



Number 23 of 2007

HEALTH ACT 2007

REVISED

Updated to 22 February 2013

This Revised Act is an administrative consolidation of the *Health Act 2007*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Irish Bank Resolution Corporation Act 2013 (2/2013)*, enacted 7 February 2013, and all statutory instruments up to and including *European Communities (Statutory Audits) (Directive 2006/43/EC) (Amendment) Regulations 2013 (S.I. No. 67 of 2013)*, made 22 February 2013, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Health Acts 1947 to 2011: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Child Care (Amendment) Act 2011* (19/2011), s. 1(4)). The Acts in this group are:

- *Health Act 1947* (28/1947)
- *Health Act 1953* (26/1953)
- *Health (Fluoridation of Water Supplies) Act 1960* (46/1960)
- *Health Act 1970* (1/1970)
- *Misuse of Drugs Act 1977* (12/1977), s. 36 and s. 42 in so far as it amends the *Health Acts 1947 to 1970*
- *Health (Family Planning) Act 1979* (20/1979)
- *Health (Family Planning) (Amendment) Act 1985* (4/1985)
- *Health (Amendment) Act 1986* (10/1986)
- *Health (Amendment) Act 1987* (3/1987)
- *Health (Nursing Homes) Act 1990* (23/1990)
- *Health (Amendment) Act 1991* (15/1991), other than s. 8
- *Health (Amendment) Act 1994* (11/1994)
- *Health (Amendment) Act 1996* (15/1996)
- *Health (Amendment) (No. 2) Act 1996* (23/1996)
- *Health (Amendment) (No. 3) Act 1996* (32/1996), other than ss. 21 and 22
- *Health (Provision of Information) Act 1997* (9/1997)
- *Health (Eastern Regional Health Authority) Act 1999* (13/1999)
- *Health (Miscellaneous Provisions) Act 2001* (14/2001), except in so far as it relates to the *Tobacco (Health Promotion and Protection) Act 1988*
- *Health Act 2004* (42/2004)
- *Health (Amendment) Act 2005* (3/2005), in so far as it amends the *Health Acts 1947 to 2004*
- *Irish Medicines Board (Miscellaneous Provisions) Act 2006* (3/2006), Part 5
- *Health (Repayment Scheme) Act 2006* (17/2006)
- *Hepatitis C Compensation Tribunal (Amendment) Act 2006* (22/2006), except s. 6
- *Health (Nursing Homes) (Amendment) Act 2007* (1/2007)
- *Health Act 2007* (23/2007)
- *Medical Practitioners Act 2007* (25/2007), s. 57(9)
- *Health Act 2008* (21/2008)
- *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64

- *Health (Amendment) Act 2010* (15/2010)
- *Health (Amendment) (No. 2) Act 2010* (20/2010)
- *Child Care (Amendment) Act 2011* (19/2011), ss. 35 and 36

Acts previously included in the group but now repealed are:

- *Health Act 1954* (23/1954)
- *Health and Mental Treatment Act 1957* (16/1957), s. 1
- *Health and Mental Treatment (Amendment) Act 1958* (37/1958), s.1
- *Health (Homes For Incapacitated Persons) Act 1964* (8/1964)
- *Health and Mental Treatment (Amendment) Act 1966* (2/1966), s. 1
- *Health (Mental Services) Act 1981* (17/1981)
- *Health (Amendment) Act 2004* (19/2004)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Health Acts 1947 to 2011*
- *Health (Miscellaneous Provisions) Act 2010* (18/2010)

All Acts up to and including *Irish Bank Resolution Corporation Act 2013* (2/2013), enacted 7 February 2013, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2012* (S.I. No. 95 of 2012)
- *Health Act 2007 (Section 11) (Commencement) Order 2011* (S.I. No. 571 of 2011)
- *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010)
- *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 36 of 2010)
- *Health Act 2007 (Commencement) (No. 3) Order 2009* (S.I. No. 268 of 2009)
- *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009)
- *Health Act 2007 (Commencement) (No. 2) Order 2009* (S.I. No. 237 of 2009)
- *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009* (S.I. No. 236 of 2009)
- *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009)
- *Health Act 2007 (Section 103) (Commencement) Order 2009* (S.I. No. 27 of 2009)
- *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2008* (S.I. No. 295 of 2008)

- *Health Act 2007 (Commencement) Order 2008* (S.I. No. 57 of 2008)
- *Health Act 2007 (Commencement) (No. 3) Order 2007* (S.I. No. 735 of 2007)
- *Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007* (S.I. No. 263 of 2007)
- *Health Act 2007 (Commencement) (No. 2) Order 2007* (S.I. No. 262 of 2007)
- *Health Information and Quality Authority (Establishment Day) Order 2007* (S.I. No. 227 of 2007)
- *Health Act 2007 (Commencement) Order 2007* (S.I. No. 226 of 2007)

All statutory instruments up to and including *European Communities (Statutory Audits) (Directive 2006/43/EC) (Amendment) Regulations 2013* (S.I. No. 67 of 2013), made 22 February 2013, were considered in the preparation of this revision.



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Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
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Data Protection Acts 1988 and 2003	
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Health (Nursing Homes) (Amendment) Act 2007	2007, No. 1
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AN ACT TO ESTABLISH A BODY TO BE KNOWN AS AN tÚDARÁS UM FHAISNÉIS AGUS CÁILÍOCHT SLÁINTE OR, IN THE ENGLISH LANGUAGE, AS THE HEALTH INFORMATION AND QUALITY AUTHORITY AND OIFIG AN PHRÍOMH-CHIGIRE SEIRBHÍSÍ SÓISIALACHA OR, IN THE ENGLISH LANGUAGE, THE OFFICE OF THE CHIEF INSPECTOR OF SOCIAL SERVICES AND TO PROVIDE FOR THE DISSOLUTION OF CERTAIN BODIES; TO PROVIDE FOR THE TRANSFER OF THE FUNCTIONS OF THE DISSOLVED BODIES AND THEIR EMPLOYEES TO THE HEALTH INFORMATION AND QUALITY AUTHORITY; TO PROVIDE FOR A SCHEME OF REGISTRATION AND INSPECTION OF RESIDENTIAL SERVICES FOR OLDER PEOPLE, PERSONS WITH DISABILITIES AND CHILDREN IN NEED OF CARE AND PROTECTION; TO PROVIDE FOR THE REPEAL AND AMENDMENT OF CERTAIN OTHER ACTS; AND TO PROVIDE FOR RELATED MATTERS.

[21st April, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Act included in collective citation (8.09.2011) by *Child Care (Amendment) Act 2011* (19/2011), s. 1(4), S.I. No. 453 of 2011.

Short title, collective citations and commencement.

1.— ...

(4) The Health Acts 1947 to 2010 and sections 35 and 36 may be cited together as the Health Acts 1947 to 2011.

Acts included or previously included in the collective citation are:

- *Child Care (Amendment) Act 2011* (19/2011), ss. 35 and 36 (8.09.2011) by s. 1(4), S.I. No. 453 of 2011.
- *Health (Amendment) (No. 2) Act 2010* (20/2010) (1.10.2010) by s. 2(2), S.I. No. 415 of 2010.
- *Health (Amendment) Act 2010* (15/2010) (3.07.2010) by s. 2(2), commenced on enactment.
- *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64 (1.08.2009) by s. 1(3), S.I. No. 288 of 2009.
- *Health Act 2008* (21/2008) (1.01.2009) by s. 1(1), commenced as per s. 1(2).

- *Medical Practitioners Act 2007* (25/2007), s. 57(9) (13.02.2008) by s. 1(2), S.I. No. 24 of 2008.
- *Irish Medicines Board (Miscellaneous Provisions) Act 2006* (3/2006), Part 5 (22.07.2007) by s. 1(5), S.I. No. 543 of 2007.
- *Health Act 2007* (23/2007) (15.05.2007) by s. 1(2), S.I. No. 226 of 2007.
- *Health (Nursing Homes) (Amendment) Act 2007* (1/2007) (15.05.2007) by *Health Act 2007* (23/2007), s. 1(2), S.I. No. 226 of 2007.
- *Health (Repayment Scheme) Act 2006* (17/2006) (30.06.2006) by s. 1(2), S.I. No. 338 of 2006.
- *Health (Amendment) Act 2005* (3/2005), insofar as it amends the *Health Acts 1947 to 2004* (11.03.2005) by s. 7(2), commenced on enactment.
- *Health Act 2004* (42/2004) (23.12.2004) by s. 1(2), S.I. No. 886 of 2004.
- *Health (Amendment) Act 2004* (19/2004) (15.06.2004) by s. 1(2), S.I. No. 378 of 2004; subsequently repealed (1.01.2005) by *Health Act 2004* (42/2004), s. 73 and sch. 4, S.I. No. 887 of 2004.
- *Health (Eastern Regional Health Authority) Act 1999* (13/1999) (2.06.1999) by s. 1(2), commenced on enactment.
- *Health (Provision of Information) Act 1997* (9/1997) (2.06.1999) by *Health (Eastern Regional Health Authority) Act 1999* (13/1999), s. 1(2), commenced on enactment.
- *Health (Amendment) (No. 3) Act 1996* (32/1996), other than ss. 21 and 22 (6.11.1996) by s. 25(2), commenced on enactment.
- *Health (Amendment) (No. 2) Act 1996* (23/1996) (15.07.1996) by s. 4(2), commenced on enactment.
- *Health (Amendment) Act 1996* (15/1996) (15.07.1996) by *Health (Amendment) (No. 2) Act 1996* (23/1996), s. 4(2), commenced on enactment.
- *Health (Amendment) Act 1994* (11/1994) (16.05.1994) by s. 2(2), commenced on enactment.
- *Health (Nursing Homes) Act 1990* (23/1990) (1.09.1993) by s. 17(2), S.I. No. 222 of 1993.
- *Health (Amendment) Act 1987* (3/1987) (1.09.1993) by *Health (Nursing Homes) Act 1990* (23/1990), s. 17(2), S.I. No. 222 of 1993.
- *Health (Amendment) Act 1991* (15/1991), other than s. 8 (1.06.1991) by s. 11(2), S.I. No. 134 of 1991.
- *Health (Amendment) Act 1986* (10/1986) (7.05.1986) by s. 4(2), commenced on enactment.
- *Health (Family Planning) (Amendment) Act 1985* (4/1985) (1.10.1985) by s. 3(2), S.I. No. 316 of 1985.
- *Health (Family Planning) Act 1979* (20/1979) (1.11.1980) by s. 17(2), S.I. No. 247 of 1980.
- *Misuse of Drugs Act 1977* (12/1977), s. 36 and s. 42 in so far as it amends the *Health Acts 1947 to 1970* (1.03.1979) by s. 43(5), S.I. No. 28 of 1979.
- *Health Act 1970* (1/1970) (12.03.1970) by s. 1(2), S.I. No. 47 of 1970.
- *Health and Mental Treatment (Amendment) Act 1966* (2/1966), s. 1 (1.04.1966) by s. 3(2), S.I. No. 64 of 1966; subsequently repealed (1.04.1971) by *Health Act 1970* (1/1970), s. 3 and sch. 1, S.I. No. 90 of 1971.
- *Health (Homes For Incapacitated Persons) Act 1964* (8/1964) (1.04.1966) by s. 9(2), S.I. No. 43 of 1966; subsequently repealed (1.09.1993) by *Health (Nursing Homes) Act 1990* (23/1990), s. 15(1), S.I. No. 222 of 1993.
- *Health (Fluoridation of Water Supplies) Act 1960* (46/1960) (28.12.1960) by s. 10(2), commenced on enactment.
- *Health and Mental Treatment (Amendment) Act 1958* (37/1958), s. 1 (29.12.1958) by s. 3(2), S.I. No. 264 of 1958; subsequently repealed (1.04.1971) by *Health Act 1970* (1/1970), s. 3 and sch. 1, S.I. No. 90 of 1971.
- *Health and Mental Treatment Act 1957* (16/1957), s. 1 (1.09.1957) by s. 3(2), S.I. No. 169 of 1957; subsequently repealed (1.04.1971) by *Health Act 1970* (1/1970), s. 3 and sch. 1, S.I. No. 90 of 1971.

- *Health Act 1954* (23/1954) (1.08.1954) by s. 4(3), S.I. No. 160 of 1954; subsequently repealed (1.04.1971) by *Health Act 1970* (1/1970), s. 3 and sch. 1, S.I. No. 90 of 1971.
- *Health Act 1953* (26/1953) (1.01.1954) by s. 1(2), S.I. No. 377 of 1953.
- *Health Act 1947* (28/1947) (1.01.1954) by *Health Act 1953* (26/1953), s. 1(2), S.I. No. 377 of 1953.
- *Hepatitis C Compensation Tribunal (Amendment) Act 2006* (22/2006), s. 6, by s. 7(2), not commenced as of 22.02.2013.
- *Health (Miscellaneous Provisions) Act 2001* (14/2001), except in so far as it relates to the *Tobacco (Health Promotion and Protection) Act 1988*, by s. 5(2), not commenced as of 22.02.2013.
- *Health (Mental Services) Act 1981* (17/1981) by s. 1(2), not commenced as of 22.02.2013; subsequently repealed (1.11.2006) by *Mental Health Act 2001* (25/2001), s. 6 and sch., S.I. No. 411 of 2006.

C2 Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...
No. 23 of 2007	Health Act 2007	Sections 6(3), 20, 28, 32, 35, 39 and 70
...

C3 Application of Act affected by *Child Care (Amendment) Act 2011* (19/2011), s. 48(8), not commenced as of 22.02.2013.

Transitional provisions

48. — ...

(6) A person who immediately before the relevant date was carrying on the business of providing special care to children in a special care unit may continue to do so, notwithstanding section 46 of the Act of 2007, for a period not exceeding one year from the relevant date.

...

(8) During the period referred to in subsection (6), the Act of 2007 applies to the person referred to in subsection (6) and to the special care unit referred to in subsection (6) as if the special care unit were a registered designated centre under the Act of 2007 and that person is registered as its registered provider.

...

C4 Application of Act extended by *Child Care Act 1991* (17/1991), s. 23B(3), as inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 10, not commenced as of 22.02.2013.

Provision of special care and special care units.

23B.— ...

(3) The Health Service Executive shall—

(a) provide special care units, and

(b) maintain and administer special care units provided by it under paragraph (a),

and shall comply with regulations, if any, made under the Act of 2007 in relation to special care units and standards, if any, set out under section 8(1)(b) of the Act of 2007.

...

Editorial Notes:

E1 Obligation imposed on person in charge of a designated centre to ensure that a copy of the Act and any regulations and rules made thereunder are available to staff in the designated centre and that staff members are made aware of the provisions thereof (1.07.2009) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009* (S.I. No. 236 of 2009), reg. 17(3) and(4), in effect as per reg. 2.

E2 Obligation imposed on Health Service Executive, in authorising an employee to be an assessment officer in accordance with *Disability Act 2005* (14/2005), s. 8, to have regard to the need for such persons to have a thorough understanding of the provisions of the Act (1.06.2007) by *Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007* (S.I. No. 263 of 2007), reg. 13(a), in effect as per reg. 2.

PART 1

PRELIMINARY MATTERS

Short title,
collective citation
and construction.

1.— (1) This Act may be cited as the Health Act 2007.

(2) The Health Acts 1947 to 2006, this Act and the Health (Nursing Homes) (Amendment) Act 2007 may be cited together as the Health Acts 1947 to 2007 and shall be construed together as one.

Interpretation.

2.— (1) In this Act:

“Authority” means the Health Information and Quality Authority established under section 6;

“Board” means the Board, referred to in section 13, of the Authority;

“dependent person” means dependent person as defined in section 1(1) of the Health (Nursing Homes) Act 1990;

“designated centre” means an institution—

(a) at which residential services are provided by the Executive, a service provider or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 or under section 10 of the Child Care Act 1991—

(i) in accordance with the Child Care Act 1991,

(ii) to persons with disabilities, in relation to their disabilities, or

(iii) to other dependent persons, in relation to their dependencies,

or

(b) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

but does not include any of the following:

(i) a centre registered by the Mental Health Commission;

(ii) an institution managed by or on behalf of a Minister of the Government;

(iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;

(iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;

(v) a special care unit;

(vi) a children detention school as defined in section 3 of the Children Act 2001;

“disability” means disability as defined in section 2 of the Disability Act 2005 and the term “substantial restriction” in that definition shall be construed as meaning a restriction as described in paragraphs (a) and (b) of section 7(2) of that Act;

“Executive” means the Health Service Executive established under the Health Act 2004;

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

“Interim Health Information and Quality Authority” means the body established by the Interim Health Information and Quality Authority (Establishment) Order, 2005 (S.I. No. 132 of 2005);

“Irish Health Services Accreditation Board” means the body established by the Irish Health Services Accreditation Board (Establishment) Order, 2002 (S.I. No. 160 of 2002);

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

“Mental Health Commission” means the body established by section 32 of the Mental Health Act 2001;

“member” in relation to the Board includes the chairperson;

“Minister” means the Minister for Health and Children;

“ordinary member” means a member of the Board other than the chairperson;

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

“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;
- (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;
- (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)*;
- (h) any other body prescribed for the purpose of any provision of this Act;

“register” means a register of designated centres established under F1[[section 41\(1\)\(b\)](#)];

“registered provider” in relation to a designated centre means the person whose name is entered in a register as the person carrying on the business of the designated centre;

“service provider” means a person who—

- (a) enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Executive, or
- (b) is in receipt of assistance under—
 - (i) section 39 of the Health Act 2004 in an amount that exceeds an amount prescribed for the purpose of this subparagraph, or
 - (ii) section 10 of the Child Care Act 1991 in an amount that exceeds an amount prescribed for the purpose of this subparagraph;

“special care unit” means a special care unit provided and maintained in accordance with section 23K of the Child Care Act 1991, by or on behalf of the Executive;

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

(2) For the purposes of the definition of designated centre in *subsection (1)*, “institution” means a home, centre or institution or part of a home, centre or institution.

Annotations

Amendments:

- F1** Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64(1), commenced on enactment.
- F2** Inserted by *Child Care (Amendment) Act 2011* (19/2011), s. 36(1)(a)(i), not commenced as of 22.02.2013.
- F3** Deleted by *Child Care (Amendment) Act 2011* (19/2011), s. 36(1)(a)(ii), not commenced as of 22.02.2013.

- F4** Substituted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(1)(b), not commenced as of 22.02.2013.
- F5** Inserted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(1)(c), not commenced as of 22.02.2013.
- F6** Inserted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(1)(d), not commenced as of 22.02.2013.

Modifications (not altering text):

- C5** Prospective amending provision: section amended by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(1), not commenced as of 22.02.2013:

Interpretation.

2.— (1) In this Act:

...

