substantial contribution to the performance of
30 those functions.

 (3) A person is not eligible for appointment as a member of the Board or a committee of the Board, if the person is—

 (a) a member of either House of the Oireachtas or of the European Parliament,

35 (b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

 (c) a member of a local authority.

40 (4) The Minister shall, to the extent practicable, endeavour to ensure that there is an equitable balance between men and women in the composition of the Board.

 (5) *Schedule 2* applies in relation to the Board.

12.—(1) The Board is the governing body of the Executive with authority, in the name of the Executive, to perform the functions of the Executive, other than those assigned to a medical officer of health.

(2) The Board may delegate to the chief executive officer any of the Executive’s functions, other than those assigned to a medical officer of health. 5

(3) If a function of the Executive is delegated to the chief executive officer under *subsection (2)*, the delegation remains in force until the Board revokes the delegation. 10

13.—(1) The Minister may at any time remove an appointed member from office if—

- (a) in the Minister’s opinion, the member has become incapable through ill-health of performing the functions of the office, 15
- (b) in the Minister’s opinion, the member has committed stated misbehaviour,
- (c) the member’s removal from office appears to the Minister to be necessary for the Board to perform its functions in an effective manner, 20
- (d) the member has contravened *section 25(1)* or *26* of this Act or an applicable provision of the Ethics in Public Office Act 1995, or
- (e) in performing functions under this Act, the member has not been guided by a code of conduct that has been drawn up under *section 10(3)* of the Standards in Public Office Act 2001 and that relates to the appointed member. 25

(2) An appointed member ceases to hold office if the member—

- (a) is adjudicated bankrupt, 30
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence,
- (d) is convicted of an offence involving fraud or dishonesty,
- (e) is the subject of an order under *section 160* of the Companies Act 1990, 35
- (f) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- (g) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession. 40

(3) A member who does not, for a consecutive period of 6 months, attend a meeting of the Board ceases at the end of that period to hold office unless the member demonstrates to the Minister’s satisfaction that the failure to attend was due to illness.

(4) In this section “applicable provision of the Ethics in Public Office Act 1995”, in relation to an appointed member, means a provision of that Act that by virtue of a regulation under section 3 of that Act applies to that member.

5 **14.—**(1) The Minister may remove all the members of the Board from office if— Removal of
members from
office.

(a) the Board fails to achieve a quorum for 3 consecutive meetings,

10 (b) the Board does not comply with a judgment, order or decree of any court,

(c) the Board does not comply with a direction of the Minister or any other requirement imposed on it by or under any enactment including this Act, or

15 (d) the Minister is satisfied that the Board’s functions are not being performed in an effective manner.

(2) The Minister may, if of the opinion that the Board’s functions are not being performed in an effective manner, appoint a person to—

20 (a) conduct an independent review of any matter giving rise to that opinion, and

(b) submit a report to the Minister on the results of the review.

25 (3) The Board shall co-operate with any such review and give the person conducting it all reasonable assistance, including access to such premises, equipment and records as the person may require for the purposes of the review.

(4) The chief executive officer does not cease to hold that position solely because he or she ceases to be a member of the Board when the members are removed from office under this section.

30 (5) The removal of the members of the Board from office does not revoke or otherwise affect any delegation of the Executive’s functions to the chief executive officer under *section 12(2)*.

35 **15.—**(1) The Board may establish committees to provide assistance and advice to it in relation to the performance of its functions and may determine the membership and terms of reference of each committee. Committees of
Board.

(2) The Board may appoint to a committee persons who are not members of the Board but have special knowledge and experience related to the purposes of the committee.

40 (3) The appointment of a person to a committee is subject to such terms and conditions as may be determined—

(a) under *section 16*, to the extent that they relate to remuneration and allowances, and

(b) by the Board, in any other case.

(4) The Board shall specify in writing the purpose and terms of reference of each committee.

(5) The acts of a committee are subject to confirmation by the Board, unless the Board dispenses with the necessity for confirmation.

5

(6) The Board may regulate the procedure of a committee but, subject to any such regulation, a committee may regulate its own procedure.

(7) The Board may at any time dissolve a committee established under this section.

10

Remuneration and expenses of members of Board and committees.

16.—(1) The remuneration and allowances for expenses, if any, determined in accordance with *subsection (3)* are payable by the Executive out of funds at its disposal to—

(a) the appointed members of the Board, and

(b) the members of a committee of the Board, other than the chief executive officer.

15

(2) The remuneration and allowances for expenses, if any, determined in accordance with *subsection (3)* are payable by the Minister out of money provided by the Oireachtas to a person appointed under *section 14(2)* to conduct an independent review.

20

(3) The Minister may, with the consent of the Minister for Finance, determine the remuneration and expenses payable under this section.

(4) This section is not to be taken to limit—

(a) the power of the appointed members to determine in accordance with *section 17(4)* the remuneration and allowances for expenses payable to the chief executive officer (including allowances relating to his or her functions as a member of the Board or a committee of the Board), or

25

(b) the chief executive officer's entitlement to be paid the remuneration and allowances so determined.

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PART 4

CHIEF EXECUTIVE OFFICER

Appointment of chief executive officer.

17.—(1) Subject to *subsection (3)*, the appointed members of the Board shall, pursuant to a recommendation of the chief executive of the Public Appointments Service, appoint a person to be the chief executive officer of the Executive.

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(2) A person is not eligible for appointment as the chief executive officer if the person is—

(a) a member of either House of the Oireachtas or of the European Parliament,

40

(b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(c) a member of a local authority.

(3) The person appointed by the Interim Health Service Executive before the establishment day as chief executive designate shall be the first chief executive officer of the Executive.

5 (4) A person appointed as chief executive officer holds office on the terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) that—

10 (a) in the case of the first chief executive officer, have been determined by the Interim Health Service Executive with the approval of the Minister given with the consent of the Minister for Finance, and

(b) in any other case, may be determined by the appointed members with the approval of the Minister given with the consent of the Minister for Finance.

15 (5) The remuneration and allowances determined under *subsection (4)* are payable to the chief executive officer by the Executive out of funds at its disposal.

20 (6) The chief executive officer is suspended from office as a member of the Board during any period of suspension or se- condment from his or her position as chief executive officer.

18.—(1) The chief executive officer shall—

Functions of chief executive officer and their performance by deputy.

(a) carry on and manage and control generally the admin- istration and business of the Executive,

25 (b) perform such other functions as may be assigned to that officer by or under this Act or other enactment or as may be delegated to him by the Board, and

(c) supply the Board with such information (including finan- cial information) relating to the performance of his or her functions as the Board may require.

30 (2) The chief executive officer is responsible to the Board for the performance of his or her functions and the implementation of the Board's policies.

35 (3) If the chief executive officer is absent or the position of chief executive officer is vacant, the functions of the chief executive officer under this section may be performed by such employee of the Execu- tive as may be appointed by the Board from time to time to act as deputy chief executive officer.

40 (4) For the purpose of *subsection (3)*, references in a provision of this Act or another enactment that assigns functions to the chief executive officer or that regulates the manner in which a function assigned to the chief executive officer is to be performed are to be read as references to the employee appointed under this section as deputy chief executive officer.

45 **19.—**(1) Subject to any directions that may be issued by the Board, the chief executive officer may in writing—

Delegation of functions.

(a) delegate any of his or her functions under *section 18*(including those relating to financial matters) to employees of the Executive specified by name, position or otherwise, and

(b) authorise the subdelegation of any or all delegated functions to or by other such employees. 5

(2) Any function delegated or subdelegated under this section to an employee is to be performed by the employee under the general direction and control of the chief executive officer and in compliance with such directions, limitations and guidelines as may be specified by— 10

(a) in the case of a delegated function, the chief executive officer, or

(b) in the case of a subdelegated function, the employee who subdelegated that function. 15

(3) The delegation or subdelegation of a function does not preclude the person who for the time being holds the position of chief executive officer from performing the function.

(4) The chief executive officer may—

(a) vary any delegation of a function under this section, including by modifying the geographical area to which the delegation relates, 20

(b) revoke such delegation, or

(c) without revoking the delegation, revoke any subdelegation of the function. 25

(5) On varying or revoking the delegation or subdelegation of a function, the chief executive officer shall inform each employee to whom the function was delegated or subdelegated of its variation or revocation.

(6) An employee of the Executive who subdelegates a function delegated or subdelegated to the employee under this section— 30

(a) may vary the subdelegation, including by modifying the geographical area to which it relates,

(b) may revoke the subdelegation, and

(c) is not precluded from performing the function. 35

(7) On varying or revoking the subdelegation of a function, the employee who subdelegated the function shall inform each employee to whom the function was subdelegated of its variation or revocation.

Chief executive officer to be accounting officer.

20.—The chief executive officer is the accounting officer in relation to the appropriation accounts of the Executive for the purposes of the Comptroller and Auditor General Acts 1866 to 1998. 40

Attendance of chief executive officer before Oireachtas Committees.

21.—(1) Subject to *subsection (2)*, the chief executive officer shall, at the written request of an Oireachtas Committee, attend before it to give an account of the general administration of the Executive.

5 (2) The chief executive officer is not required to give an account before an Oireachtas Committee of any matter relating to the general administration of the Executive that is, or has been or may at a future time be, the subject of proceedings before a court or tribunal in the State.

(3) The chief executive officer shall, if of the opinion that *subsection (2)* applies to a matter about which that officer is requested to give an account before an Oireachtas Committee, inform the Committee of that opinion and the reasons for the opinion.

10 (4) The information required under *subsection (3)* to be given to the Oireachtas Committee must be given in writing unless it is given when the chief executive officer is before the Committee.

15 (5) If, on being informed of the chief executive officer's opinion about the matter, the Oireachtas Committee decides not to withdraw its request, the High Court may, on application under *subsection (6)*, determine whether *subsection (2)* applies to the matter.

(6) An application for a determination under *subsection (5)* may be made in a summary manner to the High Court by—

20 (a) the chief executive officer not later than 21 days after being informed by the Oireachtas Committee of its decision not to withdraw its request, or

(b) the chairperson of the Oireachtas Committee acting on its behalf.

25 (7) Pending the determination of an application under *subsection (6)*, the chief executive officer shall not attend before the Oireachtas Committee to give an account of the matter to which the application relates.

30 (8) If the High Court determines that *subsection (2)* applies to the matter, the Oireachtas Committee shall withdraw its request relating to the matter, but if the High Court determines that *subsection (2)* does not apply, the chief executive officer shall attend before the Committee to give an account of the matter.

35 (9) In carrying out duties under this section, the chief executive officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

(10) In this section “Oireachtas Committee” means—

40 (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), or

(b) a subcommittee of a committee as defined in *paragraph (a)*.

PART 5

EMPLOYEES AND ADVISERS

Employees of
Executive.

22.—(1) The Executive may, subject to *subsections* (2) and (3), appoint persons recruited under the Public Service Management (Recruitment and Appointments) Act 2004 to be its employees and may determine their duties. 5

(2) The Executive shall, with the approval of the Minister given with the consent of the Minister for Finance, determine—

(a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of employees appointed under this section, and 10

(b) the grades of the employees of the Executive and the numbers of employees in each grade.

(3) A person is not eligible for appointment as an employee of the Executive if the person is— 15

(a) a member of either House of the Oireachtas or of the European Parliament, or

(b) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy. 20

(4) The remuneration and allowances of the Executive's employees are payable by the Executive to them out of funds at its disposal.

Superannuation.

23.—(1) The Executive shall prepare and submit to the Minister one or more than one scheme for granting superannuation benefits to or in respect of such employees of the Executive as it may think fit. 25

(2) Each superannuation scheme must fix the terms of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different terms may be fixed in respect of different classes of persons. 30

(3) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(4) A superannuation scheme submitted by the Executive under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Executive in accordance with its terms. 35

(5) The Executive may not grant, or enter into any arrangement for the provision of, any superannuation benefit to or in respect of an employee (including the chief executive officer) except in accordance with a scheme approved under this section or approved by the Minister with the consent of the Minister for Finance. 40

(6) Any dispute about the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme under this section shall be submitted to the Minister who shall refer the dispute to the Minister for Finance, whose decision is final. 45

(7) The Minister shall ensure that a superannuation scheme approved under this section is laid before each House of the Oireachtas as soon as practicable after the scheme is approved.

5 (8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the scheme is laid before it, annul the scheme.

(9) The annulment of a superannuation scheme under *subsection (8)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the
10 scheme before the passing of the resolution.

24.—(1) The Executive may engage such advisers as it considers Advisers. necessary for the performance of its functions.

(2) Any fees due to an adviser engaged under this section are payable by the Executive out of funds at its disposal.

15

PART 6

STANDARDS AND DISQUALIFICATIONS

25.—(1) In performing functions under this or any other enact- Standards of
ment as— integrity.

- (a) a member of the Board or a committee of the Board,
- 20 (b) the chief executive officer or any other employee of the Executive,
- (c) a person engaged by the Executive as an adviser, or
- (d) an employee of a person referred to in *paragraph (c)*,

a person shall maintain proper standards of integrity, conduct and
25 concern for the public interest.

(2) *Subsection (1)* applies to an employee of a person referred to in *paragraph (c)* of that subsection in respect only of duties of employment relating to the purposes for which the Executive has engaged that person.

