Background

The Programme for Government sets out a clear vision for the future of the health services. Central to this is greater accountability by the Health Service Executive (HSE) to the Minister for Health and the Department of Health. That process has been ongoing since the Minister announced major changes in the composition of the HSE Board in April 2011 and signalled that the Board structure would be replaced.

The Bill provides for the abolition of the Board of the HSE under the Health Act 2004 and the putting in place of a new governance structure. The Board will be replaced by a Directorate, headed by a Director General and with strengthened accountability arrangements for the HSE.

The Programme for Government also commits to the eventual dissolution of the HSE as the healthcare reform programme advances. The Directorate structure is therefore an interim measure, intended to help put in place a more direct line of accountability between the HSE and the Minister during what will be a transitional period as the health reform programme progresses further. The aim is to have a clear focus on service management during this transitional phase.

Purpose of Bill

The Minister has responsibility for health service policy while the HSE has operational responsibility for running the health services. However, it is essential that the HSE is properly accountable to the Minister for its performance. The purpose of the Bill, therefore, is to provide a framework for a new governance structure and associated new administrative structures which are designed to:

(i) make the HSE more directly accountable to the Minister for Health, who in turn is accountable to the people through the Oireachtas;

(ii) help prepare the service delivery and funding systems for the next phase of the health reform programme; and
(iii) facilitate further changes in responsibilities which achieve
greater integration and less duplication in relation to
national support functions.

Accordingly, the Bill will facilitate the Department, on behalf of the
Minister, in challenging and supporting the HSE. In that regard, the
legislation will, amongst other things, (a) strengthen the provisions
for Ministerial policy directions and priority setting and (b) require
the HSE to account for its performance to the Minister through the
Secretary General of the Department of Health.

Provisions

The Bill will:

(i) abolish the Board and CEO structure of the Health
Service Executive (HSE) and provide for a Directorate
to be the new governing body for the HSE in place of
the Board, headed by a Director General;

(ii) provide for further accountability arrangements for the
HSE; and

(iii) provide for related matters including a number of
technical amendments to take account of the
replacement of the Board/CEO structure by the
Directorate/Director General structure.

The new provisions build on and strengthen existing accountability
arrangements under the Health Act 2004 which are being retained:
for example, service plans, annual reports and the provision of
information to the Minister.

The Bill contains 3 Parts.

Part 1 Preliminary Matters

Part 1 of the Bill contains 3 sections.

Section 1 of the Bill sets out the Short Title, collective citation,
construction and commencement provisions.

Section 2 is the definitions section.

Section 3 repeals Parts 3 and 4, and sections 68 and 69, of the
Health Act 2004.

Part 2 Amendment of Health Act 2004

Part 2 of the Bill contains provisions to amend the Health Act
2004 which provided for the establishment of the HSE.

Section 4 provides for the insertion of new definitions into section
2, Interpretation, of the 2004 Act to reflect the new directorate
structure which will be chaired by the Director General and consist
of appointed directors.

Section 5 amends section 10, Directions from Minister, of the
Health Act 2004. Section 10 of the Health Act 2004 allows the
Minister to give general written directions to the HSE in relation to
the Act and to give specific directions on the submission by the HSE
to the Minister of reports and information in relation to the
performance of its functions. Section 10 will be amended to provide also for Ministerial directions on the implementation of Ministerial and Government policies and objectives relating to HSE functions where the Minister believes that the HSE is not having sufficient regard to such objectives or policies in performing its functions. Directions may not be made in relation to individual patients or service users.

Section 6 inserts two new sections, section 10A (Setting of priorities by Minister) and 10B (Limitation as to exercise of powers under sections 10 and 10A) into the Health Act 2004. Under section 10A, the Minister will be empowered to (a) determine priorities to which the HSE must have regard in preparing its service plan and (b) establish performance targets for the HSE. Before specifying priorities or performance targets under this section the Minister must have regard to—

(a) best practice as respects the service the subject of the priority or performance target,

(b) outcomes for patients and recipients of services likely to be affected by the priority or performance target which the Minister is considering specifying, and

(c) the effect that specifying the priority or performance target concerned would be likely to have on other services provided by or on behalf of the Executive.

The Bill also provides for the Minister to consult with the Minister for Children and Youth Affairs when setting priorities and performance targets for the HSE before specifying priorities or performance targets in respect of functions of the Executive which relate to the functions of the Minister for Children and Youth Affairs. Again, priorities and targets will not apply to individual patients.