“designated centre” means an institution—

(a) at which residential services are provided by the Executive, a service provider or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 or under section 10 of the Child Care Act 1991—

(i) in accordance with the Child Care Act 1991,

(ii) to persons with disabilities, in relation to their disabilities, or

(iii) to other dependent persons, in relation to their dependencies,

F2[(aa) that is a special care unit,]

or

(b) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

but does not include any of the following:

(i) a centre registered by the Mental Health Commission;

(ii) an institution managed by or on behalf of a Minister of the Government;

(iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;

(iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;

(v) F3[...]

(vi) a children detention school as defined in section 3 of the Children Act 2001;

...

F4[‘special care unit’ has the meaning assigned to it by Part IVA (as amended by the *Child Care (Amendment) Act 2011*) of the Child Care Act 1991;]

...

(2) For the purposes of the definition of designated centre in subsection (1), “institution” means a home, F5[unit,] centre or institution or part of a home, F5[unit,] centre or institution.

F6[(2A) For the purposes of the definition of designated centre (as amended by the *Child Care (Amendment) Act 2011*) in subsection (1) and construing references to persons resident in, residents of, and persons who can be accommodated in, a designated centre, such references shall be construed as including children detained in a special care unit in accordance with the Child Care Act 1991 (as amended by the *Child Care (Amendment) Act 2011*).]

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

(2) Different days may be appointed under this section for different purposes or different provisions of this Act.

Annotations

Editorial Notes:

- E3** Power pursuant to section exercised (1.12.2011) by *Health Act 2007 (Section 11) (Commencement) Order 2011* (S.I. No. 571 of 2011).

2. The 1st day of December 2011 is appointed as the day on which section 11 of the Health Act 2007 (No. 23 of 2007) comes into operation.

- E4** Power pursuant to section exercised (1.08.2009) by *Health Act 2007 (Commencement) (No. 3) Order 2009* (S.I. No. 268 of 2009).

2. The 1st day of August 2009 is appointed as the day on which section 103 (in so far as it is not already in operation) of the Health Act 2007 (No. 23 of 2007) comes into operation.

- E5** Power pursuant to section exercised (25.06.2009 and 1.07.2009) by *Health Act (Commencement)(No.2) Order 2009* (S.I. No. 237 of 2009).

3. (1) The 25th day of June 2009 is appointed as the day on which Part 13 of the Act of 2007 comes into operation.

(2) The 1st day of July 2009 is appointed as the day on which the following provisions of the Act of 2007 come into operation:

- (a) Part 1 (in so far as it is not already in operation);
- (b) paragraphs (b) and (c) of subsection (1) of section 41 (in so far only as the functions under those paragraphs are performable in relation to a designated centre to which paragraph (a)(iii) or paragraph (b) of the definition of “designated centre” in section 2 applies);
- (c) subsection (2) of section 41;
- (d) section 42;
- (e) section 45 (other than paragraph (a) of subsection (1));
- (f) Parts 8 and 9 (other than in so far as they relate to a designated centre to which subparagraph (i) or (ii) of paragraph (a) of the definition of “designated centre” in section 2 applies);
- (g) Part 10 (in so far as it is not already in operation);
- (h) subsection (1) of section 104 and Part 1 of Schedule 1 (in so far only as they relate to the repeal of sections 3, 4, 5, 6 and 9 of the Health (Nursing Homes) Act 1990 (No. 23 of 1990)).

- E6** Power pursuant to section exercised (1.03.2009) by *Health Act 2007 (Section 103) (Commencement) Order 2009* (S.I. No. 27 of 2009).

3. The 1st day of March 2009 is appointed as the day on which—

- (a) section 103(1) of the Act of 2007 (except in so far as it relates to sections 55C and 55G(b) (inserted by section 103(1) of the Act of 2007) of the Health Act 2004 (No. 42 of 2004)),
- (b) section 103(2)(a) of the Act of 2007, and
- (c) section 103(2)(b) of the Act of 2007 (except in so far as it relates to “Chief Inspector” in Schedule 2A (inserted by section 103(2)(b) of the Act of 2007) of the Health Act 2004), come into operation.

- E7** Power pursuant to section exercised (29.02.2008) by *Health Act 2007 (Commencement) Order 2008* (S.I. No. 57 of 2008).

2. The following provisions of the Health Act 2007 (No. 23 of 2007) come into operation on the date of the making of this Order:

- (a) section 8(1)(c) of Part 2;
- (b) for the purposes of monitoring compliance with standards in accordance with section 8(1)(c), the following provisions of Part 9:
 - (i) section 70;
 - (ii) section 73(1);

- (iii) section 73(3) (except paragraph (b));
 - (iv) section 73(4) (except paragraph (c)(ii));
 - (v) section 73(5) (except subparagraph (ii));
 - (vi) section 73(6);
 - (vii) section 73(7);
 - (viii) section 74;
 - (ix) section 75 (except subsections (1)(b), (2)(a)(ii) and (2)(b)(ii) and (iii));
 - (x) section 76;
 - (xi) section 77;
 - (xii) section 78 (except subparagraphs (ii) and (iii));
- (c) for the purposes of monitoring compliance with standards in accordance with section 8(1)(c), the following provisions of Part 10:
- (i) section 79(1)(b) and (3);
 - (ii) section 80 (except subsection (1)(b)).

E8 Power pursuant to section exercised (5.11.2007) by *Health Act 2007 (Commencement) (No. 3) Order 2007* (S.I. No. 735 of 2007).

2. The 5th day of November 2007 is appointed as the day on which—
- (a) section 105, in so far as it relates to the amendments mentioned in Part 5 of Schedule 2, and
 - (b) Part 5 of Schedule 2,
- of the Health Act 2007 (No. 23 of 2007) come into operation.

E9 Power pursuant to section exercised (6.06.2007) by *Health Act (Commencement) (No. 2) Order 2007* (S.I. No. 262 of 2007).

2. The 6th day of June 2007 is appointed as the day on which the following provisions of the Health Act 2007 (No. 23 of 2007) come into operation:
- (a) sections 8(1)(d) and 9 of Part 2;
 - (b) for the purposes of an investigation referred to in section 8(1)(d), the following provisions of Parts 9 and 10:
 - (i) section 70 (except subsections (1)(a) and (2)(a));
 - (ii) section 73(1) (except paragraph (a));
 - (iii) section 73(3) (except paragraph (b));
 - (iv) section 73(4) (except paragraph (c)(ii));
 - (v) section 73(5) (except subparagraph (ii));
 - (vi) section 73(6);
 - (vii) section 73(7) (except paragraph (a));
 - (viii) section 74;
 - (ix) section 75 (except subsections (1)(b), (2)(a)(ii) and (2)(b)(ii) and (iii));
 - (x) section 76;
 - (xi) section 77;
 - (xii) section 78 (except subparagraphs (ii) and (iii));
 - (xiii) section 79(1)(b) and (3);
 - (xiv) section 80 (except subsection (1)(b)).

E10 Power pursuant to section exercised (15.05.2007) by *Health Act 2007 (Commencement) Order 2007* (S.I. No. 226 of 2007).

2. The 15th day of May 2007 is appointed as the day on which the following provisions of the Health Act 2007 (No. 23 of 2007) come into operation:
- (a) Part 1 (except “designated centre” in section 2(1) of that Part and except section 2(2) of that Part), Part 2 (except sections 8(1)(c) and (d), 9 and 11 of that Part), Parts 3 to 6 and Parts 11 and 12;
 - (b) Sections 40, 43 and 44 of Part 7;
 - (c) Section 104(2) and (3) of Part 15;
 - (d) Section 105 of Part 15 (except for the purposes of Part 1 of Schedule 2, itemising certain amendments to the Child Care Act 1991, item 3 of Part 3 of Schedule 2, itemising certain amendments to the *Freedom of Information Act 1997*, item 1 of Part 4 of Schedule 2, itemising certain amendments to the Health Act 2004 and Part 5 of Schedule 2, itemising certain amendments to the *Civil Registration Act 2004*);
 - (e) The following Schedules:

- (i) Schedule 1 Part 2;
- (ii) Schedule 2 Part 2;
- (iii) Schedule 2 Part 3 (except item 3);
- (iv) Schedule 2 Part 4 (except item 1);
- (v) Schedule 2 Part 6;
- (vi) Schedule 2 Part 7.

Establishment day.

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

Annotations

Editorial Notes:

E11 Power pursuant to section exercised (15.05.2007) by *Health Information and Quality Authority (Establishment Day) Order 2007* (S.I. No. 227 of 2007).

2. The 15th day of May 2007 is appointed as the establishment day for the purposes of the Health Act 2007 (No. 23 of 2007).

Expenses.

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

PART 2

HEALTH INFORMATION AND QUALITY AUTHORITY

Establishment of Health Information and Quality Authority.

6.— (1) There is hereby established a body, to be known as An tÚdarás um Fhaisnéis agus Cáilíocht Sláinte or in the English language as the Health Information and Quality Authority to perform the functions assigned to it by this Act.

(2) The Authority is a body corporate with perpetual succession.

(3) The Authority may sue and be sued in its corporate name and, with the consent of the Minister and the Minister for Finance, may acquire, hold and dispose of land or an interest in land and any other property.

(4) The Authority shall provide itself with a seal as soon as may be after the Authority's establishment.

(5) The seal of the Authority shall be authenticated by the signature of—

(a) the chairperson of the Authority or of another member of the Board of the Authority authorised by it to act in that behalf, and

(b) by the signature of the chief executive officer or of another member of staff of the Authority as may be designated by the chief executive officer.

(6) Judicial notice shall be taken of the seal of the Authority, and any document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority shall, unless the contrary is shown, be received in evidence and be deemed to be that instrument without further proof.

Object of the Authority.

7.— The object of the Authority is to promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public.

Functions of Authority.

8.— (1) The functions of the Authority are as follows:

(a) subject to this Act and to the extent practicable, to further the Authority's object;

(b) to set standards on safety and quality in relation to—

(i) services provided by the Executive or a service provider in accordance with—

(I) the Health Acts 1947 to 2007, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2004, are provided by the Executive,

(II) the Child Care Acts 1991 and 2001,

(III) the Children Act 2001,

and

(ii) services provided by a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

in this section called the "services", and advise the Minister and the Executive accordingly;

(c) to monitor compliance with the standards referred to in *paragraph (b)*, except any standards in relation to designated centres, special care units and the performance of the Executive's functions referred to in *F7[section 41(1)(a)]* and to advise the Minister and the Executive accordingly;

(d) to undertake investigations in accordance with *section 9*;

(e) at the request or with the approval of the Minister to review and make recommendations as the Authority thinks fit in respect of the services, to ensure the best outcomes for the resources available to the Executive;

(f) to operate accreditation programmes in respect of the services and to grant accreditation to any of them meeting standards set or recognised by the Authority;

(g) to operate such other schemes aimed at ensuring safety and quality in the provision of the services as the Authority considers appropriate;

(h) to evaluate the clinical and cost effectiveness of health technologies including drugs and provide advice arising out of the evaluation to the Minister and the Executive;

(i) to evaluate available information respecting the services and the health and welfare of the population;

(j) to provide advice and make recommendations to the Minister and the Executive about deficiencies identified by the Authority in respect of the information referred to in *paragraph (i)*;

(k) to set standards as the Authority considers appropriate for the Executive and service providers respecting data and information in their possession in relation to services and the health and welfare of the population;

(l) to advise the Minister and the Executive as to the level of compliance by the Executive and service providers with the standards referred to in *paragraph (k)*;

(m) to act as a body standing prescribed by regulations made by the Minister for Health and Children—

(i) as set out in section 5(5) of the Education for Persons with Special Educational Needs Act 2004, and

(ii) as set out in section 10 of the Disability Act 2005.

(2) In carrying out its functions the Authority shall have regard to—

(a) the policies and objectives of the Government or any Minister of the Government in so far as they may affect or relate to the functions of the Authority,

(b) the need to co-operate with and co-ordinate its activities with public authorities, the performance of whose functions may affect or relate to the functions of the Authority other than the functions described in *subsection (1)(c), (d) and (l)*,

(c) the resources available to the Executive, and

(d) in so far as is reasonably practicable, research, statistics and other information in relation to the health and personal social services that are provided in other jurisdictions.

(3) The Authority has all the powers as are necessary or expedient for the performance by it of its functions.

(4) Subject to any directions given by the Minister under *section 29*, or to any charges determined under *section 39*, the Authority, in relation to health or personal social services, may—

(a) provide advice on safety, quality and standards, and

(b) operate accreditation programmes for and at the request of health providers other than service providers as defined in *section 2(1)* or the Executive.

Annotations

Amendments:

F7 Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009 (25/2009)*, s. 64(2), commenced on enactment.

F8 Deleted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(2), not commenced as of 22.02.2013.

Modifications (not altering text):

C6 Prospective amending provision: subs. (1)(c) amended by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(2), not commenced as of 22.02.2013:

Functions of Authority.

8.— (1) ...

(c) to monitor compliance with the standards referred to in *paragraph (b)*, except any standards in relation to designated centres F8[...] and the performance of the Execu-

tive's functions referred to in F7[*section 41(1)(a)*] and to advise the Minister and the Executive accordingly;

...

C7 Application of subs. (1)(b) extended by *Child Care Act 1991 (17/1991)*, s. 23B(3), as inserted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 10, not commenced as of 22.02.2013.

Provision of special care and special care units.

23B.— ...

(3) The Health Service Executive shall—

(a) provide special care units, and

(b) maintain and administer special care units provided by it under paragraph (a),

and shall comply with regulations, if any, made under the Act of 2007 in relation to special care units and standards, if any, set out under section 8(1)(b) of the Act of 2007.

...

Investigations by Authority.

9.— (1) The Authority may undertake an investigation as to the safety, quality and standards of the services described in *section 8(1)(b)* if the Authority believes on reasonable grounds that—

(a) there is a serious risk to the health or welfare of a person receiving those services, and

(b) the risk may be the result of any act, failure to act or negligence on the part of—

(i) the Executive,

(ii) a service provider,

(iii) the registered provider of a designated centre, or

(iv) the person in charge of a designated centre if other than its registered provider.

(2) The Minister may, if he or she believes on reasonable grounds that—

(a) there is a serious risk of the kind mentioned in *paragraph (a)* of *subsection (1)*, and

(b) the risk may be the result of any act, failure or negligence of the kind mentioned in *paragraph (b)* of that subsection,

require the Authority to undertake an investigation in accordance with this section.

(3) The Authority must ensure that an investigation under this section does not interfere, or conflict, with the functions of other statutory bodies.

Standards set by Authority.

10.— (1) In this section, “standards” means standards set by the Authority under *section 8(1)*.

(2) After considering any representations made in relation to any standards proposed by the Authority and after making any changes the Authority thinks fit, it shall submit the proposed standards to the Minister for approval.

Admissibility of standards in court proceedings.

11.— (1) In proceedings for an offence under this Act relating to an alleged contravention of any provision of this Act or of the regulations in respect of which standards have been set by the Authority under *section 8(1)(b)*, *subsection (2)* of this section has effect in relation to those standards and those proceedings.

(2) Where the standards referred to in *subsection (1)* appear to the Court to give guidance as to the observance of the provision of the Act or of the regulations that is alleged to have been contravened, the standards are admissible in evidence.

(3) If it is proved that any act or omission of the defendant, alleged to constitute a contravention of a provision referred to in *subsection (1)*, is—

(a) in compliance with the standards referred to in *subsection (1)*, or

(b) not in compliance with those standards,

the fact of that compliance or non-compliance is admissible in evidence.

(4) A document bearing the seal of the Authority and purporting to be a standard or part of a standard set by the Authority under *section 8(1)(b)* is admissible as evidence in any proceedings under this Act.

Provision of information to Authority.

12.— The Authority may require the Executive or a service provider to provide it with any information or statistics the Authority needs in order to determine the level of compliance by the Executive or by the service provider with the standards set by the Authority in accordance with *section 8(1)*.

PART 3

BOARD OF THE AUTHORITY

Membership of Board.

13.— (1) The Authority shall have a Board consisting of 12 members (including the chairperson and 11 ordinary members) appointed by the Minister in accordance with this section.

(2) The members of the Board shall be appointed by the Minister from among persons, who in the opinion of the Minister, have experience and expertise in relation to matters connected with the functions of the Authority which would enable such a person to make a substantial contribution to the performance by the Authority of its 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,

(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.

(4) The chairperson of the Board holds office for a period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(5) Subject to *subsection (6)*, an ordinary member of the Board shall hold office for a period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(6) Of the ordinary members of the Board first constituted under this section—

(a) 6 members of the Board as shall at a meeting held for the purposes of this subsection be selected—

(i) by unanimous agreement of the members of the Board attending the meeting, or

(ii) where no such agreement can for whatever reason be reached, by the drawing of lots by the members of the Board so attending,

shall hold office for a period of 3 years, and

(b) the remaining 5 members shall hold office for a period of 5 years.

(7) Subject to *subsection (8)*, a member of the Board whose term of office expires by the passage of time is eligible for reappointment to the Board.

(8) A member of the Board who has served 2 terms of office is not eligible for reappointment to the Board, and any period during which a person serves as a member of the Board pursuant to an appointment under *section 16* shall be deemed for the purposes of this subsection to be a term of office.

(9) The Minister shall endeavour to ensure that among the members of the Board there is an equitable balance between men and women.

Role of Board.

14.— (1) The Board is the governing body of the Authority with authority, in the name of the Authority, to perform the functions of the Authority.

(2) The Board may delegate any of its functions to the chief executive officer.

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

Conditions of office.

15.— (1) The Minister at any time may remove a member of the Board from office if, in the Minister's opinion—

(a) the member has become incapable through ill-health of performing the functions of the office,

(b) the member has committed stated misbehaviour,

(c) the member's removal from office appears to be necessary for the Board to perform its functions in an effective manner,

(d) the member has contravened *section 81(1)* or *84(2)* of this Act or a provision of the Ethics in Public Office Act 1995 that by a regulation made under section 3 of that Act applies to that member, or

(e) in performing functions under this Act, the member has not complied with—

(i) a code of conduct, under section 10(3) of the Standards in Public Office Act 2001, or

(ii) the code of governance under *section 34* that relates to the Board member.

(2) A member of the Board ceases to hold office if the member—

(a) is adjudicated bankrupt,

- (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,
- (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.

(3) A member of the Board 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 non-attendance was due to illness.

Resignations and casual vacancies.

16.— (1) A member of the Board may resign by letter to the Minister and the resignation takes effect on the later of—

- (a) the date specified in the letter, and
- (b) the receipt of the letter by the Minister.

(2) If a member of the Board dies, resigns, ceases to be qualified for office, ceases to hold office or is removed from office, the Minister may appoint a person to fill the casual vacancy so occasioned.

(3) A person appointed to be a member of the Board under this section—

- (a) holds office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of the appointment, and
- (b) subject to *section 13(8)*, is eligible for reappointment as a member of the Board on the expiry of that period.

Removal of members from office.