30 (3) For the purposes of *subsection (1)*, the Executive shall issue codes of conduct for the guidance of persons who are—

- (a) members of a committee of the Board but are not members of the Board,
- 35 (b) employees of the Executive other than employees to whom a code of conduct under section 10(3) of the Standards in Public Office Act 2001 applies,
- (c) engaged by the Executive as advisers, or
- (d) employees of persons referred to in *paragraph (c)*.

40 (4) A code of conduct issued under this section for the guidance of persons referred to in *subsection (3)* must indicate the standards of integrity and conduct to be maintained by them in performing their functions under this or any other enactment.

(5) A person to whom such a code of conduct relates is required to have regard to and be guided by the code in performing the person's functions under this or any other enactment.

(6) The terms and conditions on which a person is employed by the Executive or by a person referred to in *subsection (1)(c)* or on which a person is engaged by the Executive as an adviser, as the case may be, are deemed to include any requirements that apply to that person under *subsection (5)*. 5

(7) Subject to *subsection (8)*, the Executive shall as soon as practicable after issuing a code of conduct make the code available to the persons for whose guidance it was issued. 10

(8) A code of conduct for the guidance of employees of a person engaged by the Executive as an adviser shall be issued by the Executive to the employer and be made available by the employer to those employees. 15

(9) A document purporting to be a code of conduct issued under this section is, in the absence of evidence to the contrary, to be taken to be such code and is admissible in any proceedings before a court or other tribunal.

(10) Any provision of such code that appears to the court or other tribunal to be relevant to a question in the proceedings may be taken into account by it in determining the question. 20

Unauthorised
disclosure of
confidential
information.

26.—(1) Except in the circumstances specified in *subsection (2)*, a person shall not disclose confidential information obtained while performing functions as— 25

- (a) a member of the Board or a committee of the Board,
- (b) the chief executive officer or any other employee of the Executive,
- (c) a person engaged by the Executive as an adviser, or
- (d) an employee of a person referred to in *paragraph (c)*. 30

(2) A person does not contravene *subsection (1)* by disclosing confidential information if—

- (a) the Executive authorises its disclosure,
- (b) the disclosure is made to the Board,
- (c) the disclosure is made to the Minister by or on behalf of the Executive or in compliance with a requirement of this Act, or 35
- (d) the disclosure is otherwise required by law.

(3) In this section “confidential information” means—

- (a) information that is expressed by the Executive to be confidential either as regards particular information or as regards information of a particular class or description, and 40
- (b) proposals of a commercial nature or tenders submitted to the Executive by any person.

27.—(1) An appointed member of the Board or a member of a committee of the Board immediately ceases to hold office on—

(a) being nominated as a member of Seanad Éireann,

(b) being elected as a member of either House of the Oireachtas or of the European Parliament,

(c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(d) becoming a member of a local authority.

Disqualification
resulting from
membership of
either House of
Oireachtas,
European
Parliament or local
authority.

(2) An employee of the Executive (including the chief executive officer) is immediately seconded from employment with the Executive on—

- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament, or
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy.

(3) No remuneration or allowances are payable by the Executive in respect of the secondment period to a person seconded from employment under *subsection (2)* and that period is not to be counted as service with the Executive for the purposes of any superannuation benefit.

(4) In relation to a person seconded under *subsection (2)* from employment, the secondment period begins on the occurrence of the relevant event referred to in that subsection and ends when the person ceases to be a member of either House of the Oireachtas or of the European Parliament.

PART 7

ACCOUNTABILITY AND FUNDING

28.—(1) In this Part—

Interpretation (*Part 7*).

“approved corporate plan” means a corporate plan approved by the Minister under *section 29*;

“approved service plan” means—

- (a) a service plan approved by the Minister under *section 32*, or
- (b) an amended service plan that is approved or deemed to have been approved by the Minister under *section 33*;

“capital spending” means spending for the purpose of acquiring a fixed asset or significantly extending the life of an existing fixed asset;

“financial year” means a period of 12 months ending on 31 December in any year;

“indebtedness” has the meaning given by *section 35(4)*;

“net non-capital expenditure determination” means a determination made by the Minister under *section 31*;

“non-capital expenditure” means expenditure other than for the purpose of acquiring a fixed asset or significantly extending the life of an existing fixed asset.

5

(2) References in *section 32, 34 or 43* to health and personal social services or to a health or personal social service do not include any service provided under the Social Welfare Acts.

Executive to
prepare and submit
corporate plan for
Minister’s approval.

29.—(1) The Executive shall, in accordance with this section, prepare, adopt and, at the times specified in *subsection (2)*, submit to the Minister for approval a corporate plan for the 3 year period following the date of its submission.

10

(2) A corporate plan must be submitted at the following times:

(a) within 6 months after the establishment day;

(b) within 6 months after the appointment of a new Minister having charge of the Department of Health and Children, if that Minister requests that a corporate plan be submitted;

15

(c) at the end of the 3 year period since the last corporate plan was submitted.

20

(3) The corporate plan must be prepared in a form and manner in accordance with any directions issued by the Minister and must specify—

(a) the key objectives of the Executive for the 3 year period concerned and the strategies for achieving those objectives,

25

(b) the manner in which the Executive proposes to measure its achievement of those objectives, and

(c) the uses for which the Executive proposes to apply its resources.

30

(4) In preparing the corporate plan, the Executive shall have regard to the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the Executive.

(5) Within 3 months after receiving a corporate plan, the Minister shall—

35

(a) approve the plan, or

(b) if the plan is not amended in accordance with any directions that may be issued by the Minister to the Executive, refuse to approve the plan.

40

(6) An approved corporate plan may be amended by the Minister at any time or may be amended by the Executive, but in the latter case only after—

(a) the Executive submits the proposed amendment to the Minister for approval, and

45

(b) the amendment is approved by the Minister.

(7) *Subsections (4) and (5)* apply with the necessary modifications in respect of an amendment by the Executive to an approved corporate plan.

5 (8) Nothing in a corporate plan is to be taken to prevent the Executive from, or to limit the Executive in, performing its functions.

30.—(1) The Minister shall ensure that a copy of an approved corporate plan is laid before both Houses of the Oireachtas—

Publication and
implementation of
approved corporate
plan.

10 (a) within 21 days after the plan is approved by the Minister,
and

(b) if the plan is amended under *section 29(6)* after being approved by the Minister, within 21 days after—

(i) in the case of an amendment made by the Minister,
the making of the amendment, or

15 (ii) in the case of an amendment made by the Executive,
the amendment is approved by the Minister.

(2) The Executive shall ensure that, as soon as practicable after copies of an approved corporate plan are laid before the Houses of the Oireachtas, the plan is published on the Internet or in accordance
20 with such other arrangements as the Minister may specify.

(3) The Executive shall provide the Minister with progress reports on the implementation of an approved corporate plan—

(a) in its annual report, and

25 (b) in such other manner and at such intervals as the Minister
may direct.

(4) During the specified period, the Freedom of Information Acts 1997 to 2003 do not apply to a record containing—

(a) a corporate plan, or an amendment to such plan, that has
not been approved by the Minister,

30 (b) a preliminary or other draft of all or part of the contents
of a corporate plan or of an amendment to a corporate
plan, or

35 (c) the unamended version of a corporate plan that is approved after being amended in accordance with a direction of the Minister.

(5) For the purpose of *subsection (4)*, the specified period is 5 years beginning on the date of the creation of the record.

31.—(1) The Minister shall determine the maximum amount of net non-capital expenditure that may be incurred by the Executive
40 for—

Minister to
determine net non-
capital expenditure
limits for Executive.

(a) a financial year of the Executive, or

(b) if the Minister considers it appropriate to do so in any particular case, such period as may be specified in the relevant notification under this section.

(2) The Minister shall notify the Executive in writing of the amount determined under *subsection (1)*—

- (a) if the period to which the net non-capital expenditure determination relates is a financial year of the Executive or runs from the beginning of such year, not more than 21 days after the publication by the Government of the Estimates for Supply Services for that financial year, and 5
- (b) in any other case, as soon as practicable after making the determination.

(3) The Minister may amend a net non-capital expenditure determination by varying the maximum amount of net non-capital expenditure that the Executive may incur for a particular financial year or other specified period and the determination applies and has effect as so amended. 10

(4) As soon as practicable after amending a net non-capital expenditure determination, the Minister shall notify the Executive in writing of the amendment. 15

(5) In making or amending a net non-capital expenditure determination, the Minister may determine priorities to which the Executive shall have regard in preparing or amending its service plan. 20

Executive to
prepare and submit
service plan for
Minister's approval.

32.—(1) Within the specified period after receiving a net non-capital expenditure determination the Executive shall—

- (a) prepare, in accordance with this section, a service plan for the financial year or other period to which the determination relates, and 25
- (b) adopt the plan so prepared and submit it to the Minister for approval.

(2) For the purpose of this section, the specified period is—

- (a) 21 days after the Executive receives the net non-capital expenditure determination, or 30
- (b) such longer period (not exceeding 42 days after the receipt of that determination) as the Minister may allow.

(3) A service plan must be prepared in the form and manner in accordance with any directions issued by the Minister and must—

- (a) indicate the type and volume of health and personal social services to be provided by the Executive during the period to which the plan relates, 35
- (b) contain estimates of the income, expenditure and number of employees of the Executive for the period and the services to which the plan relates, 40
- (c) contain any other information specified by the Minister,
- (d) comply with any directions issued by the Minister under *section 10*,
- (e) comply with the net non-capital expenditure determination for the period to which the plan relates, and 45

(f) be consistent with the policies and objectives of the Minister and the Government.

(4) In preparing the service plan, the Executive shall have regard to—

- 5 (a) the approved corporate plan in operation at that time, and
- (b) any priorities determined by the Minister under *section 31(5)*.

10 (5) If a service plan is not submitted in accordance with *subsection (1)*, the Minister may, by written direction, require the Executive to submit a service plan to him or her not later than—

- (a) 10 days after the date on which the Minister issues the direction to the Executive, or
- (b) such earlier date as may be specified in the direction.

15 (6) If the Executive fails to submit a service plan in accordance with *subsection (1)* or with a direction under *subsection (5)*, the Minister may, by written direction, require the chief executive officer to prepare and submit a service plan to the Minister within 10 days after the date on which the Minister issues the direction under this subsection.

20 (7) A service plan submitted by the chief executive officer under *subsection (6)* is deemed to have been adopted and submitted by the Executive.

25 (8) Not later than 21 days after receiving a service plan submitted under this section, the Minister shall either approve the plan or issue a direction under *subsection (9)* to amend the plan.

 (9) The Minister may direct the Executive or, in the case of a service plan submitted under *subsection (6)*, the chief executive officer, to amend a service plan submitted under this section if, in the Minister's opinion, the plan—

- 30 (a) does not contain any information required under *subsection (3)*,
- (b) proposes net non-capital expenditure that exceeds the amount specified in the net non-capital expenditure determination for the period to which the plan relates,
- 35 (c) does not comply in any other respect with *subsection (3)*,
- (d) has been prepared without regard to a matter specified in *subsection (4)*, or
- 40 (e) does not accord with the policies and objectives of the Minister or of the Government to the extent that those policies and objectives relate to the functions of the Executive.

(10) The Minister may refuse to approve a service plan unless it is amended in accordance with a direction issued under *subsection (9)*.

45 (11) The chief executive officer shall comply with any direction issued to him or her under this section.

33.—(1) After amending a net non-capital expenditure determination, the Minister may either—

- (a) direct the Executive to amend, in such manner as the Minister may specify in the direction, the approved service plan to which the net non-capital expenditure determination relates, or 5
- (b) direct the Executive to submit an amended service plan that complies with the amended net non-capital expenditure determination.

(2) If the Minister directs the Executive to submit an amended service plan in accordance with *subsection (1)(b)*, *subsections (4) to (11)* of *section 32* apply with the necessary modifications to the amended service plan. 10

(3) The Executive may amend an approved service plan but, in doing so, it shall ensure that the amendment does not result in its net non-capital expenditure for the period concerned exceeding the amount specified in the net non-capital expenditure determination for that period. 15

(4) The Executive shall submit an amended service plan to the Minister as soon as practicable and not later than 5 days after the day on which it adopts the amended service plan. 20

(5) Within 21 days after receiving an amended service plan submitted in accordance with *subsection (4)*, the Minister may, in writing, direct the Executive as to how the plan should be amended.

(6) Unless a direction relating to an amended service plan is issued by the Minister within the period specified in *subsection (5)*, the amended service plan is deemed to have been approved by the Minister immediately before the end of that period. 25

(7) If a direction relating to an amended service plan is issued by the Minister within the period specified in *subsection (5)*, any amendment made (either in the amended service plan or in response to the direction) by the Executive to its approved service plan has no effect until the amendment is approved by the Minister. 30

34.—(1) The Executive shall manage health and personal social services indicated in an approved service plan so as to ensure that— 35

- (a) those services are delivered in accordance with the plan, and
- (b) the net non-capital expenditure for the financial year or other period to which the plan relates does not exceed the amount specified in the net non-capital expenditure determination for that year or other period. 40

(2) If the amount of net non-capital expenditure incurred by the Executive in the financial year or other period to which an approved service plan relates is either greater or less than the amount specified in the net non-capital expenditure determination for that year or other period, the Executive shall charge the amount of the excess expenditure or credit the amount of the surplus income in its income and expenditure account for the next financial year. 45

35.—(1) The Executive may borrow money, but only—

Borrowing by
Executive and
determination by
Minister of
maximum
indebtedness.

