



Bill Digest

Children's Health Bill 2018

Bill No. 80 of 2018

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Abstract

The [*Children's Health Bill 2018*](#) aims to establish a new body called Children's Health Ireland to plan and deliver paediatric services in Ireland. The Bill sets out the functions and object of Children's Health Ireland, and technical provisions for the transfer of staff, property, assets and liabilities.



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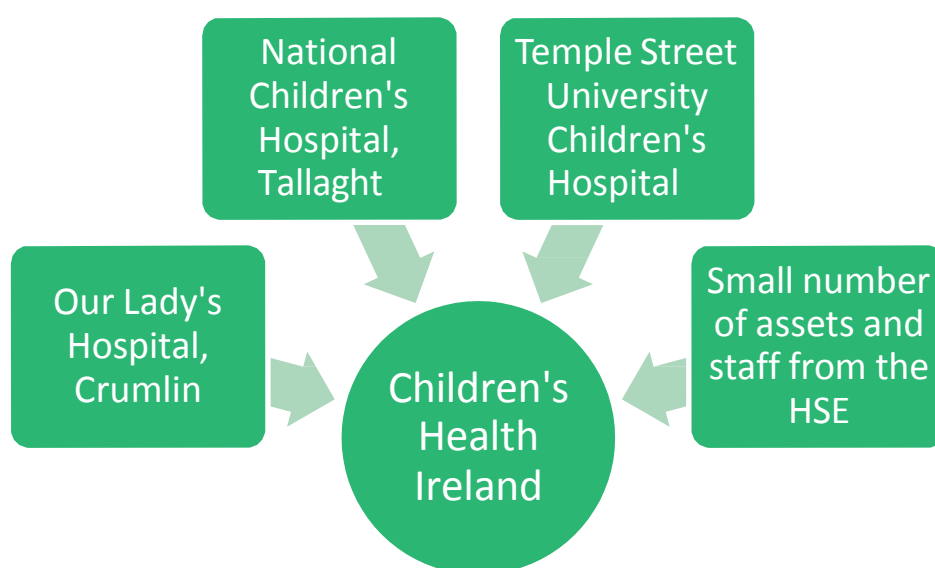
Summary

This Bill Digest will focus on the central changes proposed in the Bill. These concern:

- The establishment and functions of Children's Health Ireland;
- The new Board of Children's Health Ireland;
- The transfer of certain employees, property and rights and liabilities to Children's Health Ireland; and
- The National Paediatric Hospital Development (NPHD) Board.

This Digest does not focus extensively on the background to the new children's hospital and discussion relating to its location or name. Commentary on these issues can be found on the Bill Tracker page [here](#). The Bill is largely technical and contains a number of standard provisions for establishing a new body, mergers and transfers.

Figure 1: Overview of proposed organisational change in the Children's Health Bill 2018



The Bill provides for:

- the transfer of employees, land, property, rights and liabilities, and records from Crumlin Hospital to Children's Health Ireland;
- the transfer of employees, property, rights and liabilities, and records from Temple Street Hospital to Children's Health Ireland; and
- the transfer of certain employees, property, rights and liabilities and records from Tallaght Hospital and the Health Service Executive to Children's Health Ireland.

Table 1 below sets out a summary of the Bill's provisions. The Bill is comprised of 67 sections in nine parts.

Table 1: Summary of the Bill's provisions

Section	Title	Effect
Part 1: Preliminary and General		
1.	Short title and commencement	This section provides for the short title and commencement provisions of the Bill once enacted.
2.	Interpretation	This section contains a number of definitions used throughout the Bill, for example medical records which mean records created, used and stored principally for the purposes of patient care and treatment containing data concerning health or genetic data within the meaning of the General Data Protection Regulation and any associated biological materials. It does not define 'child', 'children' or 'paediatric'.
3.	Expenses	This section provides that the expenses incurred by the Minister for Health under the Bill, when enacted, must be sanctioned by the Minister for Public Expenditure and Reform and paid out of monies provided by the Oireachtas.
Part 2: Establishment and Functions of Children's Health Ireland		
4.	Establishment day	This section provides that the Minister for Health must specify an establishment day for Children's Health Ireland by way of Ministerial Order.
5.	Establishment of Children's Health Ireland	This section provides that on the establishment day a body to be known Children's Health as Children's Health Ireland will be established to perform the statutory functions set out in the proposed Act.
6.	Object and functions	<p>Section 6 sets out the objective and functions of Children's Health Ireland. These include:</p> <ul style="list-style-type: none"> •Improving, promoting and protecting the health and well-being of children; •Planning, managing and developing paediatric services in the hospital; •Facilitating professional development and research and innovation; •Advocating on behalf of children and young people in respect of healthcare issues; and •Engaging and supporting fundraising. <p>In the performance of its functions Children's Health Ireland must have regard to the following:</p> <ul style="list-style-type: none"> •The objectives of the public health system and the role of Children's Health Ireland within that system; •The promotion of equity of access to paediatric services; •The most beneficial, effective and efficient use of resources; and •The views of children and young people in the development and delivery of services.
6.	Policy directions	This section will oblige Children's Health Ireland to have regard to Government policy when performing its functions. It further provides that Children's Health Ireland must comply with policies and guidelines notified to it by the Minister.