17.— (1) The Minister may remove all the members of the Board from office if the Board—

- (a) does not achieve a quorum for 3 consecutive meetings,
- (b) does not comply with a judgment, order or decree of any court,
- (c) 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
- (d) in the Minister's opinion, is not performing its functions in an effective manner.

(2) If, in the Minister's opinion, the Board is not performing its functions in an effective manner, the Minister may appoint a person to—

- (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.

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

(4) The removal of all the members of the Board does not revoke or otherwise affect any delegation of the Board's functions to the chief executive officer under *section 14(2)*.

Meetings and
procedures of
Board.

18.— (1) The Minister, in consultation with the chairperson of the Board, shall fix the date of the first meeting of the Board first constituted pursuant to *section 13* and shall specify the time and place at which the meeting shall take place.

(2) The Board shall hold such meetings as are necessary for the performance of its functions but in each year shall meet at least once every 2 months.

(3) At a meeting of the Board—

(a) the chairperson of the Board, if present, shall be the chairperson of the meeting, or

(b) if and so long as the chairperson of the Board is not present, or if that office is vacant, the members of the Board who are present shall choose one of their number to be chairperson of the meeting.

(4) Every question at a meeting shall be determined by a majority of the votes of the members of the Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(5) Subject to *subsection (8)*, the Board may act notwithstanding one or more vacancies among its members.

(6) Subject to this Act, the Board shall regulate, by standing orders, the procedures and business of the Board.

(7) Notwithstanding *subsection (6)*, non-compliance with the standing orders of the Board does not invalidate any decision of the Board.

(8) The quorum for a meeting of the Board is 5 unless the Minister otherwise directs.

(9) The chairperson may call a meeting of the Board at any reasonable time.

(10) If the chairperson refuses to call a meeting of the Board, after a requisition for that purpose, signed by not less than 3 members of the Board has been presented to the chairperson, any 3 members of the Board may call a meeting of the Board.

(11) If the chairperson, without refusing to do so, does not, within 7 days after the presentation of a requisition for that purpose signed by not less than 3 members of the Board, call a meeting of the Board, any 3 members of the Board may call a meeting of the Board.

Committees of
Board.

19.— (1) The Board may—

(a) establish committees to provide assistance and advice to the Board in relation to the performance of its functions, and

(b) determine the membership and terms of reference of each committee.

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

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

(a) under *section 20*, to the extent that the terms and conditions relate to remuneration and allowances for expenses, 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.

(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.

Remuneration and expenses of members of Board and committees.

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

(a) the members of the Board, and

(b) the members of a committee of the Board.

(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 17(2)* to conduct an independent review.

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

PART 4

CHIEF EXECUTIVE OFFICER OF THE AUTHORITY

Chief executive officer of Authority.

21.— (1) The Board shall appoint a person recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 to be the chief executive officer of the Authority.

(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,

(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 chief executive officer shall hold office on the terms and conditions (including those relating to remuneration, allowances and superannuation) that shall be determined by the Board with the approval of the Minister given with the consent of the Minister for Finance.

(4) The chief executive officer shall be paid by the Authority, out of funds at its disposal, remuneration and allowances determined under *subsection (3)*.

(5) Notwithstanding *subsection (1)*, the chief executive officer of the Interim Health Information and Quality Authority is the first chief executive officer of the Authority and shall hold office subject to the terms and conditions as may be determined in accordance with *subsection (3)*.

Functions of chief executive officer.

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

- (a) carry on, and manage and control generally, the administration and business of the Authority,
- (b) perform such other functions as may be assigned to that officer by or under this Act or another enactment or as may be delegated to him or her by the Board, and
- (c) supply the Board with information (including financial information) relating to the performance of the chief executive officer's functions as the Board may require.

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

(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 an employee of the Authority designated by the Authority.

Delegation of functions of chief executive officer.

23.— (1) Subject to any directions that may be given by the Board, the chief executive officer may—

- (a) delegate any of the chief executive officer's functions under *section 22* (including those relating to financial matters) to employees of the Authority specified by name, position or otherwise, and
- (b) authorise the subdelegation of any or all delegated functions to or by other such employees.

(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 directions, limitations and guidelines as may be specified by—

- (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.

(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 or subdelegation of a function under this section,
- (b) revoke such delegation or subdelegation, or
- (c) without revoking the delegation, revoke any subdelegation of the function.

(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 Authority who subdelegates a function delegated or subdelegated to the employee under this section—

(a) may vary or revoke the subdelegation, and

(b) is not precluded from performing the function.

(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.

Accountability of chief executive officer to Committee of Public Accounts.

24.— (1) The chief executive officer, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, shall give evidence to that Committee on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Authority is required by this Act to prepare,

(b) the economy and efficiency of the Authority in the use of its resources,

(c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General, in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*, that is laid before Dáil Éireann.

(2) In the performance of the duties of the chief executive officer 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.

Accountability of chief executive officer to other Oireachtas Committees.

25.— (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 24* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the chief executive officer, at the request in writing of a Committee, shall attend before the Committee to give an account of the general administration of the Authority.

(3) The chief executive officer shall not be required to give an account before a Committee of any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the chief executive officer is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive officer is before it, the information shall be so conveyed in writing.

(5) Where the chief executive officer has informed a Committee of the chief executive officer's opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

- (a) the chief executive officer, not later than 21 days after being informed by the Committee of its decision not to withdraw the request, may apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or
- (b) the chairperson of the Committee, on behalf of the Committee, may make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief executive officer shall not attend before the Committee to give an account of the matter to which the application relates.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive officer shall attend before the Committee to give an account of the matter.

(8) In the performance of the chief executive officer's 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.

PART 5

EMPLOYEES AND ADVISERS

Employees of Authority.

26.— (1) The Authority, subject to *subsection (2)* and (4), may appoint persons to be its employees and may determine their duties.

(2) Employees appointed under this section shall be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

(3) *Subsection (2)* does not apply to employees appointed under this section during the 3 months beginning on the establishment day or during a shorter period that the Minister may specify.

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

- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of employees appointed under this section, and
- (b) the grades of the employees of the Authority and the numbers of employees in each grade.

(5) A person is not eligible for appointment as an employee of the Authority if the person is—

- (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.

(6) The remuneration and allowances of the Authority's employees are payable by the Authority to the employees out of funds at the Authority's disposal.

Superannuation. **27.**— (1) The Authority shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such employees of the Authority as it may think fit.

(2) Every such scheme shall fix the time and conditions 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.

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

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

(5) No superannuation benefit shall be granted by the Authority nor shall any other arrangements be entered into by the Authority for the provision of such a benefit, to or in respect of an employee otherwise than in accordance with a scheme under this section or with the consent of the Minister and the Minister for Finance.

(6) Each scheme made under this section shall make provision for appeals.

(7) The terms and conditions governing superannuation benefits granted under schemes made under this section to persons who transferred to the Authority under *sections 88 to 90* shall be no less favourable than those terms and conditions to which they were entitled immediately before their transfer.

(8) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the Authority under *sections 88 to 90*—

(a) the benefit shall be calculated by the Authority in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the transfer, and

(b) the person's pensionable service with the Authority shall be aggregated with the person's previous pensionable service and the benefit, as so calculated, shall be paid by the Authority.

(9) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to anything done previously.

Annotations

Editorial Notes:

E12 Any defined benefit scheme established under section is excluded from *Pensions Act 1990 (25/1990)*, Part III by *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002 (S.I. No. 279 of 2002)*, reg. 11 and sch., as substituted (26.02.2009) by *Occupational Pension Schemes (Preservation of Benefits)(Amendment) Regulations 2009 (S.I. No. 70 of 2009)*, reg. 2.

E13 Any defined benefit scheme established under section is excluded from *Pensions Act 1990 (25/1990)*, Part IV by *Occupational Pension Schemes (Funding Standard) Regulations 1993 (S.I. No. 419 of 1993)* reg. 6 and sch. C, as substituted (1.08.2008) by *Occupational Pension Schemes (Funding Standard)(Amendment) Regulations 2008 (S.I. No. 295 of 2008)*, reg. 4.

Advisers.

28.— (1) The Authority, with the approval of the Minister given with the consent of the Minister for Finance, may engage such advisers as it considers necessary for the performance of its functions.

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

PART 6

ACCOUNTABILITY AND FUNDING OF AUTHORITY

Directions to Authority.

29.— (1) The Minister may give general directions in writing to the Authority for any purpose in relation to the provisions of this Act, or any other enactment, and for any matter or thing referred to in this Act, as specified or to be specified, or as determined or to be determined, and the Authority shall comply with any such direction.

(2) The Minister may direct the Authority or the chief inspector to supply the Minister with information, reports or statistics, in the manner and within the period, both as the Minister may determine, in relation to the performance of the functions assigned by or under this Act to the Authority or to the chief inspector.

(3) The Authority or the chief inspector, as specified in the Minister's direction, shall comply with the Minister's direction.

Corporate plan of Authority.

30.— (1) The Authority shall 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.

(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 if that Minister requests that a new corporate plan be submitted;

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

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

(a) the key objectives of the Authority and the Office of the Chief Inspector of Social Services for the 3 year period concerned and the strategies for achieving those objectives, and

(b) the uses to which the Authority proposes to apply its resources.

(4) In preparing the corporate plan, the Authority 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 Authority.

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

(a) approve the plan, or

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

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

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

(b) the amendment is approved by the Minister.

(7) *Subsections (3) to (5)* apply with the necessary modifications in respect of an amendment by the Authority to an approved corporate plan.

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

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

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

(b) if the plan is amended under *subsection (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

(ii) in the case of an amendment made by the Authority, the approval of the amendment by the Minister.

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

(11) The Authority shall provide the Minister with a progress report on the implementation of an approved corporate plan for the Authority in the Authority's annual report and, at the request of the Minister, at other times that the Minister may specify.

Determination by Minister of net expenditure limits for Authority.

31.— (1) Subject to *subsection (2)*, the Minister, for a financial year of the Authority, shall—

(a) determine the maximum amount of net expenditure that may be incurred by the Authority for that financial year, and

(b) notify the Authority in writing of the amount so determined not more than 21 days after the publication by the Government of the Estimates for Supply Services for that financial year.

(2) If the Minister considers it appropriate in any particular case, a determination under this section may relate to the period (other than the financial year of the Authority) as the Minister may specify in the relevant notification under this section.

(3) The Minister may amend a determination under *subsection (1)* by varying the maximum amount of net expenditure that the Authority may incur for a particular financial year and, if the Minister varies that amount, the Minister shall notify the

Authority in writing of the amendment as soon as may be and the determination applies and has effect as so amended.

Grants to Authority. **32.**— The Minister may, with the consent of the Minister for Finance, advance to the Authority out of money provided by the Oireachtas such sum as the Minister may determine.

Submission of business plan. **33.**— (1) Within 30 days after having been notified of its determination under *section 31* for a financial year, the Authority shall submit to the Minister a business plan for the year.

(2) A business plan must be prepared in the form and manner and in accordance with any directions given by the Minister and must—

- (a) indicate the Authority's activities for the period to which the business plan relates,
- (b) contain estimates of the number of employees of the Authority for the period to which the plan relates,
- (c) contain the business plan for the Office of the Chief Inspector of Social Services,
- (d) contain any other information specified by the Minister,
- (e) accord with policies and objectives of the Minister and the Government, and
- (f) be consistent with the financial limits determined by the Minister under *section 31*.

(3) In preparing the business plan, the Authority shall have regard to—

- (a) the approved corporate plan in operation at that time, and
- (b) any direction given by the Minister under *section 29*.

(4) The Authority shall give effect to the business plan unless the Minister, within 30 days after the submission of the plan, directs the Authority in writing to either amend the plan or not to give effect to it.

(5) The Minister shall, when giving a direction to the Authority under *subsection (4)*, at the same time give to the Authority the Minister's written reasons for the direction.

(6) The Authority shall comply with a direction under *subsection (4)*.

Code of governance. **34.**— (1) As soon as practicable after the Authority is established, it shall submit to the Minister for approval a code of governance that includes an outline of the—

- (a) guiding principles applicable to the Authority as a public body having the functions described in *section 8*,
- (b) structure of the Authority, including the role and responsibilities of the Board, the chief executive officer and the chief inspector,
- (c) processes and guidelines to be followed to ensure compliance with the reporting requirements imposed on the Authority by or under this Act, and

(d) the Authority's internal controls, including its procedures relating to internal audit, risk management, public procurement and financial reporting.

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

(3) In preparing or making revisions to the code of governance, the Authority shall have regard to any direction given by the Minister under *section 29*.

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

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

Accounts of
Authority.

35.— (1) The Authority shall cause to be kept all proper and usual books or other records of account of—

- (a) all income and expenditure of the Authority,
- (b) the source of the income and the subject matter of the expenditure, and
- (c) the property, assets and liabilities of the Authority.

(2) Without limiting *subsection (1)*, the Authority shall also keep any special accounts as the Minister may direct.

(3) The books, records and special accounts kept under this section shall be—

- (a) kept in the form, and
- (b) for the accounting periods,

as the Minister may specify, with the consent of the Minister for Finance.

(4) The accounts of the Authority approved by the Board shall be submitted to the Comptroller and Auditor General for audit as soon as practicable and not later than 3 months after the end of the financial year to which the accounts relate.

(5) Within one month after the Comptroller and Auditor General issues an audit certificate for the accounts of the Authority a copy of the accounts and of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who, within 2 months after their receipt, shall cause copies to be laid before each House of the Oireachtas.

(6) If required by the Minister, the Authority shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the Authority.

(7) The Authority, chief executive officer and other employees of the Authority—

- (a) whenever so requested by the Minister, shall permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period, and
- (b) shall facilitate the examination,

and the Authority shall pay such fee as may be fixed by the Minister for the examination.

- Gifts. **36.**— (1) The Authority may accept gifts of money, land or other property upon the trusts or conditions (if any) as may be specified by the donor.
- (2) The Authority shall not accept a gift if the trusts or conditions attaching to it would be inconsistent with the Authority's—
- (a) functions, or
 - (b) obligations,
- under this Act or any other enactment.
- Annual report. **37.**— (1) Not later than 30 April in each year, the Authority shall prepare and adopt an annual report in relation to the performance of the Authority's functions during the immediately preceding calendar year.
- (2) An annual report shall include—
- (a) a statement of the activities undertaken by the Authority,
 - (b) the report of the Office of the Chief Inspector of Social Services on its activities,
 - (c) a report on the implementation of the Authority's corporate plan,
 - (d) a report on the implementation of the Authority's business plan,
 - (e) a report on the Authority's arrangements for implementing and maintaining adherence to its code of governance, and
 - (f) other particulars that the Authority considers appropriate or as the Minister may specify, including but not limited to financial statements.
- (3) As soon as may be but in any event not later than 21 days after adopting the annual report, the Authority shall submit a copy of the annual report to the Minister.
- (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 the report.
- (5) The Authority shall ensure that the annual report is published on the Internet and in accordance with any other arrangements that the Minister may specify, as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.
- Assistance to other bodies. **38.**— Subject to any directions given by the Minister under *section 29*, and on terms and conditions the Authority sees fit to impose, the Authority may give assistance to a body which performs or proposes to perform a function similar or ancillary to a function that the Authority may perform.
- Charges for services. **39.**— (1) Subject to *subsection (2)*, the Authority may make charges as the Authority considers appropriate for the—
- (a) provision by the Authority of services other than those provided by the Authority for or at the request of the Minister, another Minister of the Government, the Executive or a service provider, or in respect of a service being provided to a person in accordance with *section 38*, and
 - (b) carrying on by the Authority of its activities,

and shall record the receipts from those charges as income.

(2) The determination of the amounts of charges referred to in *subsection (1)* is subject to the approval of the Minister following consultations with the Minister for Finance.

(3) The Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to the Authority under *subsection (1)*.

PART 7

OFFICE OF THE CHIEF INSPECTOR OF SOCIAL SERVICES

Office of Chief
Inspector of
Social Services.

40.— (1) Oifig an Phríomh-Chigire Seirbhísí Sóisialacha or in the English language the Office of the Chief Inspector of Social Services is established and the holder of the office—

(a) shall be known as the Chief Inspector of Social Services, and

(b) is referred to in this Act as the “chief inspector”.

(2) Subject to *subsection (3)* and in accordance with *section 26*, the Authority shall appoint a person to be the chief inspector.

(3) Notwithstanding *section 26* and with the approval of the Minister, the Authority may appoint the first chief inspector.

(4) The chief inspector shall be paid the remuneration and any allowances for expenses that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

(5) The chief inspector holds office for the period and upon the terms and conditions that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

(6) The Authority may dismiss the chief inspector from his or her office if satisfied that the chief inspector—

(a) has become incapable through ill health of effectively performing the functions of the office,

(b) is adjudicated bankrupt,

(c) is convicted of a criminal offence,

(d) has without reasonable excuse failed to discharge his or her functions for a continuous period of 3 months beginning not earlier than 6 months before the day of dismissal, or

(e) should be dismissed for any other stated reason.

(7) The person appointed as chief inspector under this section shall be given, by the Authority, a certificate of his or her appointment and, when exercising any power duly conferred on the chief inspector under this Act, shall produce, on request by any person affected, the certificate or a copy of the certificate, together with a form of personal identification.

Functions of chief inspector.

41.— (1) The functions of the chief inspector are to—

- (a) inspect the performance by the Executive of the Executive's functions under—
 - (i) sections 39 to 42 and 53 of the Child Care Act 1991, and
 - (ii) section 10 of the Health (Nursing Homes) Act 1990,
- (b) establish and maintain one or more registers of designated centres,
- (c) register and inspect designated centres to assess whether the registered provider is in compliance with the—
 - (i) regulations, and
 - (ii) standards, if any, set by the Authority under *section 8(1)(b)*,
- (d) inspect special care units to assess whether the operator is in compliance with the—
 - (i) regulations respecting special care units under the Child Care Acts 1991 and 2001, and
 - (ii) standards, if any, set by the Authority under *section 8 (1)(b)*, and
- (e) subject to written agreement between the Minister and the Minister for Justice, Equality and Law Reform, act as an authorised person for the purposes of section 185 of the Children Act 2001, as amended by the Criminal Justice Act 2006.

(2) If the chief inspector is absent or the position of chief inspector is vacant, the functions of the chief inspector under this section may be performed by an Inspector of Social Services designated by the Authority for the purpose of this subsection.

Annotations

Amendments:

F9 Deleted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(3), not commenced as of 22.02.2013.

Modifications (not altering text):

C8 Prospective amending provision: subs. (1)(d) deleted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(3), not commenced as of 22.02.2013:

Functions of chief inspector.

41.— (1) The functions of the chief inspector are to—

- (a) inspect the performance by the Executive of the Executive's functions under—
 - (i) sections 39 to 42 and 53 of the Child Care Act 1991, and
 - (ii) section 10 of the Health (Nursing Homes) Act 1990,
- (b) establish and maintain one or more registers of designated centres,
- (c) register and inspect designated centres to assess whether the registered provider is in compliance with the—
 - (i) regulations, and
 - (ii) standards, if any, set by the Authority under *section 8(1)(b)*,
- (d) F9[...]