(a) with the prior consent of the Minister given with the concurrence of the Minister for Finance,

(b) subject to such terms and conditions (if any) as may be specified by the Minister with the consent of the Minister for Finance, and

(c) subject to the amount of indebtedness specified under *subsection (2)*.

(2) When making a net non-capital expenditure determination, the Minister shall specify the amount of indebtedness that the Executive may incur during the financial year or other period to which the determination relates.

(3) Before specifying an amount under *subsection (2)*, the Minister shall obtain the consent of the Minister for Finance to the proposed amount.

(4) The indebtedness of the Executive is the amount it owes to its creditors at the relevant time less an amount equal to the value of its current assets.

(5) For the purpose of this section the Minister may specify—

(a) accounting standards to be applied in calculating the amount owed by the Executive to its creditors at the relevant time and the value of its current assets at that time, and

(b) the manner in which the current assets of the Executive are to be determined.

(6) The Minister shall notify the Executive in writing of the amount specified under *subsection (2)*.

(7) The Executive shall so conduct its affairs that its indebtedness does not exceed the amount for the time being specified by the Minister.

36.—(1) The Minister shall—

Determination by
Minister of capital
funding and
submission by
Executive of capital
plans.

(a) in respect of each financial year of the Executive, determine the maximum amount of funding that the Minister will make available to the Executive in that year for capital spending, and

(b) notify the Executive in writing of that amount.

(2) After receiving the notification from the Minister, the Executive shall, in accordance with *subsection (3)*, submit to the Minister for approval an annual capital plan prepared in such form and containing such information as may be specified by the Minister.

(3) The annual capital plan must be submitted to the Minister at the time the Executive submits its service plan or, if it is not practicable to do so at that time, within—

(a) 21 days after the Executive receives the notification from the Minister, or

(b) such longer period (not exceeding 42 days after the receipt of that notification) as the Minister may allow.

(4) *Subsections (5) to (11) of section 32* apply with the necessary modifications to an annual capital plan.

(5) Despite any other provision of this section, the Minister may at any time direct the Executive to submit to the Minister for approval a capital plan prepared in such form, containing such information and covering such period as may be specified by the Minister. 5

(6) In preparing a plan for submission under this section, the Executive shall have regard to any priorities that may be determined by the Minister for the year or other period to which the plan relates. 10

(7) The Minister may at any time direct the Executive to amend a plan submitted and approved under this section.

(8) The Executive may, with the prior approval of the Minister, amend a plan submitted and approved under this section. 15

Grants to Executive.

37.—The Minister shall make grants to the Executive out of money provided by the Oireachtas.

Minister's permission needed for major capital spending.

38.—The Executive shall not, without the prior written permission of the Minister, enter into an agreement or arrangement or otherwise commit itself in respect of capital spending on an undertaking if the total amount spent on the undertaking would exceed an amount that may be specified by the Minister from time to time. 20

Role of chief executive officer in implementing service plans and capital plans.

39.—(1) The chief executive officer shall, under the supervision of the Board, ensure that an approved service plan is implemented to the extent practicable and that— 25

(a) the Executive's net non-capital expenditure for the financial year or other period to which the plan relates does not exceed the amount specified in the net non-capital expenditure determination for that year or other period,

(b) any borrowing by the Executive is in accordance with *section 35(1)*, 30

(c) the Executive's indebtedness does not exceed the amount specified by the Minister under *section 35(2)*,

(d) the Executive's capital plan for that financial year or other period accords with the annual capital plan and any other relevant capital plan approved by the Minister under *section 36*, and 35

(e) the Executive does not enter into an agreement or arrangement or otherwise commit itself in respect of capital spending on an undertaking in the circumstances described in *section 38* without the prior written permission of the Minister. 40

(2) The chief executive officer shall, as soon as practicable, inform the Board if he or she forms the opinion that a decision of the Board will, or that a proposed decision of the Board would, if made, result in— 45

- 5 (a) the Executive's net non-capital expenditure for a financial year or other period to which an approved service plan relates exceeding the amount specified in the net non-capital expenditure determination for that year or other period,
- (b) any borrowing by the Executive otherwise than in accordance with *section 35(1)*,
- (c) the Executive's indebtedness exceeding the amount specified by the Minister under *section 35(2)*,
- 10 (d) the Executive implementing a capital plan that does not accord with the annual capital plan or any other relevant capital plan approved by the Minister under *section 36*, or
- 15 (e) the Executive entering into an agreement or arrangement or otherwise committing itself in respect of capital spending on an undertaking in the circumstances described in *section 38* without the prior written permission of the Minister.

(3) If the Board does not, as soon as practicable after being informed under *subsection (2)* of the chief executive officer's opinion, modify the decision or the proposed decision so as to prevent it resulting in any of the occurrences mentioned in *paragraphs (a) to (e)* of that subsection, the chief executive officer shall as soon as practicable inform the Minister in writing of the Board's failure to do so.

25 **40.—(1)** The Executive shall, as soon as practicable after it is established, submit to the Minister for approval a code of governance that includes an outline of— Code of governance.

- (a) the guiding principles applicable to the Executive as a public body having functions relating to health and personal social services,
- 30 (b) the structure of the Executive, including the roles and responsibilities of the Board and the chief executive officer,
- (c) the methods to be used to bring about the integration of health and personal social services,
- 35 (d) the processes and guidelines to be followed to ensure compliance with the reporting requirements imposed on the Executive by or under this Act,
- (e) the Executive's internal controls, including its procedures relating to internal audits, risk management, public procurement and financial reporting, and
- 40 (f) the nature and quality of service that persons being provided with or seeking health and personal social services can expect.

(2) The Executive shall review the code of governance periodically and at such times as may be specified by the Minister and shall revise the code as the Executive considers appropriate.

(3) In preparing, or making any revisions to, the code of governance, the Executive shall have regard to any directions issued by the Minister under *section 10*.

(4) Following the Minister's approval of the code of governance or of any revisions to it, the Executive shall arrange for the publication of the code or the revised code.

(5) The Executive shall indicate in its annual report its arrangements for implementing and maintaining adherence to the code of governance. 5

Accounts of
Executive.

41.—(1) The Executive shall keep all proper and usual accounts of all money received or expended by the Executive including an income and expenditure account and balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct. 10

(2) The Executive shall—

(a) prepare annual financial statements in accordance with accounting standards specified by the Minister,

(b) adopt the financial statements on or before the 1st day of April in the year following the financial year to which they relate, and 15

(c) submit the financial statements to the Minister as soon as practicable after their adoption.

(3) The Minister may, by order made after consulting the Minister for Finance, vary the date specified in *subsection (2)(b)*. 20

Annual report.

42.—(1) The Executive shall, not later than the 30th day of April in each year beginning with the year 2006, prepare and adopt a report on the performance of its functions during the preceding year.

(2) An annual report shall include— 25

(a) a general statement of the health and personal social services provided during the preceding year by or on behalf of the Executive (whether provided in accordance with an agreement under *section 8* or an arrangement under *section 43*) and of the activities undertaken by the Executive in that year, 30

(b) a report on the implementation of the corporate plan in the year,

(c) a report on the implementation of the service plan in the year, 35

(d) a report on the implementation of the capital plans in the year,

(e) the annual financial statements adopted under *section 41(2)*,

(f) an indication of the Executive's arrangements for implementing and maintaining adherence to its code of governance, 40

(g) the report required by *section 59* (complaints), and

(h) such other information as the Executive considers appropriate or as the Minister may specify. 45

(3) The Executive shall submit a copy of the annual report to the Minister as soon as practicable after adopting the report and in any event not later than 21 days after its adoption.

5 (4) The Minister shall ensure that copies of the annual report are laid before each House of the Oireachtas within 21 days after the Minister receives that report.

10 (5) The Executive shall ensure that the annual report is published on the Internet, or in accordance with such other arrangements as the Minister may specify, as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.

15 **43.—**(1) The Executive may, subject to its available resources and any directions issued by the Minister under *section 10*, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive. Arrangements with service providers.

20 (2) Before entering into an arrangement under this section, the Executive shall determine, in respect of a financial year of the Executive, the maximum amount of funding (whether capital funding or non-capital funding) that it proposes to make available in that year under the arrangement and the level of service it expects to be provided for that funding.

(3) A service provider shall—

25 (a) keep, in such form as may be approved by the Executive in accordance with any general direction issued by the Minister, all proper and usual accounts and records of income received and expenditure incurred by it,

(b) submit such accounts annually for audit, and

30 (c) supply a copy of the audited accounts and the auditor's certificate and report on the accounts to the Executive within such period as may be specified by the Executive.

(4) The expenses of an audit of accounts submitted in accordance with *subsection (3)* are payable by the service provider submitting them for audit.

35 (5) The Executive may exempt from the requirements of *subsection (3)*—

40 (a) a service provider who in any one financial year receives from the Executive in respect of health and personal social services provided on behalf of the Executive a total sum that does not exceed the amount that may be determined by the Minister, or

(b) such other categories of service providers as may be specified by the Minister.

(6) The Executive may make such arrangements as it considers appropriate to monitor—

45 (a) the expenditure incurred in the provision of health or personal social services by service providers exempted under *subsection (5)*, and

(b) the provision of those services by such service providers.

(7) The Executive may request from a service provider any information that it considers material to the provision of a health or personal social service by the service provider.

(8) A service provider shall comply with a request made under subsection (7) to the service provider. 5

(9) At the Minister's request, the Executive shall supply the Minister with any information obtained in response to a request under subsection (7).

Gifts. 44.—(1) The Executive may accept gifts of money, land or other property on such trusts or conditions (if any) as may be specified by the donor. 10

(2) The Executive may not accept a gift if the trusts or conditions attaching to it would be inconsistent with the Executive's object or functions or with any obligations imposed on it under any enactment.

PART 8 15

PUBLIC REPRESENTATION AND USER PARTICIPATION

National Health Consultative Forum. 45.—(1) The Minister may convene, at such time as he or she may determine, a National Health Consultative Forum to advise the Minister on matters relating to the provision of health and personal social services. 20

(2) The Minister may, by order—

(a) specify the number of members of the Forum,

(b) determine the manner in which the members are to be nominated,

(c) appoint the members, and 25

(d) determine the rules and procedures of the Forum.

(3) The expenses of the Forum are payable by the Minister out of moneys provided by the Oireachtas.

Regional health forums. 46.—(1) After consulting the Minister for the Environment, Heritage and Local Government, the Minister shall, by regulation— 30

(a) establish such number (not exceeding 4) of regional health forums as the Minister considers appropriate, and

(b) appoint the establishment day of each regional health forum.

(2) The function of a regional health forum is to make such representations to the Executive as the forum considers appropriate on the range and operation of health and personal social services provided within its functional area, but it may not consider or make representations concerning any of the following matters: 35

(a) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of the Executive or a service provider; 40

- (b) a matter relating to an action taken by the Executive or a service provider if the action was taken solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph (a)*;
- 5 (c) a matter relating to the recruitment or appointment of employees by the Executive or by a service provider;
- (d) a matter relating to or affecting the terms or conditions (including those relating to superannuation benefits, disciplinary procedures or grievance procedures) of a contract of employment that the Executive has entered into or proposes to enter into.
- 10
- (3) A regional health forum is to be composed of members of each city council and each county council within the functional area of the forum who are to be appointed as members of the forum by
- 15 that city council or county council as follows:
- (a) in the case of the first appointment of the members of a regional health forum, at the meeting of the city council or county council held next after the establishment of the regional health forum;
- 20 (b) in any other case, at the meeting of the city council or county council held next after the election of members of the council concerned.
- (4) A person ceases to be a member of a regional health forum on ceasing to be a member of the city council or county council that
- 25 appointed the person as a member of the forum.
- (5) Regulations under this section shall—
- (a) specify the title of each regional health forum and define its functional area,
- (b) specify the number of members for each regional health forum and the number of members from each city council and each county council to be nominated to each regional health forum, and
- 30
- (c) specify requirements relating to the manner in which the functions of a regional health forum are to be performed.
- 35 (6) Regulations under this section may, among other things, prescribe requirements concerning the following matters:
- (a) the appointment of members to a regional health forum;
- (b) the election of a chairperson and vice-chairperson of each regional health forum;
- 40 (c) the filling of casual vacancies;
- (d) the meetings and procedures of a regional health forum;
- (e) the establishment of committees of a regional health forum and the appointment of their members;
- 45 (f) rules and procedures to ensure the proper administration of each regional health forum.

(7) The Executive shall provide, or arrange for the provision of, such administrative services as may be necessary to enable a regional health forum to perform its function.

(8) The expenses of a regional health forum are payable by the Executive from money advanced to it by the Minister to perform the Executive's functions. 5

(9) A member of a regional health forum or a committee established by such forum may be paid by the Executive travelling and subsistence allowances in accordance with such scales as may, from time to time, be approved by the Minister with the consent of the Minister for Finance. 10

Mechanisms
(including advisory
panels) to enable
Executive to consult
with local
communities and
others.

