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**AN BILLE SLÁINTE 2004  
HEALTH BILL 2004**

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**EXPLANATORY MEMORANDUM**

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*Background*

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

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

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

*Object of the Bill*

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

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

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

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

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

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

### **Part 1 — Preliminary Matters**

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

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

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

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

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

### **Part 2 — Establishment and Functions of the Health Service Executive**

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

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

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

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

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

### **Part 3 — The Board of the Health Service Executive**

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

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

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

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

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

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

### **Part 4 — Chief Executive Officer**

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

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

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

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

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

## **Part 5 — Employees and Advisers**

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

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

*Section 24* allows the Executive to appoint advisers.

## **Part 6 — Standards and Disqualifications**

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

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

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

## **Part 7 — Accountability and Funding**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Part 8 — Public Representation and User Participation**

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

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

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

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

### **Part 9 — Complaints**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Part 12 — Miscellaneous Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

## **Schedule 3 — Transfer of Functions and References to Functional Areas**

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

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

#### **Schedule 4 — Repeals and Revocations**

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

#### **Schedule 5 — Savings and Transitional Provisions**

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

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

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

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

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

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

#### **Schedule 6 — Amendment of Other Acts**

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

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