(e) subject to written agreement between the Minister and the Minister for Justice, Equality and Law Reform, act as an authorised person for the purposes of section 185 of the Children Act 2001, as amended by the Criminal Justice Act 2006.

Accountability of
chief inspector to
Oireachtas
Committees.

42.— (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 24* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the chief inspector, at the request in writing of a Committee, shall attend before the Committee to give a general account of the activities of the Office of the Chief Inspector.

(3) The chief inspector shall not be required to give an account before a Committee of any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the chief inspector is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief inspector is before it, the information shall be so conveyed in writing.

(5) Where the chief inspector has informed a Committee of the chief inspector’s opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

(a) the chief inspector, not later than 21 days after being informed by the Committee of its decision not to withdraw the request, may apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(b) the chairperson of the Committee, on behalf of the Committee, may make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief inspector shall not attend before the Committee to give an account of the matter to which the application relates.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief inspector shall attend before the Committee to give an account of the matter.

(8) In the performance of the chief inspector’s duties under this section, the chief inspector 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.

Inspectors of
Social Services.

43.— (1) The Authority, in accordance with *section 26*, may appoint the number of persons as it may determine to assist the chief inspector in the performance of the chief inspector’s functions and—

(a) the persons appointed shall be known as Inspectors of Social Services, and

(b) are referred to in this Act as “inspectors”.

(2) An inspector shall perform the functions of the chief inspector, to the extent the chief inspector may determine, and, in performing those functions to that extent, the inspector has the same powers and duties as the chief inspector has in performing his or her functions under this Act.

(3) A person appointed as an inspector under this section shall be given, by the Authority, a certificate of his or her appointment and, when exercising any power duly conferred on an inspector under this Act, shall produce, on request by any person affected, the certificate or a copy of the certificate, together with a form of personal identification.

Plans and reports of Office of Chief Inspector.

44.— (1) Subject to any directions that may be given by the Authority, the chief inspector shall prepare—

(a) the corporate plan for the Office of the Chief Inspector of Social Services to be approved by the Authority and included in its corporate plan prepared in accordance with *section 30*, and

(b) the business plan for the Office of the Chief Inspector of Social Services to be approved by the Authority and included in its business plan prepared in accordance with *section 33*.

(2) The chief inspector shall prepare a report on the performance of his or her functions under *section 41* for the preceding year to be included in the relevant annual report prepared by the Authority under *section 37*.

(3) Whenever requested by the Authority, the chief inspector shall furnish information in relation to such matters as the Authority may specify.

Arrangements with Executive.

45.— (1) The Minister, by written direction, may require the Executive to carry out inspections of—

(a) children’s residential centres, as defined in section 2(1) of the Child Care Act 1991, which are provided in accordance with section 38(1) of that Act, or

(b) nursing homes as defined in section 2 of the Health (Nursing Homes) Act 1990.

(2) The Executive in acting under this section acts on behalf of the chief inspector and in acting on that behalf has the same powers and duties as the chief inspector has in carrying out inspections under this Act.

(3) An inspection under this section must be carried out by the Executive in the manner specified by the chief inspector and in accordance with the regulations and any standards which may be set by the Authority.

(4) The chief inspector may require the Executive to provide the chief inspector with any information the chief inspector needs in relation to an inspection or proposed inspection under this section.

(5) Expenses incurred by the Executive in carrying out functions in accordance with this section shall be paid from money provided by the Oireachtas to the Executive.

PART 8

REGULATION OF DESIGNATED CENTRES

Prohibition against carrying on unregistered designated centre.

46.— (1) A person shall not carry on the business of a designated centre unless the centre is registered under this Act and the person is its registered provider.

(2) The person in charge of a designated centre, whether that person is the registered provider or another person, shall not manage or participate in the management of the centre unless the centre is registered under this Act.

Annotations

Modifications (not altering text):

- C9** Application of section restricted by *Child Care (Amendment) Act 2011* (19/2011), s. 48(6), not commenced as of 22.02.2013.

Transitional provisions

48.— ...

(6) A person who immediately before the relevant date was carrying on the business of providing special care to children in a special care unit may continue to do so, notwithstanding section 46 of the Act of 2007, for a period not exceeding one year from the relevant date.

...

Prohibition against false or misleading applications for registration.

47.— In, or in respect of, an application for registration or renewal of registration under this Part, a person shall not knowingly make a statement which is false or misleading in a material respect.

Applications for registration.

48.— (1) A person seeking to register or renew the registration of a designated centre under this Part shall make an application for its registration or renewal of registration to the chief inspector.

(2) The applicant shall include with the application—

- (a) the prescribed information about prescribed matters,
- (b) any other information which the chief inspector reasonably requires the applicant to include, and
- (c) the prescribed application fee.

(3) An application under *subsection (1)* for the renewal of the registration of a designated centre must be made at least 6 months, or a lesser period that the chief inspector may specify, before the expiry date of the current registration.

(4) If an application under *subsection (1)* for the renewal of the registration of a designated centre—

- (a) is made within the time limited under *subsection (3)*, and
- (b) the decision under *section 50* to grant or refuse the registration is not made before the expiry date of the current registration,

the registration remains in effect until that decision is made.

(5) A person who wishes to carry on or manage more than one designated centre shall make a separate application for the registration, or the renewal of the registration, of each of the centres.

Annotations**Editorial Notes:**

- E14** Additional information required to accompany an application for registration or renewal of registration of a designated centre for older people and fee payable in respect thereof prescribed (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 4 and schs. 1, 2 and 3, in effect as per reg. 1(2).

Register of designated centres.

49.— (1) For each registered designated centre there shall be entered in the appropriate register established and maintained under *section 41* by the chief inspector—

- (a) the name of the centre,
- (b) the name—
 - (i) of the registered provider of the centre, and
 - (ii) of the person who is in charge of the centre whether that person is its registered provider or another person,
- (c) the address of the premises in which the business of the centre is carried on,
- (d) a statement of the number of residents who can be accommodated in the centre,
- (e) the date on which the registration of the centre is to take effect (referred to in this Act as “the date of registration”),
- (f) any conditions attached to the registration of the centre, and
- (g) such other particulars as the Minister may prescribe.

(2) Subject to *sections 48* and *51*, the registration of a designated centre is for 3 years.

(3) The registers shall be—

- (a) kept at the office of the chief inspector,
- (b) open to inspection by members of the public free of charge, during normal business hours, and
- (c) made available on the Internet and by any other means that the Minister specifies.

(4) On request, a copy of an entry in any register maintained by the chief inspector shall be issued by the chief inspector on payment of the fee, if any, not exceeding the reasonable cost of making the copy, as may be determined by the chief inspector.

Annotations**Editorial Notes:**

- E15** Additional information required to be entered in the register of designated centre prescribed (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 3, in effect as per reg. 1(2).

Grant or refusal of registration.

50.— (1) Where an application is made under *section 48* for the registration or renewal of the registration of a designated centre, the chief inspector, if satisfied that the person who is the registered provider, or intended registered provider, and each other person who will participate in the management of the designated centre—

(a) is a fit person to be the registered provider of the designated centre and to participate in its management, and

(b) if the application is for registration, will comply with, or, if for renewal, is in compliance with—

(i) standards set by the Authority under *section 8(1)(b)*,

(ii) regulations under *section 101*, and

(iii) any other enactment which appears to the chief inspector to be relevant, and is cited to the applicant in writing by the chief inspector,

shall grant the application and if not so satisfied shall refuse it.

(2) The chief inspector in granting an application under this section may—

(a) attach to the registration conditions that the chief inspector thinks fit in relation to the designated centre concerned, and

(b) attach different conditions in relation to the registration of different designated centres or of different categories of designated centres.

(3) On granting the application, the chief inspector shall issue a certificate of registration to the applicant, having first noted on the certificate—

(a) the enactments, if any, cited to the applicant under *subsection (1)(b)(iii)*, and

(b) the conditions, if any, attached to the registration under *subsection (2)*.

Annotations

Editorial Notes:

- E16** Additional information required to be noted on a certificate issued in accordance with subs. (3) prescribed (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 5, in effect as per reg. 1(2).

Cancelling registration, varying conditions of registration or imposing new conditions, for cause.

51.— (1) At any time, the chief inspector, on one or more of the grounds specified in *subsection (2)* may—

(a) cancel the registration of a designated centre,

(b) vary or remove any condition of the registration of a designated centre, or

(c) attach an additional condition to the registration of a designated centre.

(2) The following are the grounds referred to in *subsection (1)*:

(a) that the registered provider, or any other person who participates in the management of the designated centre has been convicted of one or more of the following:

- (i) an offence under this Act;
 - (ii) an offence under an enactment cited by the chief inspector in accordance with *section 50(1)(b)(iii)* and noted in accordance with *section 50(3)* on the registered provider's certificate of registration;
 - (iii) an offence under the Child Care Act 1991;
 - (iv) an offence against the person;
- (b) that, in the opinion of the chief inspector, the registered provider or any other person who participates in the management of the centre is not a fit person to be the registered provider of the centre or to participate in its management;
- (c) that the designated centre is being, or has at any time been, carried on otherwise than in accordance with—
- (i) any requirements or conditions imposed by or under this Act, or
 - (ii) any other statutory provision which the chief inspector considers to be relevant.

Applications by registered providers.

52.— (1) A registered provider carrying on the business of a designated centre may apply to the chief inspector for the variation or removal of any condition of the registration of the designated centre.

(2) The chief inspector may grant an application under *subsection (1)* if satisfied that the variation or removal of the condition is—

- (a) appropriate in the circumstances, and
- (b) will not adversely affect the persons who are resident in the designated centre,

and if not so satisfied shall refuse the application.

(3) An application under *subsection (1)* shall be made in the prescribed manner, state the prescribed particulars and be accompanied by the prescribed application fee.

(4) For the purposes of *subsection (3)*—

- (a) different amounts may be prescribed for different circumstances or different categories of designated centres, and
- (b) the regulations may provide for the chief inspector to determine which of the different amounts is payable in a particular case.

Annotations

Editorial Notes:

- E17** Information required to be included in application under section for variation or removal of any condition of registration attached by the chief inspector under s. 50 and application fee required pursuant to subs. (3) prescribed (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 7, in effect as per reg. 1(2).

Notice of certain proposed decisions of chief inspector.

53.— If the chief inspector proposes—

- (a) under *section 50 or 52*, to refuse an application,
- (b) under *section 50 or 52*, to grant an application subject to any conditions,
or
- (c) under *section 51*, to—
 - (i) cancel the registration of a designated centre,
 - (ii) vary or remove any condition of the registration of a designated centre,
or
 - (iii) attach an additional condition to the registration of a designated centre,

the chief inspector shall give the applicant or the registered provider of the designated centre, as the case may be, written notice of the proposal, stating the particulars.

Right to respond to notice of proposed decision.

54.— (1) A written notice of a proposal under *section 53* shall state that, within a time limit of 28 days after the notice is given, the applicant or the registered provider, as the case may be, may make written representations to the chief inspector concerning the matter which is the subject matter of the proposal.

(2) Where written notice of a proposal has been given under *section 53*, the chief inspector shall not decide the matter that is the subject of the proposal until—

- (a) the person to whom the notice was given has—
 - (i) made written representations to the chief inspector concerning the proposal, or
 - (ii) notified the chief inspector in writing that the person does not intend to make representations,

or

- (b) the time limit of 28 days referred to in *subsection (1)* has elapsed.

Notice of decisions of chief inspector.

55.— (1) The chief inspector shall give written notice to the applicant or the registered provider, as the case may be, of a decision—

- (a) under *section 50 or 52*, to refuse an application,
- (b) under *section 50 or 52*, to grant an application subject to any conditions,
or
- (c) under *section 51*, to—
 - (i) cancel the registration of a designated centre,
 - (ii) vary or remove any condition of the registration of a designated centre,
or
 - (iii) attach an additional condition to the registration of a designated centre.

(2) A written notice under this section shall inform the applicant or the registered provider, as the case may be, of the right of appeal conferred by *section 57*.

(3) F10[Subject to subsection (4), a decision referred to in subsection (1) does not take effect]—

- (a) if no appeal from the decision is brought, until the expiration of 28 days, or a longer period determined by the chief inspector, after the receipt by the applicant or registered provider of written notice under this section, or
- (b) if an appeal to the District Court from the decision is brought, until the determination or withdrawal of that appeal.

F11[(4) If the applicant or the registered provider—

- (a) informs the chief inspector in writing that the applicant or the registered provider, as the case may be, accepts the decision concerned of the chief inspector and does not intend to appeal that decision to the District Court, and
- (b) requests the chief inspector in writing that the decision concerned of the chief inspector take effect on a date that is earlier than that specified in subsection (3)(a),

that decision shall take effect on such date, that is earlier than the expiration of a period of 28 days after the receipt by the applicant or registered provider, as the case may be, of written notice under this section, as may be determined by the chief inspector.

(5) Notwithstanding section 57, an appeal to the District Court may not be brought from a decision of the chief inspector that takes effect under subsection (4).]

Annotations

Amendments:

- F10** Substituted (9.07.2010) by *Health (Miscellaneous Provisions) Act 2010* (18/2010), s. 15(a), commenced on enactment.
- F11** Inserted (9.07.2010) by *Health (Miscellaneous Provisions) Act 2010* (18/2010), s. 15(b), commenced on enactment.

Editorial Notes:

- E18** Obligation imposed on chief inspector to amend register on the taking effect in accordance with subs. (3) of a decision notified to the registered provider under subs. (1) (1.07.2009) by *Health Act 2007 (Registration of Designated Centres For Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 3(4)(b), in effect as per reg. 1(2).

Required or prohibited conduct in relation to designated centre.

56.— (1) The registered provider carrying on the business of a designated centre shall ensure that the certificate of registration issued for the designated centre is affixed in a conspicuous place at the centre.

(2) The registered provider carrying on the business of a designated centre shall not, in an application under *section 52* for the variation or removal of any condition of the registration of the designated centre, knowingly make a statement which is false or misleading in a material respect.

(3) Unless registration as a designated centre of a particular description has been effected under this Part in respect of a premises, undertaking or organisation, a person shall not, with intent to deceive another person,

(a) apply a name to the premises, undertaking or organisation that in any way describes it as a designated centre of that description, or

(b) hold out the premises, undertaking or organisation as a designated centre of that description.

(4) The registered provider carrying on the business of a designated centre shall not describe or hold out the designated centre as able to—

(a) provide a service, the provision of which would be in contravention of a condition of the registration of the designated centre, or

(b) do anything else, the doing of which would be in contravention of a condition of the registration of the designated centre.

Appeal to District Court from decision of chief inspector respecting registration.

57.— (1) The registered provider carrying on the business of a designated centre, or a person applying to be registered in respect of a designated centre, may appeal to the District Court from a decision of the chief inspector under *section 50, 51 or 52*.

(2) The registered provider or other person who appeals to the District Court under *subsection (1)*—

(a) shall bring the appeal within 28 days after the receipt by the person of written notice under *section 55* of the decision, and

(b) at the same time as the appeal is brought, shall give to the chief inspector written notice of the appeal.

(3) A registered provider carrying on the business of a designated centre who appeals to the District Court under this section may continue to carry on that business until the determination or withdrawal of that appeal or of a further appeal under *section 62*.

(4) On an appeal under *subsection (1)*, the District Court, as it considers appropriate, may confirm the decision of the chief inspector or direct the chief inspector to—

(a) register or renew the registration of the designated centre,

(b) restore the registration of the designated centre,

(c) vary or remove a condition of the registration, or

(d) attach an additional condition to the registration.

(5) An appeal under *subsection (1)* shall be made to a District Court judge assigned to the district in which the designated centre is located.

Annotations

Editorial Notes:

- E19** Obligation imposed on chief inspector to amend register when complying with an order by the District Court in accordance with subs. (4) to vary or remove a condition or attach an additional condition (1.07.2009) by *Health Act 2007 (Registration of Designated Centres For Older People) Regulations 2009* (S.I. No. 245 of 2009), reg. 3(4)(c), in effect as per reg. 1(2)

Chief inspector may seek District Court order enforcing certain decisions.

58.— (1) If the chief inspector believes on reasonable grounds that any person is carrying on the business of a designated centre in contravention of a decision—

- (a) under *section 50* or *52*, to refuse an application,
- (b) under *section 50* or *52*, to grant an application subject to any conditions, or
- (c) under *section 51*, to—
 - (i) cancel the registration of a designated centre,
 - (ii) vary or remove any condition of the registration of a designated centre, or
 - (iii) attach an additional condition to the registration of a designated centre,

the chief inspector may apply to the District Court for an order to enforce the decision.

(2) The District Court, on hearing an application under this section, may make an order—

- (a) in the terms sought by the chief inspector in the application, or
- (b) in other terms as the Court considers appropriate.

(3) An application under *subsection (1)* shall be made to the District Court judge assigned to the district in which the designated centre is located.

Chief inspector may seek District Court order for cancellation or variation of registration.

59.— (1) If the chief inspector believes on reasonable grounds that there is a risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre, because of any act, failure to act or negligence on the part of—

- (a) the registered provider carrying on the business of the designated centre, or
- (b) a person acting on behalf of the registered provider,

the chief inspector may apply to the District Court for an order—

- (i) cancelling the registration of the designated centre,
- (ii) varying or removing any condition attached to the registration of the designated centre, or
- (iii) attaching an additional condition to the registration of the designated centre.

(2) Notice of an application for a final determination of the matters that are the subject of the application must be given by the chief inspector to the registered provider.

(3) The District Court, on hearing an application under this section, may make an order—

- (a) in the terms sought by the chief inspector in the application, or
- (b) in other terms as the Court considers appropriate.

(4) An application under *subsection (1)* shall be made to a District Court judge assigned to the district in which the designated centre is located.

Ex parte interim order in proceedings under section 59.

60.— (1) An application under section 59 by the chief inspector may be made *ex parte* and without notice for an interim order (in this section and in section 61 called an “*ex parte* interim order”) and, on that application, an *ex parte* interim order may be made—

(a) in the terms sought by the chief inspector in the application, or

(b) in other terms as the District Court considers appropriate,

if, having regard to the circumstances of the particular case, the court considers it necessary or expedient to make the order immediately in the best interests of the persons resident in the designated centre.

(2) The application for an *ex parte* interim order shall be grounded on an affidavit sworn by the chief inspector or by an individual acting on behalf of the chief inspector.

(3) The *ex parte* interim order has effect for a period, to be specified in the order, not exceeding 28 days and ceases to have effect at the end of that period unless—

(a) by consent of the parties, or

(b) on application by the chief inspector on notice to the person who was the designated centre’s registered provider at the time of the application made *ex parte* under section 59,

the District Court within that period confirms the *ex parte* interim order with effect for a specified further period.