47.—(1) The Executive may take such steps as it considers appropriate to consult with local communities or other groups about health and personal social services.

(2) Such steps may include the establishment by the Executive of panels to advise the Executive or to enable it to seek the views of— 15

(a) persons who are being or have been provided with a health or personal social service or who are seeking or have sought a health or personal social service,

(b) carers of persons referred to in *paragraph (a)*, 20

(c) service providers, and

(d) such other persons as the Executive considers appropriate.

(3) Subject to *subsection (4)*, the Executive shall determine for each panel established under this section—

(a) its terms of reference, 25

(b) the manner in which its members are to be nominated, and

(c) the rules governing its meetings and procedures.

(4) A panel may not consider, or provide advice or views to the Executive concerning, a matter that under *paragraphs (a) to (d) of section 46(2)* a regional health forum is not authorised to consider. 30

(5) In providing advice to the Executive, a panel shall have regard to—

(a) the approved corporate plan in operation at the time,

(b) the approved service plan in operation at the time, and

(c) any arrangement under *section 43* with a service provider. 35

(6) The Executive shall provide, or arrange for the provision of, such administrative services as may be necessary to enable a panel to perform its functions.

(7) The following allowances and expenses are payable by the Executive from money advanced to it by the Minister to perform the functions of the Executive: 40

- (a) the travelling and subsistence allowances of panel members in accordance with such scales as may be determined from time to time by the Minister with the consent of the Minister for Finance;

5 (b) the expenses of a panel.

(8) The Executive may dissolve a panel established under this section.

48.—(1) The Minister may direct the Executive in writing to—

Other advisory panels to be established on Minister's direction.

10 (a) establish an advisory panel for a purpose specified by the Minister, and

- (b) appoint one or more than one person specified by the Minister as a member of the panel.

(2) The Minister may determine the terms of reference of a panel established under this section and may dissolve the panel at any time.

15 (3) *Subsections (4) to (7) of section 47* apply with the necessary modifications in relation to an advisory panel established under this section.

PART 9

COMPLAINTS

20 **49.—**In this Part—

Definitions (*Part 9*).

“action” means anything done or omitted to be done by the Executive or by a service provider in the course of providing a health or personal social service on behalf of the Executive;

25 “close relative”, in relation to another person, means a person who—

- (a) is a parent, guardian, son, daughter or spouse of the other person, or

- (b) is cohabiting with the other person;

30 “complaints officer” means a person designated—

- (a) by the Executive for the purpose of dealing with complaints made to it in accordance with procedures established under *section 53(1)(a)*, or

35 (b) by a service provider for the purpose of dealing with complaints made to the service provider in accordance with procedures established under *section 53(1)(a)* or (2);

“complaint” means a complaint made under this Part about any action of the Executive or a service provider that—

40 (a) it is claimed, does not accord with fair or sound administrative practice, and

- (b) adversely affects the person by whom or on whose behalf the complaint is made;

“complainant” means a person who is entitled under *section 50* to make a complaint under this Part on the person’s own behalf or on behalf of another.

5

Who may make complaints.

50.—(1) Any person who is being or was provided with a health or personal social service by the Executive or by a service provider or who is seeking or has sought provision of such service may complain, in accordance with the procedures established under this Part, about any action of the Executive or a service provider that—

10

- (a) it is claimed, does not accord with fair and sound administrative practice, and

- (b) adversely affects or affected that person.

(2) For the purposes of this Part, an action does not accord with fair and sound administrative practice if it is—

15

- (a) taken without proper authority,

- (b) taken on irrelevant grounds,

- (c) the result of negligence or carelessness,

- (d) based on erroneous or incomplete information,

- (e) improperly discriminatory,

20

- (f) based on undesirable administrative practice, or

- (g) in any other respect contrary to fair or sound administration.

(3) If a person entitled under this section to make a complaint is unable to do so because of age, illness or disability, the complaint may be made on that person’s behalf by—

25

- (a) a close relative or carer of the person,

- (b) any person who, by law or by appointment of a court, has the care of the affairs of that person,

- (c) any legal representative of the person,

30

- (d) any other person with the consent of the person, or

- (e) any other person who is appointed as prescribed in the regulations.

(4) If a person who would otherwise have been entitled under this section to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative or carer of that person.

35

Time limit for making complaints.

51.—(1) A complaint must be made within the specified period or any extension of that period allowed under *subsection (3)*.

(2) The specified period is 12 months beginning before or after the commencement of this section, but not later than—

40

(a) the date of the action giving rise to the complaint, or

(b) if the person by whom or on whose behalf the complaint is to be made did not become aware of that action until after that date, the date on which he or she becomes aware of it.

(3) A complaints officer may extend the time limit for making a complaint if in the opinion of the complaints officer special circumstances make it appropriate to do so.

52.—(1) A person is not entitled to make a complaint about any of the following matters:

Matters excluded from right to complain.

(a) a matter that is or has been the subject of legal proceedings before a court or tribunal;

(b) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of either the Executive or a service provider;

(c) an action taken by the Executive or a service provider solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph (b)*;

(d) a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;

(e) a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into or of a contract with an adviser that the Executive proposes to enter into under *section 24*;

(f) a matter relating to the Social Welfare Acts;

(g) a matter that could prejudice an investigation being undertaken by the Garda Síochána;

(h) a matter that has been brought before any other complaints procedure established under an enactment.

(2) *Subsection (1)(h)* does not prevent a complaints officer from dealing with a complaint that was made to the Ombudsman or the Ombudsman for Children and that is referred by him or her to a complaints officer.

(3) In relation to a contract referred to in *subsection (1)(e)* “terms or conditions” includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures.

53.—(1) Subject to *subsection (2)* and any regulations under *section 57*, the Executive shall establish procedures for—

Complaint and review procedures to be established.

(a) dealing with complaints against the Executive or a service provider, and

(b) reviewing, at the request of a complainant, any recommendation made by a complaints officer following the investigation of a complaint.

(2) Any service provider may, with the agreement of the Executive, establish procedures, in place of the procedures established under *subsection (1)(a)*, for dealing with complaints against the service provider.

(3) The Executive may agree to a service provider establishing such procedures if satisfied that they will be of a comparable standard to the procedures established by the Executive under *subsection (1)(a)*. 5

(4) Subject to any regulations under *section 57*, the Executive may assign to another body the Executive's functions in relation to reviewing, and establishing procedures for reviewing, any recommendation made by a complaints officer. 10

Refusal to investigate or further investigate complaints.

54.—(1) A complaints officer shall not investigate a complaint if—

- (a) the person who made the complaint is not entitled under *section 50* to do so either on the person's own behalf or on behalf of another, 15
- (b) the complaint is made after the expiry of the period specified in *section 51(2)* or any extension of that period allowed under *section 51(3)*.

(2) A complaints officer may decide not to investigate or further investigate an action to which a complaint relates if, after carrying out a preliminary investigation into the action or after proceeding to investigate such action, that officer— 20

- (a) is of the opinion that—
 - (i) the complaint does not disclose a ground of complaint provided for in *section 50*, 25
 - (ii) the subject-matter of the complaint is excluded by *section 52*,
 - (iii) the subject-matter of the complaint is trivial, or
 - (iv) the complaint is vexatious or not made in good faith, 30
- or
- (b) is satisfied that the complaint has been resolved.

(3) A complaints officer shall, as soon as practicable after determining that he or she is prohibited by *subsection (1)* from investigating a complaint or after deciding under *subsection (2)* not to investigate or further investigate a complaint, inform the complainant in writing of the determination or decision and the reasons for it. 35

Restriction on type of recommendations complaints officers may make and power to suspend implementation of recommendations.

55.—(1) A complaints officer may not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause— 40

- (a) the Executive to make a material amendment to its approved service plan, or
- (b) a service provider and the Executive to make a material amendment to an arrangement under *section 43*.

(2) If, in the opinion of the relevant person, such a recommendation is made, that person shall either—

(a) amend the recommendation in such manner as makes the amendment to the applicable service plan or arrangement unnecessary, or

(b) reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.

(3) Pending the outcome of a review, the relevant person may suspend the implementation of a recommendation made by a complaints officer if satisfied that, in the interests of fair and sound administration, it is appropriate to do so.

(4) In this section “relevant person” means—

(a) in relation to a complaint dealt with by the Executive in accordance with the procedures established under *section 53(1)*, the chief executive officer, and

(b) in relation to a complaint dealt with in accordance with the procedures established by a service provider under *section 53(2)*, the service provider.

56.—(1) It is a condition of any arrangement under *section 43* with a service provider that the service provider will—

Adherence to complaint and review procedures to be condition of arrangements with service providers.

(a) adhere to the complaints procedures established by the Executive in accordance with *section 53(1)* and any regulations under *section 57*, or

(b) establish the procedures agreed under *section 53(2)* and adhere to those procedures.

(2) In addition, it is a condition of such arrangement that the service provider will co-operate with the Executive, or with any body to which the Executive assigns its functions under *section 53(4)*, in any review of a recommendation made by a complaints officer following the investigation of a complaint against the service provider.

(3) The Executive shall exercise any rights or remedies available to it under such arrangement if the service provider concerned does not fulfil any of the applicable conditions specified in *subsections (1) and (2)*.

57.—(1) The Minister may make regulations for the purposes of this Part.

Minister to make regulations for purposes of this Part.

(2) Regulations under this section may, among other things, make provision for the following matters:

(a) requirements to be complied with by complainants;

(b) the appointment of persons as complaints officers and the functions of complaints officers;

(c) the procedure to be followed in investigating complaints;

- (d) the making of recommendations by complaints officers following the investigation of complaints and the nature of the recommendations that, subject to *section 55*, they are authorised to make;
- (e) the implementation of recommendations made by complaints officers; 5
- (f) the appointment of persons as review officers and the functions of those officers;
- (g) the procedure to be followed in undertaking reviews;
- (h) the making of recommendations by review officers following the review of a complaint and the nature of the recommendations that they are authorised to make; 10
- (i) the implementation of recommendations made by review officers;
- (j) the assignment by the Executive of the review functions referred to in *section 53(4)* to any other body or person. 15

Referral of complaints to Ombudsman or Ombudsman for Children.

58.—(1) Nothing in this Part prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint under this Part or with a review under this Part from referring the complaint to the Ombudsman or the Ombudsman for Children. 20

(2) For the purposes of the Ombudsman Acts 1980 to 1984 and the Ombudsman for Children Act 2002, any action taken by a service provider in relation to a health or personal social service in respect of which the service provider has entered into an arrangement under *section 43* is deemed to have been taken by the Executive. 25

Annual report to include report on complaints and reviews.

59.—(1) The Executive shall submit to the Minister, as part of the Executive's annual report, a general report on the performance of its functions under this Part during the previous year containing such information as the Executive considers appropriate or as the Minister may specify. 30

(2) A service provider who has established a complaints procedure by agreement with the Executive shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the complaints received by the service provider during the previous year indicating— 35

- (a) the total number of complaints received,
- (b) the nature of the complaints,
- (c) the number of complaints resolved by informal means, and
- (d) the outcome of any investigations into the complaints. 40

(3) If the Executive assigns its functions under *section 53(4)* to another body, that body shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the reviews conducted by it during the previous year indicating— 45

- (a) the total number of reviews,

- (b) the nature of the reviews, and
- (c) the outcome of the reviews.

PART 10

5 DISSOLUTION OF CERTAIN HEALTH BODIES AND THE TRANSFER OF THEIR FUNCTIONS AND EMPLOYEES, ETC., TO THE EXECUTIVE

60.—In this Part “specified body” means—

Definitions (*Part 10*).

- (a) the health boards,
- (b) the Eastern Regional Health Authority,
- (c) the Area Health Boards,
- 10 (d) the Hospital Bodies Administrative Bureau,
- (e) the Health Boards Executive,
- (f) the General Medical Services (Payments) Board,
- (g) the Health Services Employers Agency, and
- (h) the Interim Health Service Executive.

15 **61.**—The specified bodies are, by this Act, dissolved on the establishment day.

Dissolution of health boards and other specified bodies.

20 **62.**—(1) The functions that, immediately before the establishment day, were the functions of a specified body under or in connection with the enactments referred to in *Schedule 3* are, by this Act, transferred to the Executive on that day.

Transfer of functions of specified bodies to Executive.

25 (2) If a provision of an enactment referred to in *Schedule 3*, or a provision of an instrument made under such enactment, does not come into effect until on or after the establishment day, a function that on the passing of that enactment or the making of that instrument was assigned under or in connection with that provision to a specified body is, by this Act, transferred to the Executive on the commencement of that provision.

30 (3) The functions transferred by this Act to the Executive include the functions specified in any enactment referred to in *Schedule 3* as a function of the following:

- (a) the chief executive officer of a health board;
- (b) the Regional Chief Executive of the Eastern Regional Health Authority;
- (c) the area chief executive of an Area Health Board.

35 **63.**—(1) Each person who, immediately before the establishment day, was an employee of a specified body is, on that day, transferred to and becomes an employee of the Executive.

Transfer of employees of specified bodies to Executive.