These provisions are intended to facilitate stronger accountability arrangements for the HSE and add to existing provisions such as complying with directions under section 10, preparing the service plan or code of governance.

Section 7 amends the 2004 Act by inserting a new Part — “Part 2A Directorate and Director General of Health Service Executive” — after Part 2. Part 2A provides for the establishment of a governing authority for the HSE, known as a Directorate, with authority to carry out the HSE's functions on behalf of the HSE. It inserts sections 16A to 16M into the Health Act 2004.

Section 16A provides that the Directorate will consist of a Director General and other persons referred to in the Bill as appointed directors. To offer flexibility and allow the size of the governing structure to adapt to changing circumstances, the Bill does not specify a fixed number of members for the Directorate but instead provides for a maximum of 7 and a minimum of 3 members, including the Director General who is automatically a member — and chairperson — of the Directorate. Other directors will be appointed by the Minister from among HSE employees who hold the position of national director in the HSE which is an administrative employment grade.

Section 16B sets out the detail in relation to the term of office of an appointed director. The term of office for a member appointed to the Directorate is 3 years and he or she may be re-appointed by
the Minister for a second or subsequent term. An appointed director will cease to be a member of the Directorate if they cease to be a national director in the HSE.

Section 16C sets out the role of the Directorate which will have collective responsibility as the governing authority for the HSE and the authority to perform the HSE’s functions. Subject to any directions of the Minister, the Directorate may delegate HSE functions to the Director General.

The Directorate is accountable to the Minister for the performance of the HSE’s functions as well as its own. As chairperson, the Director General will account to the Minister on behalf of the Directorate in regard to how the HSE’s functions are performed. He or she will do this through the Secretary General of the Department of Health. The Directorate must also inform the Minister of any matter that it considers should be brought to the Minister’s attention. This requirement to inform is in addition to existing arrangements such as those in Part 7A of the Health Act 2004.

Section 16D sets out eligibility for appointment and reasons for removal from office of persons appointed to the Directorate. These are similar to the provisions in other legislation in relation to Board appointments and removals.

Section 16E provides that the first Director General will be appointed by the Minister. Subsequent Director Generals will be appointed by the Minister following a recruitment process under the Public Service Management (Recruitment and Appointments) Act 2004. The appointment is made on terms and conditions as determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.

Section 16F sets out the eligibility requirements for appointment as Director General as well as circumstances where the Director General may be removed from office.

Section 16G provides for the general functions and role of Director General. These include managing and controlling the business of the HSE. In the operational aspects of his or her role, the Director General is answerable to the Directorate, as the governing authority for the HSE.

Section 16H sets out the arrangements for the delegation of functions by the Director General. A key objective of the new HSE governance arrangements is to facilitate a system whereby authority to make operational decisions is delegated as close as possible to the point of service delivery. Delegated functions may be subdelegated by the Director General to HSE employees. This will be subject to any directions from the Directorate.

Section 16I provides for the attendance by the Director General before Oireachtas Committees.

Section 16J sets out the accountability arrangements of appointed directors to the Director General (as the person at the head of the administrative structure) for the performance of their functions as employees of the Executive.

Section 16K provides for meetings and procedures of the Directorate. Section 16L sets out the position in relation to vacancies in the membership of the Directorate. Section 16M provides detail in relation to the power of the Directorate to establish committees.
for purposes such as providing advice and assistance to it in relation to the performance of its functions. These committees do not include an audit committee which is provided for elsewhere in the Bill.

**Section 8** provides for an amendment to section 23 of the 2004 Act. Section 23 of the Health Act contains superannuation provisions for HSE employees. Section 23 is amended to refer to the Director General.

**Section 9** provides for an amendment to section 25 of the 2004 Act. Section 25 of the Health Act 2004 sets out provisions in regard to standards of integrity for Board members, committee members, the CEO and other HSE employees, advisors and employees of advisors. Section 25 is amended to take account of the abolition of the Board/CEO structure and the introduction of the Directorate structure.

**Section 10** provides for an amendment to section 26 of the Act of 2004. Section 26 of the Health Act 2004 sets out provisions relating to unauthorised disclosure of confidential information by Board members, committee members, the CEO or other HSE employees, advisors or employees of advisors. Section 26 is amended to take account of the new governance structure and to include the Directorate and Directorate committee members within the relevant provisions. It is also amended to take account of protected disclosures (Whistleblowing) provisions for the HSE under the Health Act 2004.