(4) Subsection (3) does not affect any right of a party to proceedings commenced under section 59 to apply to the District Court in the proceedings.

(5) The chief inspector, as soon as practicable, shall serve on the person who was the registered provider at the time of the *ex parte* application a copy of—

(a) the *ex parte* interim order, and

(b) the affidavit referred to in subsection (2).

(6) In respect of the *ex parte* application, the chief inspector must provide the Executive with a copy of the application and of the affidavit referred to in subsection (2) and, where an *ex parte* interim order is made, must provide the Executive with a copy of the order.

(7) If an *ex parte* interim order ceases to have effect because of the operation of subsection (3) then, effective on the next day after that order ceases to have effect—

(a) the registration of the designated centre and the status as registered provider of the person who was the centre’s registered provider at the time of the *ex parte* application under section 59(1) are reinstated, and

(b) the designated centre and the registered provider are restored to the same status under this Act as they had immediately before the date of the *ex parte* application under section 59.

Final determination of matters dealt with in an *ex parte* interim order under section 59.

61.— (1) Within 42 days after the date of an *ex parte* interim order, the chief inspector may apply to the District Court for a final determination of the matters dealt with in the order.

(2) Notice of an application under this section must be given by the chief inspector to the person who was the designated centre’s registered provider at the time of the *ex parte* application made under section 59.

(3) On the hearing of the application for a final determination of the matters dealt with in the *ex parte* interim order, the District Court may make an order—

- (a) confirming, varying or setting aside the *ex parte* interim order,
- (b) reinstating the registration of the designated centre and the status as registered provider of the person who was the centre's registered provider at the time of the *ex parte* application made under *section 59*, if the registration was cancelled under the *ex parte* interim order, or
- (c) make any other order the Court considers appropriate.

(4) If the chief inspector does not apply, within the 42 days set out in *subsection (1)*, for a final determination of the matters dealt with in the *ex parte* interim order, then, effective on the next day after expiry of the 42 days—

- (a) the *ex parte* interim order ceases to have effect,
- (b) the registration of the designated centre and the status as registered provider of the person who was the centre's registered provider at the time of the *ex parte* application under *section 59* are reinstated, and
- (c) the designated centre and the registered provider are restored to the same status under this Act as they had immediately before the date of the *ex parte* application under *section 59*.

Appeals to Circuit Court from decisions of District Court.

62.— An appeal lies to the Circuit Court from a decision of the District Court under *section 57(4)*, *59(3)* or *61(3)*.

Status of chief inspector in court proceedings.

63.— The chief inspector is a party to any court proceedings under this Part and is entitled in any such proceedings to appear, be heard, adduce evidence and give evidence.

Care of residents on cancellation of registration.

64.— (1) If the chief inspector—

- (a) cancels a registration under *section 51* and the cancellation takes effect, or
- (b) obtains an order to cancel a registration in accordance with *section 59* and the cancellation takes effect,

the chief inspector shall notify the Executive forthwith of the cancellation and of the date on which the cancellation has effect.

(2) The Executive, as soon as practicable after notification under *subsection (1)*, shall make alternative arrangements for the residents of the designated centre.

(3) Where the Executive, immediately before the cancellation, was the registered provider of the designated centre, the Executive, pending the alternative arrangements referred to in *subsection (2)*, notwithstanding the cancellation, may continue to carry on the business of the designated centre as if it were registered under this Act with the Executive as its registered provider.

(4) Where the Executive, immediately before the cancellation, was not the registered provider of the designated centre, then, pending the alternative arrangements referred to in *subsection (2)*, the Executive, either—

(a) with the consent of the person who, immediately before the effective date of the cancellation, was the registered provider, or

(b) by order of the District Court,

shall take charge of the designated centre, and may carry on its business as if the designated centre were registered under this Act with the Executive as its registered provider.

Submission of information.

65.— A registered provider of a designated centre shall submit to the chief inspector such information at such time as the chief inspector considers necessary to enable the chief inspector to carry out the chief inspector’s functions.

Prohibition against closure of designated centre without notice.

66.— (1) The registered provider carrying on the business of a designated centre shall not cease to carry on its business and close the designated centre unless the registered provider first gives the chief inspector written notice, of such period as may be prescribed, of the intention to do so as of a date specified in the notice.

(2) Different periods may be prescribed for different categories of designated centres.

Cancellation of registration on closure of designated centre.

67.— If a registered provider ceases to carry on the business of a designated centre and closes the centre, the chief inspector shall—

(a) make a note to that effect in the appropriate register, and

(b) cancel the registration of the designated centre.

Notice of appointment under law to take charge of designated centre.

68.— (1) A person who is appointed by or under the law to take charge of a designated centre in place of its registered provider, shall give notice of the appointment to the chief inspector, as soon as practicable, but not later than 48 hours after the appointment.

(2) The chief inspector may accept a later notification where the chief inspector is of the opinion that it would be right and proper to do so.

(3) Where the chief inspector receives information in accordance with *subsection (1)* and has reason to believe that it is in the interests of the health and welfare of the residents—

(a) he or she may notify the Executive, and

(b) the Executive may make alternative arrangements for the residents of the centre.

Transitional provision for registration of existing designated centres.

69.— (1) In this section “institution” means any—

(a) institution or part of one,

(b) residential centre or part of one, or

(c) home or part of one,

that, immediately before the coming into operation of this Part, is a designated centre as defined in *section 2(1)*.

(2) A person who immediately before the date this Part comes into operation was carrying on the business of an institution and providing residential services at the institution may continue to do so, notwithstanding *section 46*, for a period not exceeding 3 years or such shorter period as the chief inspector may determine.

(3) A person carrying on the business of an institution in accordance with *subsection (2)* shall notify the chief inspector that the person is carrying on that business, as soon as practicable, but not later than 6 months after the centre becomes a designated centre in accordance with the provisions of this Act.

(4) During the period described in *subsection (2)* in which a person, in accordance with that subsection, may carry on the business of an institution, this Act applies to the person and to the institution as if the institution were a registered designated centre under this Act with the person as its registered provider.

Annotations

Editorial Notes:

- E20** Annual fee payable by persons carrying on the business of a designated centre for older people in accordance with section prescribed (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), in effect as per reg. 1(2); subsequently amended (1.01.2011) by *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010), in effect as per reg. 1(2).

PART 9

INSPECTIONS AND INVESTIGATIONS

Appointment by the Authority of authorised persons.

70.— (1) The Authority shall appoint, with the approval of the Minister given with the consent of the Minister for Finance, one or more persons with appropriate qualifications and experience for the purposes of—

(a) monitoring compliance with standards in accordance with *section 8(1)(c)*,
or

(b) an investigation referred to in *section 8(1)(d)* undertaken by the Authority,

and a person so appointed shall be known as an authorised person.

(2) At the request of an authorised person, the Authority may appoint such other number of persons that the Authority may determine, to assist that authorised person in the performance of the authorised person's functions and the persons appointed shall be authorised persons for the purposes of—

(a) monitoring compliance with standards in accordance with *section 8(1)(c)*,
or

(b) an investigation referred to in *section 8(1)(d)*.

(3) An authorised person shall be paid the remuneration and allowances for expenses that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

(4) Each authorised person shall be given a certificate of his or her appointment and, when exercising any power conferred on the Authority, shall produce, on request by any person affected, the certificate or a copy of the certificate, together with a form of personal identification.

Appointment by Executive of persons to examine designated centres.

71.— (1) For the purpose of assessing compliance with the terms and conditions, regulations and standards and other statutory obligations referred to in *subsection (2)*, the Executive may appoint persons to examine any premises of a service provider in which the business of a designated centre is being carried on.

(2) The following are the terms and conditions, regulations and standards and other statutory obligations for the purposes of *subsection (1)*:

(a) the terms and conditions applicable in respect of any—

(i) arrangement under section 38 of the Health Act 2004,

(ii) assistance given in accordance with section 39 of the Health Act 2004, and

(iii) assistance given in accordance with section 10 of the Child Care Act 1991;

(b) any regulations and any standards made in respect of the category of designated centres to which the designated centre referred to in *subsection (1)* belongs; and

(c) any other statutory obligations in relation to that designated centre.

(3) A person appointed under *subsection (1)* may—

(a) enter any designated centre maintained by a service provider and examine, as he or she thinks fit, the state and management of the premises and the care or treatment of residents of the centre, and

(b) examine any records in relation to the centre and interview—

(i) any employee of the centre, or

(ii) any resident of the centre with the resident's consent.

(4) The person in charge of a designated centre, whether that person is the registered provider or another person, shall—

(a) allow a person appointed under *subsection (1)* to enter the designated centre for the purpose of any examination under *subsection (2)*, and

(b) co-operate with that person throughout the course of the examination.

Appointment of qualified persons to assist chief inspector and inspectors in an inspection.

72.— (1) At the request of the chief inspector, the Authority may appoint, with the approval of the Minister, one or more persons, with expertise relevant to an inspection referred to in *section 41*, to—

(a) accompany the chief inspector or inspector during the inspection, and

(b) assist and advise the chief inspector or an inspector on matters related to the purpose of the inspection that are within the expertise of the person or persons so appointed.

(2) A person appointed under this section shall be paid the remuneration and allowances for expenses that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

Right of entry and inspection by authorised person or chief inspector.

73.— (1) If an authorised person considers it necessary or expedient for the purposes of—

- (a) monitoring compliance with standards in accordance with *section 8(1)(c)*, or
- (b) an investigation referred to in *section 8(1)(d)*,

the authorised person may enter and inspect at any time any premises—

- (i) owned or controlled by the Executive or a service provider, or
- (ii) used or proposed to be used, for any purpose connected with the provision of services described in *section 8(1)(b)*.

(2) If the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 41*, the chief inspector may enter and inspect at any time any premises—

- (a) owned or controlled by the Executive,
- (b) used, or proposed to be used, for any purpose connected with the provision of a service under sections 39 to 42 and 53 of the Child Care Act 1991 or section 10 of the Health (Nursing Homes) Act 1990 by the Executive or a service provider, or
- (c) used or proposed to be used as a designated centre used or proposed to be used as a designated centre or special care unit.

(3) If an authorised person considers it necessary or expedient for the purposes of monitoring compliance with standards in accordance with *section 8(1)(c)*, or of an investigation referred to in *section 8(1)(d)*, or the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 41*—

- (a) the authorised person, at any time, may carry out the functions conferred on the authorised person under this section and *sections 75 and 76* to the extent that the functions relate to any premises referred to in *subsection (1)*, and
- (b) the chief inspector, at any time, may carry out the functions conferred on the chief inspector under this section and *sections 75 and 76* to the extent that the functions relate to any premises referred to in *subsection (2)*.

(4) An authorised person, in respect of premises referred to in *subsection (1)*, or the chief inspector, in respect of premises referred to in *subsection (2)*, may—

- (a) inspect, take copies of or extracts from and remove from the premises any documents or records (including personal records) relating to the discharge of its functions by the Executive, or to the services provided by a service provider or at a designated centre or a special care unit,
- (b) inspect the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records in question,
- (c) inspect any other item and remove it from the premises—
 - (i) if an authorised person considers it necessary or expedient for the purposes of monitoring compliance with standards in accordance with *section 8(1)(c)*, or of an investigation referred to in *section 8(1)(d)*, or
 - (ii) the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 41*,

(d) interview in private any person—

(i) working at the premises concerned, or

(ii) who at any time was or is in receipt of a service at the premises and who consents to be interviewed,

and

(e) make any other examination into the state and management of the premises or the standard of any services provided at the premises.

(5) At any time, an authorised person, in respect of premises referred to in *subsection (1)* or the chief inspector, in respect of premises referred to in *subsection (2)*, may require any person who—

(a) is in charge of the premises or of services provided at the premises, or

(b) possesses or is in charge of any records held at the premises or in respect of any services provided at the premises, even if the records are held elsewhere,

to furnish the authorised person or the chief inspector, as the case may be, with the information—

(i) the authorised person reasonably requires for the purposes of monitoring compliance with standards in accordance with *section 8(1)(c)*, or of an investigation referred to in *section 8(1)(d)*, or

(ii) the chief inspector reasonably requires for the purposes of an inspection referred to in *section 41*,

and to make available to the authorised person or chief inspector any document or record in the power or control of the person described in *paragraph (a)* or *(b)* of this subsection that, in the opinion of the authorised person, is relevant to the monitoring of compliance with the standards or to the investigation or, in the opinion of the chief inspector, is relevant to the inspection.

(6) If a person is required under this section to produce a document or record and that document or record is kept by means of a computer, the authorised person, for premises referred to in *subsection (1)*, or the chief inspector, for premises referred to in *subsection (2)*, may require the person who is required to produce that document or record to produce it in a form which is legible and can be taken away.

(7) If an authorised person, in respect of premises referred to in *subsection (1)*, considers an explanation necessary and expedient for the purposes of—

(a) monitoring compliance with standards in accordance with *section 8(1)(c)*, or

(b) an investigation referred to in *section 8(1)(d)*,

the authorised person may require a person who is in charge of the premises or possesses or is in charge of any relevant documents or records to provide an explanation of any—

(i) document or record inspected, copied or provided in accordance with this section,

(ii) other information provided in the course of the investigation, or

(iii) other matters which are the subject of the functions being exercised by the authorised person under this section.

(8) If the chief inspector, in respect of premises referred to in *subsection (2)*, considers an explanation necessary and expedient for the purposes of conducting an inspection under this section, the chief inspector may require a person who is in charge of the premises or a person who possesses or is in charge of any documents or records which are the subject of the inspection to provide an explanation of any—

- (a) documents or records inspected, copied or provided in accordance with this section,
- (b) other information provided in the course of the inspection, or
- (c) other matters which are the subject of the functions being exercised by the chief inspector under this section.

Annotations

Amendments:

F12 Deleted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(4), not commenced as of 22.02.2013.

Modifications (not altering text):

C10 Prospective amending provision: subss. (2)(c) and (4)(a) amended by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(4), not commenced as of 22.02.2013:

Right of entry and inspection by authorised person or chief inspector.

73.— ...

(2) If the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 41*, the chief inspector may enter and inspect at any time any premises—

...

(c) used or proposed to be used as a designated centre used or proposed to be used as a designated centre F12[...].

...

(4) An authorised person, in respect of premises referred to in *subsection (1)*, or the chief inspector, in respect of premises referred to in *subsection (2)*, may—

(a) inspect, take copies of or extracts from and remove from the premises any documents or records (including personal records) relating to the discharge of its functions by the Executive, or to the services provided by a service provider or at a designated centre F12[...],

...

Requirement for occupier's consent or District Court warrant to enter dwelling.

74.— (1) In this section “dwelling” includes any part of a designated centre occupied as a private residence by the registered provider of the designated centre or by a member of the staff of the registered provider.

(2) Notwithstanding *section 73*, an authorised person or the chief inspector, in the performance of functions under that section, may not enter a dwelling other than—

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant from the District Court issued under *section 75(2)* authorising the entry.

Further circumstances in which District Court may issue warrant.

75.— (1) Where—

- (a) in relation to any premises referred to in *section 73(1)*, an authorised person monitoring compliance with the standards in accordance with *section 8(1)(c)* or conducting an investigation referred to in *section 8(1)(d)*, or
- (b) in relation to any premises referred to in *section 73(2)*, the chief inspector conducting an inspection referred to in *section 41*,

is prevented or has reasonable cause to believe there is a likelihood that he or she will be prevented from entering the premises, an application may be made to the District Court for a warrant under *subsection (2)* authorising the entry.

(2) If a judge of the District Court is satisfied on the sworn information of an authorised person or the chief inspector that there are reasonable grounds for believing—

- (a) that there are any records (including records stored in a non-legible form) relating to a service or to a registered provider, designated centre or special care unit, or that there is anything being used at the premises referred to in *section 73(1)* or (2), which—
 - (i) the authorised person considers it necessary to inspect for the purposes of monitoring compliance with standards in accordance with *section 8(1)(c)* or an investigation referred to in *section 8(1)(d)*, or
 - (ii) the chief inspector considers it necessary to inspect for the purposes of an inspection referred to in *section 41*,

or

- (b) that there is, or such an inspection is likely to disclose, evidence of a contravention of this Act or the regulations or, in the case of an inspection referred to in *paragraph (a)(ii)*, a contravention of—
 - (i) this Act or the regulations,
 - (ii) the provisions, specified in *F13[section 41(1)(a)]*, of this Act, of the other Acts referred to in *F13[section 41(1)(a)]*, or
 - (iii) the regulations or standards referred to in *F13[section 41(1)(c) or (d)]*,

the judge may issue a warrant permitting the authorised person or the chief inspector or an inspector, accompanied by other persons with appropriate qualifications, or by members of the Garda Síochána as may be necessary, at any time or times, within one month after the date of issue of the warrant, on production of the warrant if requested, to enter the premises, if need be by reasonable force, and to perform the functions conferred by or under *section 73*.

Annotations

Amendments:

F13 Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009* (25/2009) s. 64(3), commenced on enactment.

F14 Substituted by *Child Care (Amendment) Act 2011* (19/2011), s. 36(5)(a), not commenced as of 22.02.2013.

F15 Deleted by *Child Care (Amendment) Act 2011* (19/2011), s. 36(5)(b), not commenced as of 22.02.2013.

Modifications (not altering text):

C11 Prospective amending provision: subss. (2)(a) and (2)(b)(iii) by *Child Care (Amendment) Act 2011*, s. 36(5), not commenced as of 22.02.2013:

Further circumstances in which District Court may issue warrant.

75.— ...

(2) If a judge of the District Court is satisfied on the sworn information of an authorised person or the chief inspector that there are reasonable grounds for believing—

(a) that there are any records (including records stored in a non-legible form) relating to a service or to a F14[registered provider or designated centre] or that there is anything being used at the premises referred to in *section 73(1)* or (2), which—

(i) the authorised person considers it necessary to inspect for the purposes of monitoring compliance with standards in accordance with *section 8(1)(c)* or an investigation referred to in *section 8(1)(d)*, or

(ii) the chief inspector considers it necessary to inspect for the purposes of an inspection referred to in *section 41*,

or

(b) that there is, or such an inspection is likely to disclose, evidence of a contravention of this Act or the regulations or, in the case of an inspection referred to in *paragraph (a)(ii)*, a contravention of—

(i) this Act or the regulations,

(ii) the provisions, specified in F13[*section 41(1)(a)*], of this Act, of the other Acts referred to in F13[*section 41(1)(a)*], or

(iii) the regulations or standards referred to in F13[*section 41(1)(c)*] F15[...],

the judge may issue a warrant permitting the authorised person or the chief inspector or an inspector, accompanied by other persons with appropriate qualifications, or by members of the Garda Síochána as may be necessary, at any time or times, within one month after the date of issue of the warrant, on production of the warrant if requested, to enter the premises, if need be by reasonable force, and to perform the functions conferred by or under *section 73*.