(2) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person transferred under this section is entitled, while in the employment of the Executive, to terms and conditions of employment no less favourable than those to which the person was entitled immediately before the establishment day. 5

(3) Until the terms and conditions of employment to which a person transferred under this section was entitled immediately before the establishment day are varied by the Executive after consulting and reaching a collective agreement with the recognised trade union or association of employees concerned, they continue to apply to that person while in the employment of the Executive. 10

(4) The previous service of a person transferred under this section is to be counted as service for the purposes of, but subject to any exceptions or exclusions in, the following Acts: 15

- (a) the Redundancy Payments Acts 1967 to 2003;
- (b) the Protection of Employees (Part-Time Work) Act 2001;
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;
- (d) the Organisation of Working Time Act 1997; 20
- (e) the Minimum Notice and Terms of Employment Acts 1973 to 2001;
- (f) the Unfair Dismissals Acts 1977 to 2001;
- (g) the Maternity Protection Act 1994;
- (h) the Parental Leave Act 1998; 25
- (i) the Adoptive Leave Act 1995;
- (j) the Carer's Leave Act 2001.

(5) Any superannuation benefits awarded to or in respect of a person transferred under this section and the terms relating to those benefits shall be no less favourable than those applicable to or in respect of that person immediately before the establishment day. 30

(6) If, in the period beginning on the establishment day and ending immediately before the commencement of a superannuation scheme under *section 23*, a superannuation benefit becomes payable to or in respect of a person transferred under this section— 35

- (a) the Executive shall calculate the benefit in accordance with such superannuation scheme, or such enactments in relation to superannuation, as applied to the person immediately before the establishment day,
- (b) the person's pensionable service with the Executive shall, for the purpose of calculating the benefit, be aggregated with the person's previous pensionable service, and 40
- (c) the benefit shall be paid by the Executive.

(7) In this section—

“previous service” means service before the applicable transfer day with a specified body; 45

“recognised trade union or association of employees” means a trade union or association of employees recognised by the Executive for the purposes of negotiations that are concerned with the terms and conditions of employment and the working conditions of employees;

- 5 “terms and conditions of employment” includes terms and conditions in respect of remuneration and related matters.

64.—(1) The pension payments and other superannuation liabilities of each specified body in respect of its former employees become on the establishment day the liabilities of the Executive.

Transfer of pension liabilities relating to former employees of specified bodies.

- 10 (2) *Subsection (1)* is not to be taken to limit the generality of *section 65(3)* or *(4)*.

- 15 **65.—**(1) On the establishment day, all land that, immediately before that day, was vested in a specified body and all rights, powers and privileges relating to or connected with that land are, without any conveyance or assignment, transferred to and vested in the Executive.

Transfer of property and liabilities to Executive.

- 20 (2) On the establishment day, all property other than land (including choses-in-action) that, immediately before that day, was the property of a specified body is transferred to and vested in the Executive without any assignment.

- (3) All rights and liabilities of a specified body arising by virtue of any contract or commitment (express or implied) entered into by that body before the establishment day are on that day transferred to the Executive.

- 25 (4) Each right and liability transferred under *subsection (3)* may on or after its transfer be sued on, recovered or enforced by or against the Executive in its own name and it shall not be necessary for the Executive to give notice of the transfer to the person whose right or liability is transferred.

- 30 **66.—**Every contract, agreement or arrangement made between a specified body and any other person and in force immediately before the establishment day—

Preservation of contracts, etc., and adaptation of references.

- (a) continues in force on and after that day,
(b) is to be read and have effect as if the name of the Executive were substituted in the contract, agreement or arrangement for that of the specified body, and
35 (c) is enforceable by and against the Executive.

- 67.—**(1) If, immediately before the establishment day, any legal proceedings to which a specified body is a party are pending in any court or tribunal, the Executive’s name shall be substituted in the proceedings for the name of the specified body and the proceedings shall not abate because of the substitution.

Pending legal proceedings.

- 40 (2) Any reference to a specified body in an order made by a court before the establishment day shall, on the establishment day, be construed as a reference to the Executive.
45

Preservation of orders, notices, rules, etc.

68.—(1) Any resolution passed, order made or notice served by a specified body before the establishment day the operation, effect or term of which has not ceased or expired immediately before that day continues in force on and after that day, and has effect as if it were a resolution passed, an order made or a notice served by the Executive. 5

(2) Any rule or regulation made by a specified body that was in force immediately before the establishment day continues in force on and after that day, and has effect as if it were a rule or regulation made by the Executive.

(3) Each rule or regulation continued in force under *subsection* 10 (2) may be varied or revoked, and penalties and forfeitures arising under the rule or regulation may be recovered and enforced by the Executive.

References to specified bodies.

69.—Subject to this Act, references (however expressed) to a specified body in any Act passed before the establishment day, or in 15 any instrument made before that day under an Act, are to be read as references to the Executive.

Functional areas of dissolved health boards.

70.—(1) An area that before the establishment day was a functional area of—

- (a) a health board, 20
- (b) the Eastern Regional Health Authority, or
- (c) an Area Health Board,

becomes on that day a functional area of the Executive with the same geographical boundaries as it had before that day.

(2) References (however expressed) in any enactment referred to 25 in *Schedule 3* to a functional area of a health board, the Eastern Regional Health Authority or an Area Health Board are on and after the establishment day to be read as references to—

- (a) the corresponding functional area of the Executive or that area as redefined in accordance with this section, or 30
- (b) if the context so requires, the area comprising all of the corresponding functional areas of the Executive or comprising all of those areas as redefined in accordance with this section.

(3) Subject to *subsections* (4) to (6), the Executive may, by notice 35 published in *Iris Oifigiúil*, redefine for any purpose specified by it in the notice the geographical boundaries of a functional area of the Executive.

(4) If the Executive proposes to redefine the boundaries of functional areas in respect of any function that, under an enactment relating to the registration of births, marriages, deaths or stillbirths, was the responsibility of a health board or an Area Health Board, the Executive shall consult An tÁrd Chláraitheoir or the person duly authorised to carry out the duties of An tÁrd Chláraitheoir before redefining those boundaries. 45

(5) If the Executive proposes to redefine the geographical boundaries of a functional area for the purpose of any function that is the subject of an agreement under *section 8* with a public authority, the

Executive shall consult that public authority before redefining those boundaries.

5 (6) In this section “enactment relating to the registration of births, marriages, deaths or stillbirths” includes the Civil Registration Act 2004, the Births and Deaths Registration Acts 1863 to 1996, the Notification of Births Acts 1907 to 1998, the Registration of Marriages (Ireland) Act 1863 and the Marriages (Ireland) Act 1844.

10 **71.**—Subject to *section 62*, references (however expressed) in any Act passed before the establishment day or in any instrument made before that day under such Act to—
References to chief executives of dissolved health boards.

- (a) the chief executive officer of a health board,
- (b) the Regional Chief Executive of the Eastern Regional Health Authority, or
- (c) the area chief executive of an Area Health Board,

15 are to be read as references to the chief executive officer of the Executive.

20 **72.**—Subject to *section 62*, references (however expressed) in any Act passed before the establishment day or in any instrument made before that day under such Act to the deputy chief executive officer of—
References to deputy chief executives of dissolved health boards.

- (a) a health board,
- (b) the Eastern Regional Health Authority, or
- (c) an Area Health Board,

25 are to be read as references to the employee of the Executive appointed under *section 18(3)* as deputy chief executive officer.

73.—(1) The Minister may, by order, provide for the dissolution, on such day or days as he or she may appoint, of bodies established under the Health (Corporate Bodies) Act 1961 and for the transfer of their functions to the Executive.
Dissolution of bodies established under Health (Corporate Bodies) Act 1961.

30 (2) An order under this section may include provision for the following matters:

- (a) the transfer to the Executive of any of the property, rights and liabilities of a body dissolved in accordance with the order;
- 35 (b) the preservation of continuing contracts and commitments made by the dissolved body;
- (c) the continuance of pending legal proceedings;
- (d) the application of *section 63*, with the necessary modifications, to the transfer of employees of the dissolved body to the Executive;
- 40 (e) superannuation arrangements for employees of the dissolved body;

(f) the transfer of all records of the dissolved body to the Executive.

(3) References (however expressed) to a body dissolved in accordance with an order under this section in any Act passed, or instrument made, before the dissolution of that body are to be read as references to the Executive. 5

Final accounts of specified bodies and other dissolved bodies.

74.—(1) The Executive shall prepare, in accordance with the accounting standards specified by the Minister for the purposes of section 41(2) and in respect of the period specified under subsection (3) of this section, final accounts of each body dissolved under section 61 or in accordance with an order under section 73. 10

(2) The Executive shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after—

(a) the establishment day, in the case of a body dissolved under section 61, or 15

(b) the dissolution of the body, in the case of a body dissolved in accordance with an order under section 73.

(3) For the purpose of subsection (1), the Minister may specify a period that is longer or shorter than a financial year of the body concerned. 20

(4) Subject to subsections (1) and (2) of this section, section 6 of the Comptroller and Auditor General (Amendment) Act 1993 applies to the final accounts of a specified body.

Executive to prepare final annual report for specified bodies and other dissolved bodies.

75.—(1) The Executive shall prepare the final annual report for each body dissolved under section 61 or in accordance with an order under section 73 and submit the report to the Minister not later than— 25

(a) 6 months after the establishment day of the Executive, in the case of a body dissolved under section 61, or

(b) as soon as practicable after the dissolution of the body, in the case of a body dissolved in accordance with an order under section 73. 30

(2) Subsections (4) and (5) of section 42 apply with the necessary modifications in relation to an annual report prepared under this section. 35

PART 11

REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENT OF OTHER ACTS

Repeals and revocations.

76.—(1) Each Act specified in the second column of Part 1 of Schedule 4 is repealed to the extent specified in the third column, but the repeal does not affect any notice or certificate given under the repealed Act and such notice or certificate has effect as if given under this Act. 40

(2) Each order specified in the second column of Part 2 of Schedule 4 is revoked to the extent specified in the third column. 45

5 (3) Each order, regulation and rule that was made under a provision of an enactment repealed or revoked by this Act and that was in force immediately before such repeal or revocation continues in force under the corresponding provision, if any, of this Act, subject to such adaptations and modifications as the Minister may, by regulation, make for the purpose of bringing any such order, regulation or rule into conformity with this Act.

77.—The savings and transitional provisions in *Schedule 5* have effect.

Savings and transitional provisions.

10 78.—The Acts specified in *Schedule 6* are amended as indicated in that Schedule.

Amendment of other Acts.

PART 12

MISCELLANEOUS PROVISIONS

15 79.—(1) If a function of the Executive is delegated by the Board to the chief executive officer under *section 12(2)*, references in a provision of this Act or any other enactment that assigns that function to the Executive or that regulates the manner in which the function is to be performed are to be read as references to the chief executive officer.

Effect of delegation and subdelegation of functions.

20 (2) If a function of the chief executive officer under *section 18* is delegated by him or her to an employee of the Executive under *section 19(1)* or is subdelegated by an employee authorised to do so under *section 19(1)*, references in any provision of this Act or any other enactment that regulates the manner in which that function is to be performed are to be read as references to the employee to whom the function is delegated or subdelegated.

30 (3) If a function is delegated under *section 12(2)* or *19(1)* or subdelegated under *section 19(1)*, the delegation or subdelegation is to be taken to include the delegation or subdelegation of any duty or power incidental to or connected with that function.

(4) An act or thing done by the chief executive officer pursuant to a delegation by the Board under *section 12(2)* has the same force and effect as if done by the Board.

35 (5) An act or thing done by an employee of the Executive pursuant to a delegation or subdelegation under *section 19* has the same force and effect as if done by the chief executive officer.

40 (6) The revocation of a delegation by the Board or the chief executive officer does not affect a subdelegation authorised under *section 19(1)*, unless the Board or the chief executive officer, as the case may be, otherwise directs.

45 (7) A delegation or subdelegation of a function does not cease to have effect solely because the person who delegated or subdelegated the function or authorised its subdelegation no longer holds the position that the person held when the function was delegated, subdelegated or authorised to be subdelegated.

80.—(1) In any legal proceedings, a certificate that—

- (a) is signed by the chairperson,
- (b) states that a specified function of the Executive was on a specified date delegated to the chief executive officer, and
- (c) states that the delegation of the function remained in force on a specified date,

5

is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(2) In any legal proceedings, a certificate that—

10

- (a) is signed by the chief executive officer or by an employee who has subdelegated a function delegated to him or her under this section,
- (b) states that a specified function of the chief executive officer was on a specified date delegated or subdelegated, as the case may be, in accordance with *section 19*, to a specified employee of the Executive,
- (c) states that the delegation or subdelegation of the function remained in force on a specified date, and
- (d) specifies the limitations, if any, imposed on the delegation or subdelegation,

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20

is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

(3) A certificate referred to in *subsection (1)* or *(2)* that appears to be signed by the chairperson, the chief executive officer or the employee concerned (as the case may be) is admissible in any proceedings as evidence of the matters stated in the certificate without proof of his or her signature.

25

81.—(1) The Minister may make regulations—

- (a) for any purpose in relation to which regulations are provided for in this Act,
- (b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed, and
- (c) generally for the purpose of giving effect to this Act.