**Section 11** provides for an amendment to section 27 of the Act of 2004. Section 27 contains disqualification provisions relating to Board members and Board committee members and membership of either House of the Oireachtas, the European Parliament or local authorities. Section 11 amends it to take account of the new HSE structures.

**Section 12** provides for an amendment to section 31 of the Act of 2004. Section 31 deals with the preparation of a service plan by the HSE and the submission of the service plan to the Minister. Currently, the Executive prepares a service plan in line with certain requirements, adopts the plan and submits it to the Minister for approval. The Minister must either approve the service plan or issue a direction to amend the plan if requirements are not met. Section 31 is amended to provide for the HSE to prepare a plan in line with current criteria and also taking account of priorities determined and targets set by the Minister. While the Minister may direct the HSE to amend the plan if requirements are not met, the Minister may now also amend the plan, following consultation with the HSE. In addition, section 31 is amended to provide for the Minister to consult with the Minister for Children and Youth Affairs.

**Section 13** provides for an amendment to section 32 of the 2004 Act. Section 32 provides for the Minister to direct the HSE to submit an amended service plan after he or she has approved a plan. It also provides for arrangements where the HSE amends an approved service plan. The changes to section 32 are consequential to the changes to section 31.

**Section 14** provides for an amendment to section 33 of the 2004 Act. Section 33 states that the HSE shall manage health and personal social services indicated in an approved service plan so as to ensure that the services are delivered in accordance with that plan. Section 14 adds a new subsection providing that the Minister may direct the HSE to take specified measures in relation to the implementation of the plan.
Section 15 provides for an amendment to section 35 of the 2004 Act. Section 35 requires the HSE to submit a code of governance to the Minister for approval and sets out what should be included in the code. Subsection (1)(b) states that the code should contain an outline of the structure of the HSE, including the roles and responsibilities of the Board. This is amended consequent to the new Directorate structure.

Section 16 provides for an amendment to section 37 of the Act of 2004 which sets out arrangements for the annual report. Section 37(2) provides for what should be included in the report including, under section 37(2)(g), any other information the HSE thinks appropriate or the Minister may specify. Section 37(2)(g) is amended to refer to consultation by the Minister with the Minister for Children and Youth Affairs.

Section 17 inserts a new Part after 7A — Accounting Officer and Audit Committee — which is called Part 7B. Under section 40G, the Director General will be the Accounting Officer for the HSE.

Sections 40H and I deal with the establishment and functions of an audit committee to advise the Director General on financial matters relating to his or her functions and other related matters. Specifically, the audit committee shall—

(a) advise the Director General on financial matters relating to his or her functions,

(b) report in writing at least once in every year to the Director General on those matters and on the activities of the committee in the previous year, and

(c) send a copy of that report to the Minister and the Directorate.

The Director General is required to furnish to the audit committee information on any financial matter or procedure necessary for the performance of its functions when requested to do so and where such information relates to—

(a) any contract that the Executive proposes to enter into involving expenditure of an amount in excess of a threshold specified by the committee, and

(b) any legal proceedings taken or threatened against the Executive that may give rise to a potential financial liability.

Section 18 is a technical amendment to section 51 of the Health Act 2004 consequent to the new structure. Section 51 relates to the complaints framework for the HSE.

Section 19 relates to section 76 of the Health Act 2004 which deals with the effect of delegation and subdelegation of functions.

Section 20 amends section 77 of the 2004 Act which covers certificates of evidence concerning delegation of functions in legal proceedings.

Section 21 amends Schedule 2 to the 2004 Act by providing that the seal of the Executive will be authenticated by the signature of (a) the Director General or an appointed director and (b) an employee of the Executive authorised by the Directorate to act in that behalf.
Section 22 provides that references in legislation to the Board and CEO are to be construed as references to the Directorate and the Director General.

**Part 3 Transitional Measures**

Section 23 is a saver provision that provides that notwithstanding the repeals effected by section 3 and the other amendments of the 2004 Act effected by the Bill the performance of functions or the taking of any action or doing of any thing under the Act of 2004 which was commenced by the Executive or the CEO may be carried out by the Directorate or Director General as appropriate. A similar situation will apply in relation to delegations and subdelegations.

**Financial Implications**

It is not expected that the proposed legislation will result in costs to the Exchequer.

*Department of Health,*  
*July, 2012.*