Authorised person or chief inspector may be accompanied by Garda.

76.— If an authorised person or the chief inspector—

(a) has reasonable cause to expect any serious obstruction in the performance of functions under this Act, and

(b) is in possession of a warrant under *section 75(2)*,

the authorised person or chief inspector, when performing those functions, may be accompanied by a member of the Garda Síochána.

Prohibition against certain conduct in relation to inspections under *section 73*.

77.— A person shall not—

(a) refuse to allow a person who under *section 73* is monitoring compliance with standards, or conducting an investigation or inspection—

(i) to enter any premises other than a dwelling in accordance with that section or in accordance with a warrant issued by the District Court, or

(ii) to enter any dwelling in accordance with that section under and in accordance with a warrant issued by the District Court,

or

(b) obstruct or impede a person conducting an investigation or inspection under *section 73* in the exercise of functions under that section, or

(c) give to a person conducting an investigation or inspection under *section 73* information that the person giving the information knows, or should reasonably know, to be false or misleading.

Reports of authorised persons, the chief inspector and inspectors.

78.— The Authority, an authorised person, the chief inspector, an inspector or a person appointed under *section 72* is not liable in damages arising from any—

(a) report or other document prepared, or

(b) communication made,

in good faith, for the purposes of, or in connection with, the performance of the functions—

(i) under *section 70* of an authorised person appointed under that section,

(ii) under *section 41* of the chief inspector, or

(iii) performed under *section 43* by an inspector appointed under that section.

PART 10

OFFENCES

Offences.

79.— (1) A person is guilty of an offence if the person—

(a) fails to discharge a duty to which the person is subject under *section 69(3)*, or

(b) contravenes *section 46, 47, or 77*.

(2) A registered provider carrying on the business of a designated centre is guilty of an offence if the registered provider—

(a) fails to discharge a duty to which the registered provider is subject under *section 56(1 or 65)*,

(b) contravenes *section 56(2), (3) or (4)*, or *66(1)*,

(c) fails to discharge a duty to which the registered provider is subject under a provision of the regulations,

(d) contravenes a provision of the regulations, or

(e) fails to comply with a condition of the registration of the designated centre.

(3) A person guilty of an offence under *subsection (1)* is liable—

(a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both.

(4) A registered provider guilty of an offence under *subsection (2)* is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both.

Proceedings for offences.

80.— (1) Summary proceedings for an offence under this Act may be brought and prosecuted—

- (a) where a person contravenes *section 77* by refusing to allow an authorised person to monitor compliance with standards or conduct an investigation, by the Authority,
- (b) in any other case, by the chief inspector.

(2) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be commenced any time within—

- (a) 12 months after the date of the offence, or
- (b) 6 months after the date on which evidence first comes to the knowledge of the Authority or the chief inspector that is sufficient, in the opinion of the Authority or the chief inspector, to justify the bringing of the proceedings, provided that the proceedings are commenced not later than 2 years after the date of the offence.

(3) A document, purporting to have been issued by the Authority, in the case of a contravention of *section 77* described in *section 80(1)(a)*, or by the chief inspector, in any other case, certifying the date on which the evidence described in *subsection (2)* first came to the knowledge of the Authority or the chief inspector—

- (a) is admissible without proof of the signature or official character of the person appearing to have signed the document, and
- (b) in the absence of evidence to the contrary, is proof of the matters certified in the document.

(4) Where an offence under this Act—

- (a) is committed by a body corporate, by a person purporting to act on behalf of a body corporate or by an individual or an unincorporated body of persons, and
- (b) is proved to have been committed with the consent or approval of, or to have been attributable to any neglect on the part of, any person who, when the offence was committed, was—
 - (i) a director, member of the committee of management or other controlling authority of the body concerned, or
 - (ii) the manager, secretary or other officer of the body concerned,

that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

PART 11

STANDARDS, DISQUALIFICATIONS, ETC.

Standards of integrity.

81.— (1) In performing functions under this or any other enactment as—

- (a) a member of the Board or a committee of the Board,
- (b) the chief executive officer, the chief inspector or any other employee of the Authority,
- (c) a person engaged by the Authority as an adviser under *section 28*, or
- (d) an employee of a person referred to in *paragraph (c)*,

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

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

Codes of conduct.

82.— (1) For the purposes of *section 81(1)*, the Authority 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,
- (b) employees of the Authority other than employees to whom a code of conduct under *section 10(3)* of the Standards in Public Office Act 2001 applies,
- (c) engaged under *section 28* by the Authority as advisers, or
- (d) employees of persons referred to in *paragraph (c)*.

(2) A code of conduct issued under this section for the guidance of persons referred to in *subsection (1)* must indicate the standards of integrity and conduct to be maintained by them in performing their functions under this or any other enactment.

(3) A person to whom the code of conduct relates shall have regard to and be guided by the code in performing functions under this or any other enactment.

(4) The terms and conditions on which a person is employed by the Authority or by a person referred to in *subsection (1)(c)* or on which a person is engaged by the Authority as an adviser are deemed to include any requirements that apply to that person under *subsection (3)*.

Availability of codes of conduct.

83.— (1) Subject to *subsection (2)*, the Authority, as soon as practicable after issuing a code of conduct, shall make the code available to the persons for whose guidance it was issued.

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

(3) In the absence of evidence to the contrary, a document purporting to be a code of conduct issued under this section—

- (a) is such code, and
- (b) is admissible in any proceedings before a court or other tribunal,

and any provision of the code of conduct that appears to the court or other tribunal to be relevant to a question in the proceedings may be taken into account by the court or tribunal in determining the question.

Prohibition against unauthorised disclosure of confidential information.

84.— (1) In this section “confidential information” means—

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

(2) Except in the circumstances set out in *subsection (3)*, a person shall not disclose confidential information obtained while performing functions as—

- (a) a member of the Board or a committee,
- (b) the chief executive officer or any other employee of the Authority,
- (c) a person engaged by the Authority as an adviser,
- (d) an employee of a person referred to in *paragraph (c)*,
- (e) a person appointed as an authorised person under *section 70*, or
- (f) a person appointed under *section 72*.

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

- (a) is authorised by the Authority,
- (b) is made to the Board,
- (c) is made to the Minister by or on behalf of the Authority or in compliance with this Act, or
- (d) is required by law.

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

85.— (1) A member of the Board of the Authority or a member of a committee of the Board of the Authority 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.

(2) An employee of the Authority, including the chief executive officer, is immediately seconded from employment with the Authority 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 Authority for the secondment period to a person seconded under *subsection (2)* from employment and the secondment period is not to be counted as service with the Authority 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 12

DISSOLUTION OF SPECIFIED BODIES, TRANSFER OF EMPLOYEES, PROPERTY AND LIABILITIES TO THE AUTHORITY

Specified bodies. **86.**— In this Part “specified bodies” means—

- (a) the Irish Health Services Accreditation Board, and
- (b) the Interim Health Information and Quality Authority.

Dissolution of specified bodies. **87.**— The specified bodies are dissolved by this Act on the establishment day.

Transfer of employees of specified bodies to Authority. **88.**— (1) In this section and *section 90*—

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

“recognised trade union or association of employees” means—

- (a) a trade union, or
- (b) an association of employees,

recognised by the Authority for the purposes of negotiations that are concerned with the terms and conditions of employment;

“terms and conditions of employment” includes terms and conditions in respect of tenure of office, remuneration and related matters.

(2) On the establishment day each person who, immediately before that day, was an employee of a specified body—

- (a) is transferred to the Authority, and
- (b) becomes an employee of the Authority.

(3) 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 Authority to terms and conditions of employment no less favourable than those to which the person was entitled immediately before the establishment day.

(4) 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 Authority after consulting and reaching a collective agreement with the

recognised trade union or association of employees concerned, the terms and conditions continue to apply to the person in the employment of the Authority.

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

- (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;
- (e) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (f) the Unfair Dismissals Acts 1977 to 2005;
- (g) the Maternity Protection Act 1994;
- (h) the Parental Leave Acts 1998 and 2006;
- (i) the Adoptive Leave Acts 1995 and 2005;
- (j) the Carer's Leave Act 2001.

Transfer of staff of Minister to Authority.

89.— (1) In this section “recognised trade union or staff association” means one recognised by the Minister for the purposes of negotiations about either or both of the following:

- (a) the transfer of staff to the Authority;
- (b) the remuneration, conditions of employment or working conditions of staff.

(2) On the establishment day, every person who immediately before that day was an officer of the Minister and who is designated by the Minister for the purpose of this section—

- (a) is transferred to the Authority, and
- (b) becomes an employee of the Authority.

(3) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred in accordance with *subsection (2)* to the staff of the Authority shall not, while in the service of the Authority—

- (a) receive a lesser scale of pay than the scale of pay to which he or she was entitled, or
- (b) be made subject to less beneficial terms and conditions of service, including but not limited to those relating to terms of office, than the terms and conditions of service to which he or she was subject immediately before the transfer.

(4) In relation to persons transferred in accordance with *subsection (2)* to become an employee of the Authority, previous service in the civil service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in the—

- (a) Redundancy Payments Acts 1967 to 2003,
- (b) Protection of Employees (Part-Time Work) Act 2001,

- (c) Protection of Employees (Fixed-Term Work) Act 2003,
- (d) Organisation of Working Time Act 1997,
- (e) Minimum Notice and Terms of Employment Acts 1973 to 2005,
- (f) Unfair Dismissals Acts 1977 to 2005,
- (g) Maternity Protection Act 1994,
- (h) Parental Leave Acts 1998 and 2006,
- (i) Adoptive Leave Acts 1995 and 2005, and
- (j) Carer's Leave Act 2001.

Transfer of employees of Executive to Authority.

90.— (1) The chief executive officer of the Executive, in consultation with the Authority, may designate employees of the Executive for transfer to the Authority.

(2) Any employee of the Executive transferred to the Authority under this section becomes an employee of the Authority.

(3) 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 Authority, to terms and conditions of employment no less favourable than those to which the person was entitled immediately before the date of his or her transfer to the Authority.

(4) Until the terms and conditions of employment to which a person transferred under this section was entitled immediately before his or her transfer to the Authority are varied by the Authority after consulting and reaching a collective agreement with the recognised trade union or association of employees concerned, they continue to apply to the person transferred in the employment of the Authority.

(5) 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:

- (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;
- (e) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (f) the Unfair Dismissals Acts 1977 to 2005;
- (g) the Maternity Protection Act 1994;
- (h) the Parental Leave Acts 1998 and 2006;
- (i) the Adoptive Leave Acts 1995 and 2005;
- (j) the Carer's Leave Act 2001.

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

91.— 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 Authority.

Transfer of property and liabilities to Authority.

92.— (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 transferred to and vested in the Authority without conveyance or assignment.

(2) On the establishment day, all property other than land that, immediately before that day, was the property of a specified body is transferred to and vested in the Authority 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, and in effect immediately before that day, are on the establishment day transferred to the Authority.

(4) Each right and liability transferred under this section and *section 91* may, on or after its transfer, be sued on, recovered or enforced by or against the Authority in the Authority's own name.

(5) The Authority need not give notice of the transfer to the person whose right or liability is transferred.

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

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

(a) continues in force on or after that day,

(b) has effect as if the name of the Authority were substituted in the contract, agreement or arrangement for that of the specified body, and

(c) is enforceable by or against the Authority.

Records of specified bodies.

94.— (1) Each record held by a specified body immediately before the establishment day is on that day transferred to the Authority and is, on and from that day, deemed to be held by the Authority.

(2) Any right of access, under the Freedom of Information Acts 1997 and 2003, to records that before the establishment day of the Authority were held by a body specified under *section 86* and that are transferred to the Authority under *subsection 1* is not affected by the transfer of those records.

(3) For the purpose of section 18 of the Freedom of Information Act 1997, any act done by the Irish Health Services Accreditation Board before the establishment day of the Authority is deemed to have been done by the Authority.

Pending legal proceedings.

95.— (1) If, immediately before the establishment day, any legal proceedings to which a specified body is a party are pending in any court or other tribunal—

(a) the Authority's name shall be substituted in the proceedings for the name of the specified body, and

(b) the proceedings shall not abate because of the substitution.

(2) Any reference to a specified body in an order made by a court or other tribunal before the establishment day shall, on the establishment day, be construed as a reference to the Authority.

Final accounts of specified bodies.

96.— (1) The Authority shall prepare in accordance with the accounting standards specified by the Minister for the purposes of *section 35* and in respect of the period specified in *subsection (3)* of this section, final accounts for each body dissolved under *section 87*.

(2) The Authority shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the establishment day.

(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.

Final reports of specified bodies.

97.— (1) The Authority shall prepare a final annual report for each of the specified bodies dissolved under *section 87* and submit the report to the Minister not later than 6 months after the establishment day.

(2) *Section 37(4)* and *(5)* applies in relation to a final annual report prepared under this section.

PART 13

REGULATIONS

Regulations and orders.

98.— (1) The Minister may make regulations that the Minister considers necessary or expedient for purposes under this Act.

(2) Without limiting the generality of *subsection (1)*, the Minister may make regulations—

- (a) for any purpose in relation to which regulations are provided for in this Act,
- (b) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,
- (c) generally for the purpose of giving effect to this Act, and
- (d) specifying a body established under the Health (Corporate Bodies) Act 1961 and making applicable to the specified body one or more of the functions of the Authority under *section 8*.

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

(4) 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*.

(5) A fee prescribed under this Part may be recovered summarily as a civil debt, without prejudice to any other method of recovery.

Annotations**Editorial Notes:**

- E21** Power pursuant to section exercised (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), in effect as per reg. 1(2); subsequently amended (1.01.2011) by *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010), in effect as per reg. 1(2).

Regulations governing registration under this Act.

99.— Without limiting the generality of *section 98*, the Minister may make regulations governing the registration of persons under this Act in respect of designated centres, including but not limited to regulations—

- (a) respecting the making of applications for registration,
- (b) prescribing the contents of certificates of registration,
- (c) respecting the giving of notice by a registered provider, in respect of a designated centre, of any intended change in the identity of the person carrying on or managing the designated centre,
- (d) respecting the giving of notice by a registered provider, in respect of a designated centre which is carried on or managed by a body corporate, of changes in the ownership of the body corporate or the identity of its officers,
- (e) prescribing an annual fee payable by a registered provider at such a time as may be prescribed, and
- (f) prescribing the notice to be given by a registered provider of a designated centre of intention to cease to carry on its business and close the designated centre.

Annotations**Editorial Notes:**

- E22** Power pursuant to section exercised (1.01.2011) by *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010), in effect as per reg. 1(2).
- E23** Power pursuant to section exercised (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), in effect as per reg. 1(2); subsequently amended (1.01.2011) by *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010), in effect as per reg. 1(2).

Regulations respecting procedures for setting standards.

100.— Without limiting the generality of *section 98*, the Minister may make regulations respecting procedures to be followed by the Authority in setting standards under *section 8(1)* including but not limited to regulations respecting—

- (a) publication of any proposed standards,
- (b) consultations in relation to the standards,
- (c) the consultation period, and
- (d) the publication of the standards after their approval by the Minister.

Regulations respecting designated centres.

101.— (1) Without limiting the generality of *section 98* for the purpose of ensuring proper standards in relation to designated centres, the Minister—

- (a) shall make regulations as the Minister thinks appropriate, and
- (b) may make different regulations for different purposes and for different categories of designated centres.

(2) Without limiting the generality of *subsection (1)*, regulations under this section may provide as respects one or more of the following:

- (a) the maintenance, care, welfare and well-being of persons resident in a designated centre;
- (b) the numbers, qualifications and availability of persons employed in a designated centre;
- (c) the design, maintenance, repair, cleaning and cleanliness, ventilation, heating and lighting of a designated centre;
- (d) the accommodation (including the amount of space in bedrooms and wards, the washing facilities and the sanitary conveniences) provided in a designated centre;
- (e) the food provided for persons while resident in a designated centre;
- (f) the records to be kept in a designated centre;
- (g) the effecting by registered providers of designated centres of contracts of insurance against injury to persons resident in them;
- (h) the management and control of the operations of a designated centre;
- (i) the notification of incidents occurring in designated centres;
- (j) the giving of notice by the registered provider of periods during which—
 - (i) the registered provider, or
 - (ii) the F16[person in charge], if the registered provider is not the F16[person in charge] of the designated centre,
 proposes to be absent from the designated centre, and specifying the information to be supplied in the notice;
- (k) adequate arrangements for the running of a designated centre during a period when the F17[person in charge] is absent from it.

(3) Without limiting the generality of *subsection (1)*, regulations under this section—

F18[(a) may, subject to any regulations made under Part 9 of the Health Act 2004, require registered providers—

- (i) to make adequate arrangements for dealing with complaints made by or on behalf of a person who is or was receiving any of the services provided through a designated centre or who is seeking or has sought any such service, and

(ii) to publicise the arrangements,]

- (b) may prescribe for specified provisions of this Act to apply with prescribed modifications, if any, in cases where a person is appointed by or under the law to take charge of a designated centre in place of its registered provider,

(c) may provide for a designated centre referred to in *paragraph (b)* to be carried on for a prescribed period by a person who is not registered in respect of it, and

(d) may include provision for the prescribed period to be extended by a further period the chief inspector may allow.

Annotations

Amendments:

- F16** Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64(4)(a), commenced on enactment.
- F17** Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64(4)(b), commenced on enactment.
- F18** Substituted (21.07.2009) by *Health (Miscellaneous Provisions) Act 2009* (25/2009), s. 64(4)(c), commenced on enactment.

Editorial Notes:

- E24** Power pursuant to section exercised (30.03.2012) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2012* (S.I. No. 95 of 2012), in effect as per reg. 2.
- E25** Power pursuant to section exercised (15.02.2010) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 36 of 2010), in effect as per reg. 2.
- E26** Power pursuant to section exercised (1.07.2009) by *Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2009* (S.I. No. 245 of 2009), in effect as per reg. 1(2); subsequently amended (1.01.2011) by *Health Act 2007 (Registration of Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 593 of 2010), in effect as per reg. 1(2).
- E27** Power pursuant to section exercised (1.07.2009) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009* (S.I. No. 236 of 2009), in effect as per reg. 2; subsequently amended (15.02.2010) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2010* (S.I. No. 36 of 2010), in effect as per reg. 2, and (30.03.2012) by *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2012* (S.I. No. 95 of 2012), in effect as per reg. 2.

Laying of regulations and orders before Houses of Oireachtas.

102.— (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.

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

(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 the resolution.

PART 14

PROTECTION OF DISCLOSURES OF INFORMATION

Protection of disclosures of information.

103.— (1) The Health Act 2004 is amended by inserting the following Part after Part 9:

“PART 9A

PROTECTED DISCLOSURES OF INFORMATION

Definition of expressions in this Part.