30

(2) A regulation under this section may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

35

(3) The Minister may—

- (a) make orders for any matter in relation to which orders are provided for in this Act, and
- (b) amend or revoke any such order (other than an order under *section 3* or *4*).

40

82.—(1) The Minister shall ensure that every regulation and every order made by the Minister under this Act (other than an order under *section 3* or *4*) is laid before each House of the Oireachtas as soon as practicable after it is made.

Laying of
regulations and
orders before
Houses of
Oireachtas.

5 (2) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which a regulation or order is laid before it under this section, annul the regulation or order.

10 (3) The annulment of a regulation or order under *subsection (2)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation or order before the passing of that resolution.

ACTS REFERRED TO IN DEFINITION OF HEALTH AND PERSONAL SOCIAL
SERVICES

1. Health Acts 1947 to 2001	
2. Public Health (Tobacco) Acts 2002 and 2004	5
3. Mental Health Acts 1945 to 2001	
4. Births and Deaths Registration Acts 1863 to 1996	
5. Notification of Birth Acts 1907 to 1998	
6. Marriages (Ireland) Act 1844	
7. Registration of Marriages (Ireland) Act 1863	10
8. Civil Registration Act 2004	
9. Adoption Acts 1952 to 1998	
10. Protections for Persons Reporting Child Abuse Act 1998	
11. Child Care Acts 1991 and 2001	
12. Children Acts 1908 and 1989	15
13. Poisons Act 1961	
14. Registration of Maternity Homes Act 1934	
15. Rats and Mice (Destruction) Act 1919	
16. Blind Persons Act 1920	
17. State Lands (Workhouses) Act 1930	20
18. State Lands (Workhouses) Act 1962	
19. Social Welfare Acts	
20. Family Law (Maintenance of Spouses and Children) Act 1976	
21. European Communities Act 1972	
22. International Carriage of Perishable Foodstuffs Act 1987	25
23. Domestic Violence Acts 1996 and 2002	
24. Refugee Act 1996	
25. Children Act 1997	
26. Food Safety Authority of Ireland Act 1998	
27. Immigration Act 1999	30
28. Education (Welfare) Act 2000	
29. Children Act 2001	
30. Protection of the Environment Act 2003	
31. Licensing of Indoor Events Act 2003	

- 32. Immigration Act 2003
- 33. Education of Persons with Special Educational Needs Act 2004
- 34. Residential Tenancies Act 2004
- 5 35. Any other Act that is prescribed by the Minister for the purposes of the definition of “health and personal social services” in *section 2*.

MISCELLANEOUS PROVISIONS RELATING TO THE EXECUTIVE AND THE
BOARD

Seal of Executive.

1. (1) The Executive shall provide itself with a seal as soon as practicable after the establishment day. 5
- (2) The seal of the Executive must be authenticated by the signature of—
 - (a) the chief executive officer and another member of the Board, or 10
 - (b) any 2 employees of the Executive from a panel of employees who are designated by the chief executive officer for the purpose of this section and are authorised annually by the Board to act in that behalf.
- (3) Judicial notice shall be taken of the seal of the Executive. 15
- (4) Each instrument purporting to be made by the Executive and to be sealed with its seal (purporting to be authenticated in accordance with *subparagraph (2)*) is admissible in evidence and is deemed, in the absence of evidence to the contrary, to be such instrument. 20

*Term of office of chairperson and other appointed members of
Board*

2. (1) The chairperson holds office for such period, not exceeding 5 years from the date of appointment to the office, as the Minister shall determine. 25
- (2) Subject to *subparagraph (3)*, an ordinary member holds office for such period, not exceeding 5 years from the date of appointment to the office, as the Minister may determine.
- (3) Of the ordinary members of the Board first constituted under this section— 30
 - (a) 5 of them (selected in accordance with *subparagraph (4)*) hold office for a period of 3 years from the date of appointment to the office, and
 - (b) the others hold office for a period of 5 years from the date of such appointment. 35
- (4) The ordinary members who are to hold office for a period of 3 years are, at a meeting of the Board held for the purpose, to be selected by—
 - (a) unanimous agreement of the ordinary members present at the meeting, or 40
 - (b) if for any reason unanimous agreement cannot be reached, the drawing of lots by those members.
- (5) An appointed member who completes a term of office is eligible for reappointment to the Board, but may not serve for more than 2 consecutive terms. 45

- (6) A period of service as a member pursuant to an appointment under *paragraph 3(2)* is considered for the purposes of *subparagraph (5)* to be a term of office.

Resignations and casual vacancies.

- 5 3. (1) An appointed member may resign office by letter addressed to the Minister and the resignation takes effect on the later of—
- (a) the date specified in the letter, or
- (b) the receipt of the letter by the Minister.
- 10 (2) If an appointed member resigns, dies, ceases to hold office (other than on completing a term of office), ceases to be qualified for office or is removed from office, the Minister shall as soon as practicable appoint a person to fill the casual vacancy so occasioned.
- 15 (3) A person appointed under *subparagraph (2)* holds office for the unexpired portion of his or her predecessor's term of office and at the end of that term is, subject to *paragraph 2(5)*, eligible for reappointment as a member.

Meetings of Board.

- 20 4. (1) The Minister, in consultation with the chairperson, shall fix the date of the first meeting of the Board and shall specify the time and place of the meeting.
- (2) The Board shall hold as many meetings as are necessary for performing its functions, but in each year shall hold not fewer than one meeting in each of 11 months of that year.
- 25 (3) The chairperson may at any reasonable time call a meeting of the Board.
- (4) Any 3 members may call a meeting of the Board if the chairperson—
- 30 (a) refuses to call a meeting after being presented with a requisition for that purpose signed by not fewer than 3 members, or
- (b) without refusing to call a meeting, does not call one within 7 days after being presented with such requisition.
- 35

Quorum and procedures.

5. (1) The quorum for a meeting of the Board is 5.
- (2) The chairperson is to preside at all meetings of the Board at which he or she is present.
- 40 (3) If the chairperson is absent from a meeting, or if that office is vacant, the members present at the meeting shall choose one of themselves, other than the chief executive officer, to preside.

- (4) Each question at a meeting shall be determined by a majority of the votes of the members present and voting on the question.
- (5) In the case of an equal division of votes, the chairperson or other member presiding at the meeting has a second or casting vote. 5
- (6) As long as there is a quorum, the Board may act despite one or more than one vacancy among its members.
- (7) Subject to this Act, the Board shall regulate, by standing orders or otherwise, the procedures and business of the Board. 10
- (8) Non-compliance with a standing order of the Board does not invalidate a decision of the Board.

TRANSFER OF FUNCTIONS AND REFERENCES TO FUNCTIONAL AREAS

1. Health Acts 1947 to 2001
2. Public Health (Tobacco) Acts 2002 and 2004
- 5 3. Mental Health Acts 1945 to 2001
4. Births and Deaths Registration Acts 1863 to 1996
5. Notification of Birth Acts 1907 to 1998
6. Marriages (Ireland) Act 1844
7. Registration of Marriages (Ireland) Act 1863
- 10 8. Protections for Persons Reporting Child Abuse Act 1998
9. Child Care Acts 1991 and 2001
10. Children Acts 1908 and 1989
11. Poisons Act 1961
12. Registration of Maternity Homes Act 1934
- 15 13. Rats and Mice (Destruction) Act 1919
14. Blind Persons Act 1920
15. State Lands (Workhouses) Act 1930
16. State Lands (Workhouses) Act 1962
17. Social Welfare Acts
- 20 18. Family Law (Maintenance of Spouses and Children) Act 1976
19. European Communities Act 1972
20. International Carriage of Perishable Foodstuffs Act 1987
21. Domestic Violence Acts 1996 and 2002
22. Refugee Act 1996
- 25 23. Children Act 1997
24. Food Safety Authority of Ireland Act 1998
25. Immigration Act 1999
26. Education (Welfare) Act 2000
27. Children Act 2001
- 30 28. Protection of the Environment Act 2003
29. Licensing of Indoor Events Act 2003
30. Immigration Act 2003
31. Education of Persons with Special Educational Needs Act 2004
32. Residential Tenancies Act 2004

33. Child Abduction and Enforcement of Custody Orders Act 1991	
34. Protection of Children (Hague Convention) Act 2000	
35. Nurses Act 1985	
36. Dentists Act 1985	
37. Medical Practitioners Acts 1978 to 2002	5
38. National Beef Assurance Scheme Act 2000	
39. Irish Medicines Board Act 1995	
40. Misuse of Drugs Acts 1977 and 1984	
41. Freedom of Information Acts 1997 and 2003	
42. Data Protection Acts 1988 and 2003	10
43. Housing Acts 1966 to 1998	
44. Ombudsman Acts 1980 to 1984	
45. Ombudsman for Children Act 2002	
46. Finance Acts 1989 to 2002	
47. Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997	15
48. Family Law (Miscellaneous Provisions) Act 1997	
49. Family Law Act 1995	
50. Redundancy Payments Acts 1967 to 2003	
51. Protection of Employees (Part-Time Work) Act 2001	20
52. Protection of Employees (Fixed-Term Work) Act 2003	
53. Organisation of Working Time Act 1997	
54. Minimum Notice and Terms of Employment Acts 1973 to 2001	
55. Unfair Dismissals Acts 1977 to 2001	
56. Maternity Protection Act 1994	25
57. Carer's Leave Act 2001	
58. Parental Leave Act 1998	
59. Adoptive Leave Act 1995	
60. Youth Work Act 2001	
61. Local Government Act 2001	30
62. National Development Finance Agency Act 2002	
63. Adoption Acts 1952 to 1998	
64. Civil Registration Act 2004	

65. Any other enactment prescribed by the Minister for the purpose of *sections 62 and 70* and *paragraph 2 of Schedule 5*.

SCHEDULE 4

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)	5
No. 1 of 1970	Health Act 1970	Sections 4(1), 4(5), 4(6), 5(1)(a) to (c), 6, 11, 13, 14, 15, 16(1) to 16(6), 17(4), 17(5), 18, 19, 20, 21(1), 21(4), 21(5), 22, 23(1) to 23(3), 24, 25, 26, 28, 29, 32(1), 33, 41(1), 41(3) to 41(8), 41(11) to 41(16), 73 and 83.	10 15
No. 32 of 1996	Health (Amendment) (No. 3) Act 1996	Sections 1, 2(1), 2(3), 3, 4(3), 5, 6(1) to 6(3), 6(6), 7(1) to 7(5), 8(1), 8(2), 9(1), 10, 11(1) to 11(4), 13, 14, 15(1), 15(2), 15(4), 15(5), 16, 18(a), 18(c), 23, 24 and 25.	20
No. 13 of 1999	Health (Eastern Regional Health Authority) Act 1999	Sections 1 to 8, 10, 12(1) to 12(5), 13, 14, 15(1) to 15(5), 17(1) to 17(4), 17(6) to 17(10), 18 to 22 and 24.	
No. 19 of 2004	Health (Amendment) Act 2004	The Whole Act.	25

PART 2

ORDERS REVOKED

Number and Year (1)	Short Title (2)	Extent of Revocation (3)	30
1973 No. 53	Hospital Bodies Administrative Bureau (Establishment) Order 1973	The Whole Order.	35
1996 No. 213	Health Service Employers Agency (Establishment) Order 1996	The Whole Order.	
2004 No. 90	Interim Health Service Executive (Establishment) Order 2004	The Whole Order.	40

SAVINGS AND TRANSITIONAL PROVISIONS

Continuation of authority to perform delegated functions.

5 1. (1) Subject to *subparagraph* (2), a person who is transferred to the Executive on the establishment day and who immediately before that day had, pursuant to a delegation or subdelegation made or deemed to have been made under an enactment, authority to perform a relevant function continues on and after that day to have authority to perform the function within the area to which it relates as though the function had been delegated or subdelegated under *section 19*.

10 (2) *Sections 19, 79 and 80* apply, with the necessary modifications, in relation to a delegation or subdelegation continued under *subparagraph (1)*.

15 (3) Nothing in this Schedule prevents the Executive or an employee of the Executive from performing the functions that immediately before the establishment day were, under any enactment, the functions of a specified body.

20 (4) In this paragraph—

“relevant function” means a function that—

(a) before the establishment day was a function of a specified body, and

25 (b) on the establishment day becomes a function of the Executive;

“specified body” has the same meaning as in *Part 10*.

Continuation of appointments of authorised officers and other officers.

30 2. A person who is transferred to the Executive on the establishment day and who immediately before that day held, under an enactment referred to in *Schedule 3*, an appointment as an authorised officer, designated officer, investigation officer, liaison officer or inspector or an analogous appointment continues to hold that appointment until it is revoked or amended by the Executive.

35 *Transitional provision relating to inquiries and requests under section 24 of Health Act 1970.*

40 3. (1) If, before the repeal of section 24 of the Health Act 1970 by this Act, a committee was appointed under that section to perform functions relating to the proposed removal from office of an officer of a health board, the Eastern Regional Health Authority or an Area Health Board and the committee has not made a recommendation under section 24(5) of that Act before that repeal—

45 (a) the committee may, until it makes a recommendation, continue to perform its functions in relation to the matter as if section 24 of that Act had not been repealed, and

- (b) section 24 of that Act continues to apply in respect of all matters relating to the removal of the officer until those matters are concluded, except that—
 - (i) the committee shall make its recommendation to the Executive, 5
 - (ii) any request made to the Minister under section 24(10) of that Act relating to the committee's recommendation is deemed to be a request to issue a direction to the chief executive officer of the Executive, and 10
 - (iii) any direction by the Minister under section 24(11) of that Act relating to the request shall be given to the chief executive officer of the Executive.
- (2) If, before the repeal of section 24 of the Health Act 1970 15
by this Act, a request was made to the Minister under section 24(10) of that Act and the Minister has not given a direction under section 24(11) of that Act before that repeal, section 24 of that Act continues to apply in respect of all matters relating to the request until those 20
matters are concluded, except that the Minister's direction shall be given to the chief executive officer of the Executive.

Transitional provisions relating to net expenditure determinations.

- 4. (1) If, before the establishment day, the Minister determines 25
pursuant to the Act of 1996 the maximum amount of net expenditure that may be incurred by the Eastern Regional Health Authority or by a health board in respect of a financial year or other period beginning before but ending after the establishment day— 30
 - (a) the maximum net expenditure of the Eastern Regional Health Authority and of each health board as so determined for that year or other period shall be aggregated,
 - (b) subject to *subparagraph (3)*, the aggregated amount is 35
for the purposes of this Act deemed to be the net non-capital expenditure determination under *section 31* of this Act for the Executive for the financial year in which it is established, and
 - (c) in relation to that aggregated amount, the Minister 40
may exercise the powers given to him or her under *section 31* of this Act to relate a net non-capital expenditure determination to a period (other than a financial year of the Executive) specified by the Minister. 45
- (2) If, before the establishment day, the Minister approves making funding available to a specified body other than the Eastern Regional Health Authority or a health board, the amount of funding so approved shall be added to the amount deemed under *subparagraph (1)* to be the net 50
non-capital expenditure determination for the Executive for the financial year in which it is established.
- (3) *Subparagraphs (1) and (2)* apply only if the Minister—

(a) decides that it is expedient to apply them rather than *section 31* (determination of net non-capital expenditure limits for Executive), and

(b) notifies the Executive of that decision and of the amount deemed to be the maximum amount of net non-capital expenditure determined by the Minister under *section 31*.

(4) If, before the dissolution of a body in accordance with an order under *section 73*, the Minister approves making funding available to that body, the amount of funding so approved shall be added to the net non-capital expenditure determination under *section 31* for the Executive for the year in which the body is dissolved.

Transitional provisions relating to new service plans.

5. (1) If notified of the Minister's decision to apply *paragraph 4(1)* and (2), the Executive shall adopt and submit to the Minister a service plan in accordance with *section 32* as though the Executive had received a net non-capital expenditure determination from the Minister.

(2) However, the Executive need not adopt and submit a service plan if it is notified by the Minister of a decision taken under *paragraph 6*.

(3) *Section 33* (amendment of approved service plan) and *section 34* (implementation of approved service plan) apply, with the necessary modifications, to a service plan adopted and submitted as described in *subparagraph (1)*.

Transitional provision relating to option to use existing service plan or plans.

6. (1) If, before the establishment day, the Minister has approved a service plan submitted in accordance with the Act of 1996 by—

(a) a health board or the chief executive officer of a health board, or

(b) the Eastern Regional Health Authority or the Regional Chief Executive of that Authority,

in respect of a period beginning before but ending after the establishment day, the Minister may, after consulting the Executive, decide that such service plan or a combination of such service plans constitutes the service plan of the Executive for the remainder of that period.

(2) If the Minister decides in accordance with this paragraph that a service plan submitted and approved before the establishment day or a combination of such plans constitutes the service plan of the Executive for the remainder of the period concerned—

(a) the requirements of this Act, and in particular *section 32*, in relation to the adoption and submission of a service plan by the Executive are fulfilled for that period, and

- (b) the expenditure incurred by the specified bodies before the establishment day together with the expenditure incurred by the Executive during the remainder of that period constitute the net non-capital expenditure of the Executive for the purpose of *section 31*. 5
- (3) *Section 33* (amendment of approved service plan) and *section 34* (implementation of approved service plan) apply with the necessary modifications in relation to a service plan of the Executive constituted in accordance with this section. 10

AMENDMENT OF OTHER ACTS

PART 1

AMENDMENT OF HEALTH ACT 1947

Item	Provision affected	Amendment
1.	Section 78 (as amended by the Health (Amendment) Act 2004)	Substitute the following subsection for subsection (1): “(1) The Health Service Executive may acquire land either— (a) by agreement, subject to any general directions given by the Minister with the consent of the Minister for Finance, or (b) compulsorily under this Part of this Act or the Acts incorporated with this Act.”.
2.	Section 89 (as amended by the Health (Amendment) Act 2004)	Substitute the following subsection for subsection (1): “(1) The Health Service Executive may, subject to any general directions given by the Minister with the consent of the Minister for Finance, sell, exchange, let or otherwise dispose of any land vested in it.”.

PART 2

AMENDMENT OF UNFAIR DISMISSALS ACT 1977

Item	Provision affected	Amendment
1.	Section 2	In subsection (1) (as amended by the Unfair Dismissals (Amendment) Act 1993), substitute the following paragraphs for paragraph (j): “(j) officers of a vocational committee established by the Vocational Education Act 1930, (k) the chief executive officer of the Health Service Executive for the purposes of <i>section 17</i> of the <i>Health Act 2004</i> .”.

PART 3

AMENDMENT OF FREEDOM OF INFORMATION ACT 1997

Item	Provision affected	Amendment
1.	Third Schedule	(a) In Part 1, column (2), insert “ <i>Health Act 2004</i> .”; (b) In Part 1, column (3), insert “ <i>section 26</i> .” opposite the mention in column (2) of the <i>Health Act 2004</i> .

PART 4

AMENDMENT OF LOCAL GOVERNMENT ACT 2001

Item	Provision affected	Amendment	
1.	Section 13	In subsection (1), insert the following paragraph after paragraph (i): “(ii) is a person employed by the Health Service Executive and is at a grade or of a description of employment designated by order of the Minister for Health and Children, or”.	5 10
2.	Section 85	Substitute the following subsection for subsection (7): “(7) This section is without prejudice to <i>section 8</i> of the <i>Health Act 2004</i> and an agreement may not be entered into under this section in any case in which an agreement could be entered into under that section.”.	15
3.	Section 220	In subsection (1) in the definition of “linked body” (as amended by the Health (Amendment) Act 2004) insert “a Regional Health Forum established under the <i>Health Act 2004</i> ,” after “means”.	20



AN BILLE SLÁINTE 2004
HEALTH BILL 2004

EXPLANATORY MEMORANDUM

Background

The Bill provides for the reform of the management structures in the health service.

The 2001 Health Strategy, *Quality and Fairness*, provided for an independent audit of structures and functions in the health system to be carried out. In addition, the Commission on Financial Management and Control Systems in the Health Service was established to examine, evaluate and make recommendations on the relevant financial systems, practices and procedures throughout the health services.

In 2003 the reports of the *Audit of the Structure and Functions of the Irish Health Care System* and the *Commission on Financial and Control Systems in the Health Service* were published and the Government decided to give effect to the Reports' recommendations for structural, organisational, financial management and systems reform in the health sector.

Object of the Bill

The main object of the Bill is to provide for the establishment of the Health Service Executive (HSE). This Executive will, on the establishment day, take over responsibility for the functions currently being performed by the Eastern Regional Health Authority, the area health boards in the Eastern Region and the health boards; the General Medical (Payments) Board, the Health Boards Executive, the Health Service Employers Agency, the Hospital Bodies Administrative Bureau and the interim Health Service Executive.

The Executive will be responsible for managing the health service as a single national entity. It will be charged with improving, promoting and protecting the health and welfare of the population. It will do this through planning, monitoring and delivering or arranging for the delivery of health and personal social services.

The Bill also provides for the incorporation in the future of a number of other health service agencies into the Executive. This consolidation of service providers will help reduce the fragmentation of services in the health system and make services more integrated and easier to access for the public.

The Bill also strengthens the arrangements for governance and accountability in the health system. It establishes structures for public representation and participation by service users. It also provides for a statutory framework to deal with complaints.

To ensure that there is a smooth transition from the current structures to the new HSE structure, the Bill provides for a range of

technical provisions in relation to financial, staffing and service planning matters. This includes provision for the transfer of staff from the health boards and other agencies to the Executive.

Part 1 — Preliminary Matters

Section 1 provides the short title, collective citation and construction.

Section 2 defines certain words and terms used in the Bill.

Section 3 provides that the Bill, when enacted, will come into operation by Ministerial order and that different provisions of the Bill may be brought into operation at different times.

Section 4 provides for the making of an order by the Minister to set a day for the establishment of the Executive.

Section 5 is a standard provision on the payment of expenses incurred in the administration of the Bill out of moneys provided by the Oireachtas.

Part 2 — Establishment and Functions of the Health Service Executive

Section 6 provides for the establishment of the Executive as a body corporate, on a day to be appointed by the Minister and that the Executive may sue and be sued in its own right and acquire and dispose of property. It provides for the corporate seal of the Executive by applying *Paragraph 1 of Schedule 2*.

Section 7 sets out the object and functions of the Executive. It is required to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. The Executive will assume the functions of the bodies dissolved under the Bill as they relate to the planning, delivery or operation of health and personal social services. The Executive is required to manage and deliver such services or to arrange for other bodies to do so on its behalf. It must facilitate as necessary the education and training of health service personnel and must have regard to the need for co-operation with other public authorities as necessary. It must also have regard to Government policy and provide advice to the Minister where requested to do so. It will also have authority to commission or take part in research on issues relevant to its remit.

Section 8 allows the Executive to enter into formal agreements with public authorities for it to perform functions on their behalf. It also allows the Executive to enter into formal agreements with public authorities for them to carry out functions on behalf of the Executive.

Section 9 allows the Executive and a local authority to make informal arrangements allowing employees of one to carry out functions on behalf of the other.

Section 10 allows the Minister to give general written directions to the Executive as appropriate in relation to the Bill. It also allows the Minister to give specific directions about the submission by the Executive to the Minister of reports and information in relation to the performance of its functions.

Part 3 — The Board of the Health Service Executive

Section 11 provides that the Executive will have a Board consisting of 11 members appointed by the Minister, and also the Chief Executive. It specifies general requirements for appointment to the Board and contains standard prohibitions on members of the Board holding political office at local, national or European level.

Section 12 vests the functions of the Executive, other than those assigned to a medical officer of health, in the Board and provides for delegation of any functions to the chief executive officer.

Section 13 sets out the conditions under which the Minister may remove a member of the Board from office. It also provides that a member will cease to hold office in certain defined circumstances.

Section 14 provides that the Minister may remove the Board from office in a range of defined circumstances. It allows the Minister, where concerned about the manner in which the Board's functions are being performed, to appoint a person to conduct a review of the issue. The chief executive officer does not cease to hold that office in the event of the Board being removed by the Minister.

Section 15 allows the Board to establish committees to assist and advise it in relation to issues arising in its performance of its functions. It sets out certain requirements governing the establishment and operation of such committees.

Section 16 specifies conditions governing the payment of remuneration and expenses to members of the Board or committees.

Part 4 — Chief Executive Officer

Section 17 specifies the terms under which the chief executive officer will be appointed and hold office.

Section 18 provides that the chief executive officer is responsible to the Board for the day-to-day management and control of the administration and business of the Executive. He or she will be accountable to the Board for the implementation of the Board's policies and the performance generally of his or her functions. In the absence of the chief executive officer, or when that post is vacant, the relevant functions may be performed by an employee appointed by the Board as deputy chief executive officer.

Section 19 allows the chief executive officer to delegate functions and to authorise their subdelegation to other employees of the Executive and specifies the procedures governing this.

Section 20 designates the chief executive officer as accounting officer in respect of the Executive.

Section 21 contains standard provisions relating to the attendance by the chief executive officer before other Oireachtas Committees. This includes provision for procedures to be followed in the event of the chief executive officer being of the opinion that a matter on which he or she has been asked to give an account is or has been, or may in future be, the subject of proceedings before a court or tribunal. The chief executive officer may not, in the context of attendance at an Oireachtas Committee, question or express an opinion on matters of Government policy, as the role of the Executive is to implement policy.

Part 5 — Employees and Advisers

Section 22 allows the Executive to appoint its employees and to determine their duties, subject to compliance with certain conditions.

Section 23 requires the Executive to prepare a superannuation scheme or schemes for approval by the Minister and the Minister for Finance, in respect of its employees.

Section 24 allows the Executive to appoint advisers.

Part 6 — Standards and Disqualifications

Section 25 requires members of the Board and its committees, the chief executive officer, the Executive's employees, advisers and their employees to maintain appropriate standards of integrity and conduct. The Executive is required to issue codes of conduct for the guidance of all of these parties.

Section 26 prohibits the unauthorised disclosure of confidential information by a member of the Board or of a committee, an employee, adviser or member of their staff.

Section 27 provides that members of the Board or of a committee cease to be members of the Board or committee if they are nominated or elected to the Oireachtas, European Parliament or a local authority and also provides for secondment arrangements where persons employed by the Executive are elected or otherwise appointed to such political office.