55A.— In this Part and Schedule 2A:

‘actions’ means anything done or omitted to be done;

‘authorised person’ means, unless otherwise specified, a person appointed in accordance with section 55H(3);

‘chief inspector’ means the person who is appointed to the Office of the Chief Inspector of Social Services in accordance with *section 40* of the *Health Act 2007*;

‘designated centre’ means a designated centre as defined in *section 2(1)* of the *Health Act 2007*;

‘employee’ means a person who has entered into or works under (or, where the employment has ceased, had entered into or worked under) a contract of employment with or is (or was) placed for the purpose of vocational training with any of the following:

- (a) the Executive;
- (b) another person providing a service similar to a service provided by the Executive who employs or has a contractual arrangement with a person registered with a professional regulatory body;
- (c) a service provider;
- (d) any other person receiving assistance in accordance with section 39 of this Act or section 10 of the Child Care Act 1991;
- (e) a designated centre other than a designated centre operated by a relevant body;
- (f) a mental health service other than a mental health service operated by a relevant body;
- (g) a body established under the Health (Corporate Bodies) Act 1961; or
- (h) any other person who provides a service for the purpose of providing staff to any of the persons or bodies referred to in paragraphs (a) to (g);

‘employer’, in relation to an employee, means a person or body (including a service provider or designated centre or mental health service) listed in the definition of ‘employee’;

‘Health Information and Quality Authority’ means the body established in accordance with *section 6* of the *Health Act 2007*;

‘mental health services’ means mental health services as defined in section 2(1) of the Mental Health Act 2001;

‘Pharmaceutical Society of Ireland’ means the body constituted in accordance with section 4 of the Pharmacy Act (Ireland) 1875;

‘professional regulatory body’ means—

- (a) an Bord Altranais,
- (b) the Dental Council,
- (c) the Health and Social Care Professionals Council,
- (d) the Medical Council, or
- (e) the Pharmaceutical Society of Ireland;

'relevant body' means—

- (a) the Executive,
- (b) a service provider,
- (c) any other person who has received or is receiving assistance in accordance with section 39 of this Act or section 10 of the Child Care Act 1991, or
- (d) a body established under the Health (Corporate Bodies) Act 1961;

'Scheduled body' means a body referred to in Schedule 2A.

Protected disclosure of information by an employee of a relevant body.

55B.— Where an employee of a relevant body makes, in good faith, a disclosure to an authorised person and the employee has reasonable grounds for believing that it will show one or more of the following:

- (a) that the health or welfare of a person who is receiving a health or personal social service in accordance with this Act has been, is or is likely to be at risk;
- (b) that the actions of any person employed by or acting on behalf of the relevant body has posed, is posing or is likely to pose a risk to the health or welfare of the public;
- (c) that the relevant body or a person employed by or acting on behalf of the relevant body failed, is failing or is likely to fail to comply with any legal obligation to which the relevant body or person is subject in the performance of the relevant body's or person's functions;
- (d) that the conduct of the relevant body or of a person employed by or acting on behalf of the relevant body has led, is leading or is likely to lead to a misuse or substantial waste of public funds;
- (e) that evidence of any matter falling within any of paragraphs (a) to (d) has been, is being or is likely to be deliberately concealed or destroyed;

the disclosure shall be a protected disclosure under this Act.

Protected disclosure of information by an employee of a designated centre.

55C.— Where an employee of a person carrying on the business of a designated centre other than a centre operated by a relevant body makes, in good faith, a disclosure to the chief inspector and the employee has reasonable grounds for believing that the disclosure will show one or more of the following:

- (a) that the actions of any person employed by or acting on behalf of a person carrying on the business of a designated centre has posed, is posing or is likely to pose a risk to the health or welfare of a resident of the centre;
- (b) that the person carrying on the business of a designated centre has failed, is failing or is likely to fail to comply with any of the following which are applicable to the designated centre:

- (i) a provision of regulations made under the *Health Act 2007*;
 - (ii) a standard made under the *Health Act 2007*;
 - (iii) any other statutory obligation;
- (c) that evidence of any matter falling within either of paragraphs (a) and (b) has been, is being or is likely to be deliberately concealed or destroyed;

the disclosure shall be a protected disclosure under this Act.

Protected disclosure of information by an employee of a mental health service provider.

55D.— Where an employee of a person providing mental health services other than a relevant body makes, in good faith, a disclosure to the Mental Health Commission or the Inspector of Mental Health Services, and the employee has reasonable grounds for believing that the disclosure will show one or more of the following:

- (a) that the actions of any person employed by or acting on behalf of the person providing the services has posed, is posing or is likely to pose a risk to the health or welfare of a person receiving the service;
- (b) that a person providing the services has failed, is failing or is likely to fail to comply with any of the following which are applicable to the person:
 - (i) a provision of the Mental Health Acts 1945 to 2001;
 - (ii) a provision of regulations made under those Acts;
 - (iii) any other statutory obligation;
- (c) that evidence of any matter falling within either of paragraphs (a) and (b) has been, is being or is likely to be deliberately concealed or destroyed;

the disclosure shall be a protected disclosure under this Act.

Protected disclosure of information in relation to regulated professions.

55E.— Where a person makes, in good faith, a disclosure to a professional regulatory body, which the person has reasonable grounds for believing will show that the actions of any person, the exercise of whose profession requires him or her to be registered with a professional regulatory body, has posed, is posing or is likely to pose a risk to the health or welfare of the public, the disclosure shall be a protected disclosure under this Act.

Applications and complaints about health professionals to be protected disclosures.

55F.— (1) An application in accordance with—

- (a) section 45 of the Medical Practitioners Act 1978,
- (b) section 38 of the Dentists Act 1985,
- (c) section 38 of the Nurses Act 1985,

is a protected disclosure under this Act.

(2) A complaint under section 52 of the Health and Social Care Professionals Act 2005 is a protected disclosure under this Act.

Protected disclosure of information: monitoring, investigations and inspections.

55G.— Where a person makes, in good faith, a disclosure to—

- (a) an authorised person appointed by the Health Information and Quality Authority in accordance with *section 70* of the *Health Act 2007* to—

- (i) monitor compliance with standards in accordance with *section 8(1)(c)* of the *Health Act 2007*, or
- (ii) undertake an investigation under *section 9* of the *Health Act 2007*,
- (b) the chief inspector who is in the course of an inspection carried out in accordance with *section 41* of the *Health Act 2007*, or
- (c) the Inspector of Mental Health Services who is in the course of an inspection carried out in accordance with *section 51* of the *Mental Health Act 2001*,

which the person has reasonable grounds for believing will show a risk to the health or welfare of the public, the disclosure is a protected disclosure under this Act.

Duty of relevant body to establish procedures.

55H.— (1) The Executive shall establish procedures, applicable to the Executive, service providers and any other person who has received or is receiving assistance in accordance with *section 39* of this Act or *section 10* of the *Child Care Act 1991*—

- (a) to facilitate the making of protected disclosures, and
- (b) for the investigation of any matter which is the subject matter of a protected disclosure.

(2) A body established under the *Health (Corporate Bodies) Act 1961* which is not a service provider shall establish procedures—

- (a) to facilitate the making of protected disclosures, and
- (b) for the investigation of any matter which is the subject matter of a protected disclosure.

(3) The Executive, or as the case may be, a body referred to in subsection (2), shall appoint a person (the ‘authorised person’) to whom protected disclosures may be made.

(4) A service provider may, with the agreement of the Executive, establish procedures for the purposes set out in paragraphs (a) and (b) of subsection (1) so far as relating to matters within the remit of the service provider.

(5) The Executive may agree under subsection (4) only if satisfied that the procedures being established under that subsection are of a standard equivalent to those established, or which it would otherwise have established, under subsection (1).

(6) Procedures established under subsection (4) are in place of those established, or which the Executive would have established, under subsection (1), so far as applicable to the service provider.

(7) Where a body established under the *Health (Corporate Bodies) Act 1961* is a service provider, the provisions of subsections (1), (4), (5) and (6) shall apply to the body.

(8) The Executive or a body referred to in subsection (2) shall, before establishing procedures under this section—

- (a) submit a draft of the proposed procedures to the Data Protection Commissioner for his or her opinion as to whether any provision of the procedures would, if given effect, be likely to result in a contravention of the *Data Protection Acts 1988* and *2003*, and

(b) request that the opinion be given in writing to the Executive, or as the case may be, the body referred to in subsection (2) before the date specified in the request.

(9) If, before that date, the Data Protection Commissioner provides a written opinion that a provision of the draft procedures would, if given effect, be likely to have the results referred to in subsection (8)(a), the Executive, or as the case may be, the body referred to in subsection (2) shall have regard to that opinion in its further deliberations on the draft procedures.

Adherence to procedures governing protected disclosure of information to be a condition of arrangements made by the Executive.

55I.— (1) It is a condition of any arrangement under section 38 or of assistance given under section 39 of this Act or section 10 of the Child Care Act 1991 that a service provider or person receiving assistance will—

- (a) adhere to the procedures established by the Executive in accordance with section 55H(1), or
- (b) where procedures have been established by the service provider under section 55H(4), adhere to those procedures.

(2) The Executive may exercise any rights or remedies available to it by virtue of an arrangement or the giving of assistance referred to in subsection (1) if the service provider or person receiving assistance, as the case may be, is in breach of that subsection.

Duties in respect of protected disclosures.

55J.— (1) Where a protected disclosure is made to an authorised person, the authorised person shall investigate the subject matter of the disclosure.

(2) An authorised person may refer that subject matter or any part of it to an appropriate Scheduled body or a professional regulatory body or, where the authorised person believes that a criminal offence has been committed, to the Garda Síochána.

(3) An authorised person may inform a person in charge of the body to whom the disclosure relates of the subject matter of the disclosure.

(4) Notwithstanding a referral under subsection (2), the authorised person may investigate the subject matter if the authorised person or the person in charge of the body to which the disclosure relates considers it appropriate to do so.

(5) The person in charge of the body to whom the disclosure relates may, with the consent of the authorised person, appoint another person to investigate the subject matter.

(6) If, at any time during an investigation, the authorised person believes the disclosure is false, misleading, frivolous or vexatious, he or she may cease the investigation.

Disclosure to a Scheduled body.

55K.— (1) An employee of a relevant body may make a protected disclosure only in accordance with—

- (a) sections 55E, 55F or 55G, or
- (b) the procedures established under section 55H.

(2) Notwithstanding subsection (1), an employee of a relevant body may make a disclosure to a Scheduled body if the employee has reasonable grounds to believe—

- (a) that the disclosure is justified by reason of the urgency of the matter, or
- (b) there has been no investigation of the matter, or if an investigation has taken place, there has been no action or recommended action on the subject matter of the disclosure.

Protection from civil liability of persons who have made a protected disclosure.

55L.— (1) A person is not liable in damages in consequence of a protected disclosure.

(2) Subsection (1) does not apply in respect of a person who makes a disclosure knowing it to be or reckless as to whether it is false, misleading, frivolous or vexatious or who, in connection with a disclosure, furnishes information that the person knows to be false or misleading.

(3) The reference in subsection (1) to liability in damages shall include a reference to any other form of relief.

Protection of employees from penalisation for having made a protected disclosure.

55M.— (1) An employer shall not penalise an employee for making a protected disclosure.

(2) A contravention of subsection (1) is a ground of complaint by an employee to a rights commissioner.

(3) In proceedings before a rights commissioner or the Labour Court in relation to a complaint of a contravention of subsection (1), it shall be presumed, unless the contrary is proved, that the disclosure was a protected disclosure.

(4) If the contravention of subsection (1) was a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee both under this section and under those Acts.

(5) A rights commissioner hearing a complaint under this section shall—

- (a) give the parties an opportunity to be heard and to present any evidence relevant to the complaint,
- (b) give a decision in writing, and
- (c) communicate it to the parties.

(6) A decision of a rights commissioner under subsection (5) shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the employer to comply with subsection (1) and to take specified steps;
- (c) order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

(7) A rights commissioner shall not entertain a complaint under this section unless it is presented to him or her within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within that period) such further period, not exceeding 6 months from the expiration of the period of 12 months, as the rights commissioner considers reasonable.

(8) (a) A complaint under this section shall be presented to a rights commissioner by giving notice of it in writing to him or her and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Enterprise, Trade and Employment after consulting the Minister for Health and Children.

(b) A copy of a notice under paragraph (a) shall be given to the employer by the rights commissioner.

(9) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(10) A rights commissioner shall furnish the Labour Court with a copy of any decision given by the commissioner under this section.

(11) A party to proceedings under this section before a rights commissioner may appeal to the Labour Court from a decision of the rights commissioner and, on an appeal, the Labour Court shall—

- (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and
- (c) communicate the determination to the parties.

(12) (a) An appeal under this section shall be initiated by the giving, by the party appealing, within 6 weeks of the date on which the decision to which it relates was communicated to that party, of a notice in writing to the Labour Court under subsection (13) and stating the intention of that party to appeal.

(b) A copy of a notice under paragraph (a) shall be given by the Labour Court to the other party as soon as practicable after the receipt of the notice by the Labour Court.

(13) The following matters, or the procedures to be followed in relation to those matters, shall be determined by the Labour Court, namely:

- (a) the procedure in relation to the initiation and the hearing by the Labour Court of appeals under this section;
- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under subsections (12) and (15);
- (f) any matters consequential on, or incidental to, the matters referred to in paragraphs (a) to (e).

(14) (a) The Minister for Enterprise, Trade and Employment, after consulting the Minister for Health and Children, may, at the request of the Labour Court, refer a point of law arising in proceedings under this Part before it to the High Court for determination.

(b) A party to proceedings before the Labour Court may appeal to the High Court from a determination of the Labour Court on a point of law.

(c) The determination of the High Court under this subsection is final and conclusive.

(15) (a) Where a decision of a rights commissioner under subsection (6)(b) or (c) has not been implemented by the employer in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer or any

evidence (other than in relation to the matters), make a determination to the like effect as the decision.

- (b) The bringing of a complaint before the Labour Court by virtue of this subsection shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(16) Proceedings under this section before the Labour Court shall be heard otherwise than in public.

(17) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under paragraphs (a), (b), (c), (e) or (f) of subsection (13) (not being a determination as respects a particular appeal under this section) or subsection (15)(b).

Proceedings
before
Labour Court.

55N.— (1) The Labour Court shall, on the hearing of any matter referred to it under this Part, have power to take evidence on oath and for that purpose may cause oaths to be administered to persons attending as witnesses at the hearing.

(2) Any person who, upon examination on oath authorised under this section, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false is guilty of an offence and, on conviction, is liable to the penalties for wilful and corrupt perjury.

(3) The Labour Court may, by giving notice in that behalf in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter referred to the Labour Court under this section or to produce any documents in his or her possession, custody or control which relate to any such matter.

(4) A notice under subsection (3) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides.

(5) A person to whom a notice under subsection (3) has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

Enforcement
of determina-
tions of
Labour Court.

55O.— (1) (a) If an employer fails to carry out in accordance with its terms a relevant determination of the Labour Court under section 55M within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (i) the employee,
- (ii) with the consent of the employee, any trade union of which the employee is a member, or
- (iii) the Minister for Enterprise, Trade and Employment, if that Minister considers it appropriate to make an application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms.

- (b) In paragraph (a), a 'relevant determination' means a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought, it has been abandoned and the reference

to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of its abandonment.

(2) The Circuit Court may, in an order under this section relating to the payment of compensation, if in all the circumstances it considers it appropriate to do so, direct the employer to pay to the employee interest on the compensation, at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer ordinarily resides or carries on any profession, trade, business or occupation.

Evidence of failure to attend before or give evidence or produce documents to Labour Court.

55P.— A document purporting to be signed by the chairman or a vice-chairman of the Labour Court stating that—

- (a) a person named in the document was, by a notice under section 55N required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and
- (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under section 55N, be evidence of the matters so stated without further proof.

Interpretation of 'penalise'.

55Q.— (1) In this Part, 'penalise' includes any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment and which is consequent upon a protected disclosure by the employee.

(2) For the purposes of subsection (1) but without prejudice to its generality, penalisation includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or a change in working hours,
- (d) imposition of any discipline, reprimand or other penalty (including a financial penalty),
- (e) coercion, intimidation or harassment,
- (f) injury, damage or loss, and
- (g) threats of reprisal.

(3) Paragraph (c) of subsection (2) shall not be construed in a manner which prevents an employer from ensuring that the business of the body concerned is carried on in an efficient and effective manner.

Continuity of employer's business.

55R.— References in this Part to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to ownership of the business.

Making false reports.

55S.— (1) A person who makes a disclosure which the person knows or reasonably ought to know to be false is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was committed or, if later, 2 years from the date on which evidence that, in the opinion of a member of the Garda Síochána, is sufficient to justify the bringing of the proceedings.

(4) For the purposes of subsection (3) of this section, a certificate signed by a Superintendent of the Garda Síochána as to the date on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge is *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed is deemed to be so signed and shall be admitted as evidence without proof of the signature of the Superintendent purporting to sign the certificate.

Saver.

55T.— This Part is without prejudice to the provisions of the Protections for Persons Reporting Child Abuse Act 1998.”.

(2) The Health Act 2004 is further amended—

(a) by deleting “and” from immediately after paragraph (e) of section 35(1) and inserting after that paragraph the following:

“(f) procedures established under section 55H, and”,

and

(b) by inserting after Schedule 2 the following Schedule:

“SCHEDULE 2A

BODIES AND OFFICE-HOLDERS REFERRED TO IN PART 9A AS SCHEDULED BODIES

Adoption Board

Chief Inspector

Comptroller and Auditor General

Health Information and Quality Authority

Inspector of Mental Health Services

Irish Medicines Board

Mental Health Commission”.

PART 15

CONSEQUENTIAL AND MINOR AMENDMENTS TO OTHER ACTS

Repeals and revocations. **104.**— (1) Each Act specified in the second column of *Part 1 of Schedule 1* 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.

(2) Each order specified in the second column of *Part 2 of Schedule 1* is revoked to the extent specified in the third column.

(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, by regulation, may make for the purpose of bringing any such order, regulation or rule into conformity with this Act.

Amendment to other Acts. **105.**— The Acts specified in *Schedule 2* are amended as indicated in that Schedule.

Section 104.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)
No. 21 of 1961	Hospitals Federation and Amalgamation Act 1961	The whole Act.
No. 23 of 1990	Health (Nursing Homes) Act 1990	Sections 3, 4, 5, 6 and 9.
No. 17 of 1991	Child Care Act 1991	Sections 38(3) and (4) and 59 to 65.

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PART 2

ORDERS REVOKED

Number and Year	Short Title	Extent of Revocation
(1)	(2)	(3)
No. 160 of 2002	Irish Health Services Accreditation Board (Establishment) Order 2002	The whole order.
No. 132 of 2005	Interim Health Information and Quality Authority (Establishment) Order 2005	The whole order.

Section 105.