Part 7 — Accountability and Funding

Section 28 defines certain words and terms used in this Part of the Bill.

Section 29 sets out the requirements regarding the preparation by the Executive of a three-year Corporate Plan, its submission to the Minister and approval and amendment arrangements. This plan must have regard to Government policy and must specify the key objectives of the Executive for the period concerned.

Section 30 specifies the requirements regarding publication and implementation of an approved corporate plan. The Executive is required to provide progress reports on implementation annually or at such other intervals as directed by the Minister.

Section 31 provides the basis on which the Minister shall make and amend a non-capital allocation to the Executive for a financial year or other period. The Minister may also amend the Executive's determination and, in so doing, determine certain priorities to which the Executive must have regard.

Section 32 requires the Executive to prepare and adopt a service plan specifying the services to be provided by the Executive within the financial limits determined by the Minister for the financial year or other period to which a non-capital expenditure determination relates. The section also contains provisions dealing with the approval of the service plan and allowing the Minister to direct the Executive to amend a plan which does not meet certain financial, policy or other requirements.

Section 33 specifies the arrangements governing the amendment of an approved service plan in line with the amendment of the Executive's non-capital expenditure determination.

Section 34 requires the Executive to deliver services in accordance with its service plan and within its net non-capital expenditure determination for the period concerned.

Section 35 permits the Executive to borrow money subject to the consent of the Minister for Health and Children with the concurrence of the Minister for Finance and to any other conditions specified by those Ministers. This section also requires the Minister with the consent of the Minister for Finance to specify the amount of indebtedness which the Executive may incur in each financial year and the Executive not to exceed that amount.

Section 36 sets out the arrangements governing the allocation of funding for capital spending and the accountability arrangements in respect of such spending by the Executive. The Minister is required to inform the Executive of the total capital amount available in the financial year and the Executive must prepare a capital plan in line with this. Provision is also made for the amendment of this plan and for the preparation of capital plans other than on an annual basis where the Minister so directs. These provisions allow flexibility to be built into the system so that the plan can be adjusted if circumstances or policy priorities change.

Section 37 empowers the Minister to make grants to the Executive.

Section 38 requires the Executive to obtain the permission of the Minister to undertake capital projects which cost in excess an amount to be determined by the Minister from time to time.

Section 39 provides that the chief executive officer is responsible for the implementation of the Executive's service plan and capital plan within the determination and indebtedness limits set under the Bill. The chief executive officer must inform the Board if any of its decisions will lead to a breach of these limits and, if the Board does not act to prevent such a breach occurring, he or she must inform the Minister of this.

Section 40 requires the Executive to submit a code of governance to the Minister for approval. It is also required to review the code periodically and to report on arrangements for compliance with it.

Section 41 requires the Executive to keep accounts of income and expenditure and to prepare annual financial statements. Such statements must be adopted by the Executive by 1 April of the following year, or by such other date as the Minister, in consultation with the Minister for Finance, may direct.

Section 42 requires the Executive, beginning in 2006, to prepare an annual report in relation to the performance of its functions during the preceding year. Within 21 days of adopting the annual report, the Executive must submit it to the Minister, who must lay the report before the Houses of the Oireachtas within 21 days of receiving it. The Executive is also required to publish the annual report on the Internet or by such other means as specified by the Minister.

Section 43 allows the Executive to make arrangements with other parties for the provision of services and specifies conditions which will attach to such arrangements. The Executive must inform such service providers of its level of determination for the year and the level of services required by the Executive. The section also requires providers to submit accounts in respect of the service they are providing to the Executive. The Executive may dispense with this requirement for providers in receipt of grants below a given amount

or for other categories of persons providing services, as may be determined by the Minister.

Section 44 allows the Executive to accept gifts, provided no conditions are attached which would be incompatible with the Executive's remit.

Part 8 — Public Representation and User Participation

Section 45 provides that the Minister may convene a National Health Consultative Forum to advise the Minister on matters relating to health and personal social services and, by order, to specify requirements regarding its membership, rules and procedures.

Section 46 provides for the establishment by the Minister of up to four regional health forums. Subject to certain exclusions, the role of such a forum is to make such representations to the Executive as it considers appropriate regarding the delivery of health and personal social services within its area. A forum will be composed of members of each city council and county council within the region. The section requires the Minister to make regulations governing certain aspects of the establishment and operation of each forum. The Executive must provide administrative and other support to enable each forum to carry out its functions.

Section 47 allows the Executive to consult local communities or other groups about health and personal social services. This may include the establishment of panels to advise the Executive or to enable it to seek the views of users, service providers and others.

Section 48 allows the Minister to direct the Executive to establish an advisory panel for a particular purpose and to determine the terms of reference of such a panel.

Part 9 — Complaints

Section 49 defines certain words and terms used in this Part of the Bill.

Section 50 provides that certain persons may complain about an action of the Executive or a service provider which, it is claimed, does not accord with fair and sound administrative practice and which adversely affects the complainant. The section defines, for the purposes of this section, the types of action which do not accord with fair and sound administrative practice. Provision is made for complaints to be made on behalf of persons unable to do so because of age, illness or disability and in the case of deceased persons.

Section 51 specifies the time limit for making a complaint. Provision is made for a complaints officer to extend the time limit in special circumstances.

Section 52 specifies the types of matter which may not be the subject of a complaint under the Bill. The section contains an explicit provision that a complaints officer is not precluded from dealing with a complaint referred to him or her by the Ombudsman or the Ombudsman for Children.

Section 53 requires the Executive to establish procedures for dealing with complaints about its own services or those provided on its behalf by another body, and for reviewing the recommendations of complaints officers. A body providing services on behalf of the Executive may establish its own complaints procedures, with the agreement of the Executive. Subject to any regulations made by the

Minister, the Executive may assign its review functions to another body.

Section 54 provides that a complaints officer shall dismiss complaints which are inadmissible under the Bill. Provision is also made for a complaints officer not to proceed with an investigation if it does not satisfy certain criteria.

Section 55 restricts a complaints officer from making a recommendation which would require amendment of the Executive's service plan or of another body's arrangements with the Executive for service provision on its behalf. In the event that such a recommendation is made, arrangements must be made by the relevant person in the Executive or other body to amend, reject or suspend implementation of the recommendation.

Section 56 requires a provider of services on behalf of the Executive to adhere to the complaints procedures of the Executive, or to have equivalent procedures of its own, and to comply with any review of a recommendation made by a complaints officer.

Section 57 allows the Minister to make regulations for the purposes of this Part of the Bill.

Section 58 provides that a person who is dissatisfied with a recommendation made, an action taken in response to a complaint or a review under these complaints procedures, is not debarred from referring the complaint to the Ombudsman or the Ombudsman for Children.

Section 59 requires the Executive's annual report to include a report on the operation of its complaints procedures during the year. A service provider who has established a complaints procedure in agreement with the Executive must provide the Executive with a report on the complaints received by the service provider during the previous year and how they have been dealt with. If the Executive assigns to another body the function of reviewing recommendations about complaints, that body must make a report annually to the Executive on its work in this regard.

Part 10 — Dissolution of Certain Health Bodies and the Transfer of their Functions and Employees etc. to the Executive

Section 60 specifies certain health bodies dealt with in this Part of the Bill.

Section 61 dissolves the specified bodies on the establishment day of the Executive.

Section 62 provides that the statutory functions of the specified bodies are transferred to the Executive on the establishment day.

Section 63 facilitates the transfer of employees of the specified bodies to the Executive on terms and conditions of employment no less favourable than those they enjoyed immediately prior to the transfer. Provision is made for changes in terms and conditions of employment of employees on an agreed basis following negotiations with staff representative interests. Employees of the Executive will be covered by a broad range of employment protections under employment law. The Executive is also required, pending the commencement of any new arrangements under *section 23*, to maintain employees' existing superannuation entitlements.

Section 64 provides for the Executive to assume the superannuation liabilities of specified and dissolved bodies in respect of their former employees.

Section 65 provides that all land, other property, rights and liabilities of the specified bodies become vested in the Executive on the establishment day.

Section 66 provides that every contract, agreement or other arrangement made by a specified body and in force immediately before the establishment day will be continued in the name of the Executive.

Section 67 provides that the Executive shall be substituted for a specified body in any legal proceedings or court order in which such a body is named as a party.

Section 68 provides for the continuation, in the name of the Executive, of any resolution, order, notice, rule or regulation made by a specified body and which is in force on the establishment day.

Section 69 provides for all references to any specified body in any Act or statutory instrument to be read as references to the Executive.

Section 70 provides that pending any decision of the Executive to change them, the functional areas of the health boards, Eastern Regional Health Authority and Area Health Boards will become functional areas of the Executive, and that relevant references in any enactment shall be read as references to the Executive. The Executive may redefine the boundaries of functional areas as it sees fit, subject to specific consultation requirements in relation to civil registration and agreements with public authorities to perform functions on the Executive's behalf.

Section 71 provides for certain references to the chief executive of a health board, the Eastern Regional Health Authority or an Area Health Board to be construed as references to the chief executive officer of the Executive.

Section 72 provides for certain references to the deputy chief executive officer of a health board, the Eastern Regional Health Authority or an Area Health Board to be construed as references to an employee appointed under *section 18(3)* as deputy chief executive officer of the Executive.

Section 73 allows the Minister for Health and Children to dissolve bodies established under the Health (Corporate Bodies) Act 1961 and to provide for the transfer of their functions, assets, liabilities and employees to the Executive.

Section 74 requires the Executive to prepare final accounts of the specified bodies and bodies dissolved under *section 73* of the Bill.

Section 75 requires the Executive to prepare a final annual report in respect of the specified bodies and bodies dissolved under *section 73* of the Bill.

Part 11 — Repeals, Transitional Provisions and Amendment of other Acts

Section 76 provides for the repeal or revocation of the enactments specified in *Schedule 4* but allows notices, certificates, orders, regulations and rules given or made under those enactments to remain valid, subject to any modifications which the Minister may direct.

Section 77 gives effect to the provisions of *Schedule 5*.

Section 78 gives effect to the provisions of *Schedule 6*.

Part 12 — Miscellaneous Provisions

Section 79 specifies the effect of the provisions in the Bill regarding the delegation or subdelegation of any function of the Board.

Section 80 provides that certain legal certificates shall be accepted in any legal proceedings as proof of delegation or subdelegation of functions of the Executive, or of the chief executive officer, as appropriate.

Section 81 allows the Minister to make regulations and orders for the purposes of the Bill.

Section 82 contains standard provisions regarding the laying before each House of the Oireachtas of regulations and orders made by the Minister under the Bill.

Schedule 1 — Acts referred to in Definition of Health and Personal Social Services

Schedule 1 specifies the Acts referred to in the definition of health and personal social services contained in *section 2*.

Schedule 2 — Miscellaneous Provisions relating to the Executive and the Board

Paragraph 1 contains standard provisions regarding the seal of the Executive and its use.

Paragraph 2 specifies the terms of office of the chairperson and the ordinary members of the Board and the arrangements for re-appointment to a second term. In order to maintain continuity of experience and expertise on the Board, five members of the first appointed Board will have a three-year term of membership and the remaining five a five-year term.

Paragraph 3 specifies the arrangements governing the resignation of Board members and the filling of consequent vacancies.

Paragraph 4 sets out the arrangements governing the convening of Board meetings. This includes a requirement that the Board meet at least once in each of 11 months of the year.

Paragraph 5 specifies the required quorum and certain other procedural requirements in relation to Board meetings.

Schedule 3 — Transfer of Functions and References to Functional Areas

Schedule 3 specifies those enactments which contain functions being transferred to the Executive from the specified bodies under *section 62* and which contain reference to the functional areas or

health boards, or analogous references, for the purposes of *section 70* of the Bill.

Schedule 4 — Repeals and Revocations

Schedule 4 specifies the enactments repealed or revoked by the Bill.

Schedule 5 — Savings and Transitional Provisions

Paragraph 1 provides for the continuation of authority for employees of the Executive to perform certain delegated or subdelegated functions which they had immediately before the establishment day as employees of a body dissolved under the Bill.

Paragraph 2 provides for any employee of the Executive who, immediately prior to the establishment of the Executive, was an authorised officer or other designated officer for the purposes of certain Acts or Regulations, to continue in that capacity.

Paragraph 3 provides for the continuation of certain proceedings under section 24 of the Health Act 1970 which have been initiated prior to the repeal of that section by this Bill.

Paragraph 4 provides that where the Minister has made a determination of maximum net expenditure for the Eastern Regional Health Authority and the health boards before the establishment day, he or she may deem the aggregated amount of these determinations to be the maximum amount of net expenditure for the Executive for the financial year concerned.

Paragraph 5 specifies the arrangements which will apply in relation to the Executive's service plan, in the event of the Minister applying the arrangements described in *paragraph 4*.

Paragraph 6 allows one or more individual service plans submitted by the Eastern Regional Health Authority or the health boards to be constituted as the service plan for the Executive. It also specifies the arrangements regarding aggregation of expenditure and amendment and implementation of service plans if this approach is adopted.

Schedule 6 — Amendment of Other Acts

Schedule 6 specifies those Acts which are to be amended by this Bill.

*An Roinn Sláinte agus Leanaí,
Samhain, 2004.*