SCHEDULE 2

AMENDMENTS TO OTHER ACTS

PART 1

AMENDMENTS TO CHILD CARE ACT 1991

Item	Provision affected	Amendment
1.	Section 2	(a) In subsection (1), by adding the following definition after the definition of "child":

Item	Provision affected	Amendment
		<p>“‘children’s residential centre’ means an institution for the residential care of children in the care of the Health Service Executive or of other children in need of adequate care and protection but does not include—</p> <p>(a) an institution managed by or on behalf of a Minister of the Government,</p> <p>(b) an institution in which a majority of the children being maintained are being treated for acute illnesses or are being provided with palliative care,</p> <p>(c) an institution for the care and maintenance of children with a disability,</p> <p>(d) an institution approved in accordance with the Mental Health Acts 1945 to 2001,</p> <p>(e) a children detention school as defined in section 3 of the Children Act 2001;”.</p> <p>(b) By adding the following subsection after subsection (2):</p> <p>“(3) For the purposes of the definition of ‘children’s residential centre’ in subsection (1), ‘institution’ means a home, centre or institution or part of a home, centre or institution.”.</p>
2.	Section 15	<p>To delete section 15 and substitute the following:</p> <p>“15.—The Health Service Executive shall provide or make arrangements with suitable persons for the provision of suitable accommodation for the purposes of this Part.”.</p>
3.	Section 23K	<p>(a) In subsection (2)(a), by substituting “by the Office of the Chief Inspector of Social Services” for “by a person authorised in that behalf by the Minister”.</p> <p>(b) In subsection (7)(f), by deleting everything after “the periodical inspections of those units.” ...</p>
4.	Section 36	<p>To delete subsection (1)(b) and substitute the following:</p> <p>“(b) by placing him or her in residential care (whether in a children’s residential centre or in a school or other suitable place of residence), or”.</p>
5.	Section 38	<p>(a) In subsection (1), by deleting subsection (1) and by substituting the following subsection:</p> <p>“(1) The Health Service Executive may make arrangements with suitable persons to ensure the provision of an adequate number of residential places for children in its care.”.</p> <p>(b) Delete subsection (2) and substitute the following:</p> <p>“(2) The Health Service Executive may provide and maintain a children’s residential centre or other premises for the provision of residential care for children in care.”.</p>

Annotations

Amendments:

F19 Deleted by *Child Care (Amendment) Act 2011 (19/2011)*, s. 36(6), not commenced as of 22.02.2013.

Modifications (not altering text):

C12 Prospective amending provision: sch. 2 part 1 item 3 deleted by *Child Care (Amendment) Act 2011* (19/2011), s. 36(6), not commenced as of 22.02.2013:

Item	Provision affected	Amendment
...
3.	F19[...]	
...

PART 2**AMENDMENT TO COMPTROLLER AND AUDITOR-GENERAL (AMENDMENT) ACT 1993**

Item	Provision affected	Amendment
1.	First Schedule	After "Fire Services Council", by substituting "Health Information and Quality Authority" for "General Medical Services (Payments) Board".

PART 3**AMENDMENTS TO FREEDOM OF INFORMATION ACT 1997**

Item	Provision affected	Amendment
1.	First Schedule	(a) By inserting in paragraph 1(2), "the Health Information and Quality Authority" before "the Heritage Council", and (b) in paragraph 1(2), by deleting "An Comhairle na nOspidéal," and "the Irish Health Services Accreditation Board".
2.	Third Schedule	By inserting in Part I of the Third Schedule in the appropriate chronological place— (a) in column (1) "39 & 40 Vict., c. 77 1876", (b) in column (2) opposite the mention of "39 & 40 Vict., c. 77 1876", "Cruelty to Animals Act 1876", and (c) in column (3) opposite the mention of the "Cruelty to Animals Act 1876", "section 12C(1)".
3.	Third Schedule	By inserting in Part 1 of the Third Schedule in the appropriate chronological place— (a) in column (1) "No. 28 of 1947", (b) in column (2) opposite the mention of "No. 28 of 1947", "Health Act 1947" and (c) in column (3) opposite the mention of "Health Act 1947", "section 54(3)".
4.	Third Schedule	By inserting in Part I of the Third Schedule in the appropriate chronological place— (a) in column (1) "No. 16 of 1994",

Item	Provision affected	Amendment
		<p>(b) in column (2) opposite the mention of “No. 16 of 1994”, “Health Insurance Act 1994”, and</p> <p>(c) in column (3) opposite the mention of the “Health Insurance Act 1994”, “section 34(1)”.</p>
5.	Third Schedule	<p>By inserting in Part I of the Third Schedule in the appropriate chronological place—</p> <p>(a) in column (1) “No. 29 of 1998”,</p> <p>(b) in column (2) opposite the mention of “No. 29 of 1998”, “Food Safety Authority of Ireland Act 1998”, and</p> <p>(c) in column (3) opposite the mention of the “Food Safety Authority of Ireland Act 1998”, “section 43(1)”.</p>
6.	Third Schedule	<p>By inserting in Part I of the Third Schedule in the appropriate chronological place—</p> <p>(a) in column (1) “No. 6 of 2002”,</p> <p>(b) in column (2) opposite the mention of “No. 6 of 2002”, “Public Health (Tobacco) Act 2002”, and</p> <p>(c) in column (3) opposite the mention of the “Public Health (Tobacco) Act 2002”, “section 20(1)”.</p>
7.	Third Schedule	<p>By inserting in Part I of the Third Schedule in the appropriate chronological place—</p> <p>(a) in column (1) “No. 17 of 2006”,</p> <p>(b) in column (2) opposite the mention of “No. 17 of 2006”, “Health (Repayment Scheme) Act 2006”, and</p> <p>(c) in column (3) opposite the mention of the “Health (Repayment Scheme) Act 2006”, “section 12(4)”.</p>
8.	Third Schedule	<p>By inserting in Part I of the Third Schedule in the appropriate chronological place—</p> <p>(a) in column (2) “<i>Health Act 2007</i>”, and</p> <p>(b) in column (3), opposite the mention of the “<i>Health Act 2007</i>”, “<i>section 84</i>”.</p>
9.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 288 of 1976”,</p> <p>(b) in column (2) opposite the mention of “No. 288 of 1976”, “The European Communities (Recognition of Medical Qualifications) Regulations 1976”, and</p> <p>(c) in column (3) opposite the mention of the “The European Communities (Recognition of Medical Qualifications) Regulations 1976”, “Article 8(b)”.</p>
10.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 237 of 1980”,</p> <p>(b) in column (2) opposite the mention of “No. 237 of 1980”, “The European Communities (Recognition of General Nursing Qualifications) Regulations 1980”, and</p> <p>(c) in column (3) opposite the mention of the “The European Communities (Recognition of General Nursing Qualifications) Regulations 1980”, “Article 7(b)”.</p>
11.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 20 of 1983”,</p>

Item	Provision affected	Amendment
		<p>(b) in column (2) opposite the mention of “No. 20 of 1983”, “The European Communities (Recognition of Midwifery Nursing Qualifications) Regulations 1983”, and</p> <p>(c) in column (3) opposite the mention of the “The European Communities (Recognition of Midwifery Nursing Qualifications) Regulations 1983”, “Article 8(b)”.</p>
12.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 226 of 1993”,</p> <p>(b) in column (2) opposite the mention of “No. 226 of 1993”, “Nursing Homes (Care and Welfare) Regulations 1993”, and</p> <p>(c) in column (3) opposite the mention of the “Nursing Homes (Care and Welfare) Regulations 1993”, “Article 20”.</p>
13.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 279 of 1986”,</p> <p>(b) in column (2) opposite the mention of “No. 279 of 1986”, “The Health Research Board (Establishment) Order 1986”, and</p> <p>(c) in column (3) opposite the mention of the “The Health Research Board (Establishment) Order 1986”, “Article 23”.</p>
14.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 252 of 1994”,</p> <p>(b) in column (2) opposite the mention of “No. 252 of 1994”, “The European Communities (Medical Devices) Regulations 1994”, and</p> <p>(c) in column (3) opposite the mention of the “The European Communities (Medical Devices) Regulations 1994”, “Articles 24A and 26(1)(c)”.</p>
15.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 253 of 1994”,</p> <p>(b) in column (2) opposite the mention of “No. 253 of 1994”, “The European Communities (Active Implantable Medical Devices) Regulations 1994”, and</p> <p>(c) in column (3) opposite the mention of the “The European Communities (Active Implantable Medical Devices) Regulations 1994”, “Article 20(1)(c)”.</p>
16.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 97 of 1997”,</p> <p>(b) in column (2) opposite the mention of “No. 97 of 1997”, “The National Social Work Qualifications Board (Establishment) Order 1997”, and</p> <p>(c) in column (3) opposite the mention of the “The National Social Work Qualifications Board (Establishment) Order 1997”, “Article 37”.</p>
17.	Third Schedule	<p>By inserting in Part II of the Third Schedule—</p> <p>(a) in column (1) “No. 120 of 1997”,</p> <p>(b) in column (2) opposite the mention of “No. 120 of 1997”, “The National Council on Ageing and Older People (Establishment) Order 1997”, and</p> <p>(c) in column (3) opposite the mention of the “The National Council on Ageing and Older People (Establishment) Order 1997”, “Article 24”.</p>

Item	Provision affected	Amendment
18.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 278 of 1997”,</p> <p>(b) in column (2) opposite the mention of “No. 278 of 1997”, “The Women’s Health Council (Establishment) Order 1997”, and</p> <p>(c) in column (3) opposite the mention of the “The Women’s Health Council (Establishment) Order 1997”, “Article 24”.</p>
19.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 187 of 1971”,</p> <p>(b) in column (2) opposite the mention of “No. 187 of 1971”, “St. James Hospital Board (Establishment) Order 1971”, and</p> <p>(c) in column (3) opposite the mention of the “St. James Hospital Board (Establishment) Order 1971”, “Article 29”.</p>
20.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 253 of 1999”,</p> <p>(b) in column (2) opposite the mention of “No. 253 of 1999”, “St Luke’s Hospital Board (Establishment) Order 1999”, and</p> <p>(c) in column (3) opposite the mention of the “St Luke’s Hospital Board (Establishment) Order 1999”, “Article 25”.</p>
21.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 376 of 1999”,</p> <p>(b) in column (2) opposite the mention of “No. 376 of 1999”, “The National Council for the Professional Development of Nursing and Midwifery (Establishment) Order 1999”, and</p> <p>(c) in column (3) opposite the mention of the “The National Council for the Professional Development of Nursing and Midwifery (Establishment) Order 1999”, “Article 25”.</p>
22.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 109 of 2000”,</p> <p>(b) in column (2) opposite the mention of “No. 109 of 2000”, “The Pre-Hospital Emergency Care Council (Establishment) Order 2000”, and</p> <p>(c) in column (3) opposite the mention of the “The Pre-Hospital Emergency Care Council (Establishment) Order 2000”, “Article 35”.</p>
23.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 304 of 2001”,</p> <p>(b) in column (2) opposite the mention of “No. 304 of 2001”, “European Communities (In Vitro Diagnostic Medical Devices) Regulations 2001”, and</p> <p>(c) in column (3) opposite the mention of the “European Communities (In Vitro Diagnostic Medical Devices) Regulations 2001”, “Articles 17(4)(c) and 20”.</p>
24.	Third Schedule	By inserting in Part II of the Third Schedule— <p>(a) in column (1) “No. 446 of 2001”,</p> <p>(b) in column (2) opposite the mention of “No. 446 of 2001”, “Crisis Pregnancy Agency (Establishment) Order 2001”, and</p>

Item	Provision affected	Amendment
		(c) in column (3) opposite the mention of the "Crisis Pregnancy Agency (Establishment) Order 2001", "Article 24".
25.	Third Schedule	By inserting in Part II of the Third Schedule— (a) in column (1) "No. 179 of 2004", (b) in column (2) opposite the mention of "No. 179 of 2004", "National Treatment Purchase Fund Board (Establishment) Order 2004", and (c) in column (3) opposite the mention of the "National Treatment Purchase Fund Board (Establishment) Order 2004", "Article 16".
26.	Third Schedule	By inserting in Part II of the Third Schedule— (a) in column (1) "No. 451 of 2004", (b) in column (2) opposite the mention of "No. 451 of 2004", "National Haemophilia Council (Establishment) Order 2004", and (c) in column (3) opposite the mention of the "National Haemophilia Council (Establishment) Order 2004", "Article 23".

PART 4

AMENDMENTS TO HEALTH ACT 2004

Item	Provision affected	Amendment
1.	Section 2	In subsection (1), by deleting the definition of "service provider" and substituting the following definition: "service provider" means a person who— (a) enters into an arrangement under section 38 to provide a health or personal social service on behalf of the Executive, or (b) is in receipt of assistance under— (i) section 39 in an amount that exceeds an amount prescribed for the purposes of paragraph (b)(i) of the definition of 'service provider' in section 2 of the <i>Health Act 2007</i> , or (ii) section 10 of the <i>Child Care Act 1991</i> in an amount that exceeds an amount prescribed for the purposes of paragraph (b)(ii) of the definition of 'service provider' in section 2 of the <i>Health Act 2007</i> ;"
2.	Section 5A	By adding the following section after section 5: "Expenses of the Executive. 5A.—The expenses incurred by the Executive are, with the approval of the Minister, to such extent as may be sanctioned by the Minister for Finance, payable out of money provided by the Oireachtas."
3.	Section 7	In subsection (5), by deleting "and" at the end of paragraph (d), by substituting ", and" for the full stop at the end of paragraph (e) and by adding the following paragraph: "(f) any standards set by the Health Information and Quality Authority, in so far as practicable and subject to the resources available to the Executive."

Item	Provision affected	Amendment
4.	Section 38	<p>(a) In subsection (3), by deleting paragraph (b) and substituting the following paragraph:</p> <p>“(b) submit such accounts annually for examination, and”.</p> <p>(b) After subsection (3) by inserting the following:</p> <p>“(4) The Executive may make an arrangement for the provision of a health or personal social service in accordance with this section by seeking and accepting a tender for the provision of such services.</p> <p>(5) A service provider providing a service in accordance with subsection (4) is exempt from the requirements of subsections (2) and (3).”.</p>
5.	Section 41	In subsection (2) after the words “The Minister may” delete the words “by order”.

PART 5

AMENDMENT TO CIVIL REGISTRATION ACT 2004

Item	Provision affected	Amendment
1.	Section 51	<p>In subsection (2) delete paragraph (c) and substitute the following paragraph:</p> <p>“(c) the solemnisation takes place in a place that is open to the public, unless an tArd-Chláraitheoir or a superintendent registrar—</p> <p>(i) is satisfied on the basis of a certificate of a registered medical practitioner that one or both of the persons to be married is too ill to attend at a place that is open to the public, and</p> <p>(ii) gives approval to the solemniser to the solemnisation taking place at another place—</p> <p>(I) chosen by the persons to be married, and</p> <p>(II) agreed to by the solemniser.”.</p>
2.	Section 52	<p>Insert the following subsection at the end of section 52:</p> <p>“(4) Subsection (1) does not apply in respect of a marriage solemnised in the circumstances described in subparagraph (i) and (ii) of section 51(2)(c).”.</p>

PART 6

AMENDMENT TO DISABILITY ACT 2005

Item	Provision affected	Amendment
1.	Section 10	By deleting “under section 5 of the Act of 2004”.

PART 7

AMENDMENT TO HEALTH (REPAYMENT SCHEME) ACT 2006

Item	Provision affected	Amendment
1.	Section 2	<p>(a) By inserting the following definition after the definition of “act”:</p> <p>“‘Agency’ means the National Treasury Management Agency established by section 3 of the National Treasury Management Agency Act 1990;”,</p> <p>and</p> <p>(b) By inserting the following definitions after the definition of “applicant”:</p> <p>“‘Authority’ means the Irish Financial Services Regulatory Authority established by section 33B of the Central Bank Act 1942 (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003);</p> <p>‘central treasury services’ means central treasury services within the meaning of section 18 of the National Treasury Management Agency (Amendment) Act 2000;”.</p> <p>(c) In the definition of “connected person”, in paragraph (b), by inserting “or the county registrar concerned, as the case requires,” after “Wards of Court”.</p>
2.	Section 9	<p>(a) In subsection (2)—</p> <p>(i) by substituting the following for paragraph (a)(ii):</p> <p>“(ii) as follows:</p> <p>(I) with such financial institutions as are authorised by the Authority;</p> <p>(II) in securities of the Government (including savings certificates); or</p> <p>(III) in securities guaranteed as to capital and interest by the Minister for Finance,”</p> <p>(ii) in paragraph (b), by deleting “or” at the end,</p> <p>(iii) in paragraph (c), by deleting “lodged.” and substituting “lodged, and”,</p> <p>(iv) by inserting the following after paragraph (c):</p> <p>“(d) may deposit moneys held in any patient’s private property account, unless otherwise directed in writing by the account holder or a next friend appointed by a court, in central treasury services,</p> <p>(e) may request the Agency to manage some or all of the moneys in patients’ private property accounts subject to such conditions as the Executive and the Agency may agree to from time to time,</p> <p>(f) may amend or revoke a request referred to in paragraph (e) (but without prejudice to the validity of any act done pursuant to the request before the amendment or revocation, as the case may be);”,</p> <p>and</p> <p>(b) by inserting the following after subsection (2):</p>

Item	Provision affected	Amendment
		<p>“(2A) The Agency shall, by virtue of this subsection, have all such powers as are necessary for or incidental to the carrying out of a request referred to in subsection (2)(e).”.</p>
3.	Section 11	<p>By deleting subsection (12) and substituting the following:</p> <p>“(12) The Executive, in respect of moneys standing to the credit of the Fund (other than such moneys for the time being required for the purposes of making payments out of the Fund pursuant to subsection (1))—</p> <p style="padding-left: 40px;">(a) may invest such moneys—</p> <p style="padding-left: 80px;">(i) with such financial institutions as are authorised by the Authority,</p> <p style="padding-left: 80px;">(ii) in securities of the Government (including savings certificates), or</p> <p style="padding-left: 80px;">(iii) in securities guaranteed as to capital and interest by the Minister for Finance,</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">(b) may deposit such moneys in central treasury services.</p> <p>(13) The Executive—</p> <p style="padding-left: 40px;">(a) may request the Agency to manage some or all of the moneys standing to the credit of the Fund (other than such moneys for the time being required for the purposes of making payments out of the Fund pursuant to subsection (1)) subject to such conditions as the Executive and the Agency may agree to from time to time,</p> <p style="padding-left: 40px;">(b) may amend or revoke a request referred to in paragraph (a) (but without prejudice to the validity of any act done pursuant to the request before the amendment or revocation, as the case may be).</p> <p>(14) The Agency shall, by virtue of this subsection, have all such powers as are necessary for or incidental to the carrying out of a request referred to in subsection (13)(a).”.</p>