8.	Subsidiaries, partnerships and other matters	This section provides that Children's Health Ireland may, among other things, form, establish or acquire corporate bodies (subject to Ministerial consents). The purpose of these bodies include: <ul style="list-style-type: none"> • Managing engagement with academic partners; and • Pursuing philanthropic and fund raising activities.
9.	Land, property, gifts and borrowing	This section provides that Children's Health Ireland may (subject to HSE approval): <ul style="list-style-type: none"> • acquire, hold and dispose of land and property; • borrow money; and • accept gifts. Any gift made to the three hospitals (in respect of paediatric services the case of Tallaght Hospital) on or after the commencement of Parts 5, 6, or 7 will be deemed as gifts to Children's Health Ireland.
10.	Accounts	This section sets out Children's Health Ireland's accounting and reporting obligations. Annual financial accounts must be submitted to the Comptroller and Auditor General for audit, presented to the Minister and laid before the Houses. Section 10 also obliges Children's Health Ireland to co-operate with a person appointed by the Minister to examine its books and records.
11.	Annual report	Section 11 provides that Children's Health Ireland must no later than 21 May each year prepare its annual report. This report must be submitted to the Minister and laid before the Houses.

Part 3: Board of Children's Health Ireland

12.	Board of Children's Health Ireland	This section provides that a Board of 12 members (including a chairperson) be appointed by the Minister. Members of the Board must have experience or expertise in matters connected with the functions of Children's Hospital Ireland or corporate governance and management. The Board must ensure the objectives and functions of Children's Health Ireland are met. It must act in good faith with care, skill and diligence. The day to day running of Children's Health Ireland may be delegated by the Board to the Chief Executive Officer.
13.	Membership of Board on establishment day	This section provides that the chairperson and members of the current Children's Hospital Group Board must be appointed to the Board of Children's Health Ireland on establishment day. It provides for the staggering of the terms of office of such members (3 years and 5 years determined by lot) to ensure continuity as new members are appointed.
14.	Subsequent Board	This section provides that appointments to subsequent Boards will be for not more than 4 years and will be made by ministerial appointment following consultation with the chairperson (as to the necessary expertise and experience). It provides that vacancies caused by the passage of time will be filled on the following basis: <ul style="list-style-type: none"> • 4 appointed on the nomination of the Board; • 2 chosen by the Minister. Members appointed on the nomination of the Board can not exceed 8 at any given time. Section 14 provides that in so far as is practicable there should be gender balance on the Board. Employees of Children's Health Ireland are not eligible to be Board members and members may not serve on the Board for more than 2 consecutive terms (after that they are eligible for reappointment).

15.	Casual vacancies	This section provides for the filling of vacancies on the Board on the death, resignation, or cessation of office of a member. It also provides for the alternation of appointments between the Minister and the Board in specified circumstances.
16.	Meetings of Board	This section obliges the Board to hold at least 6 meetings in every year. The quorum for a meeting is 6 members. The chairperson may convene a meeting at any reasonable time and members may convene a meeting where: <ul style="list-style-type: none"> • 6 members have signed a request to the chairperson to hold a meeting; • The chairperson refuses or fails to call a meeting within 7 days of the request. Questions are to be determined by majority vote and the chairperson will have the casting vote.
17.	Conditions of office of members of Board	This section sets out the conditions of office of membership of the Board, and how a member might be removed from office.
18.	Removal of all members of Board from office	This section provides that the Minister may remove the entire Board where it: <ul style="list-style-type: none"> • fails to achieve a quorum for 3 consecutive meetings; • fails to comply a judgment or order of a Court; or where the Minister is satisfied following a independent review that the Board is not performing its functions in an effective manner. The Minister may, if of that opinion, appoint a person to conduct a review of the performance of the Board's functions and submit a report to him or her. The Board is obliged to co-operate with any such review and are entitled to a copy of same within 21 days of it being received by the Minister.
19.	Committees of Board	This section provides for the Board to establish advisory Committees. Persons who are not Board members may be appointed based on their specialist knowledge and experience.
20.	Membership of either House of Oireachtas or European Parliament or local authority	This is a standard provision disqualifying members of either House of the Oireachtas, the European Parliament, or a local authority from becoming or continuing to be a member of the Board, a Committee member or CEO.
21.	Expenses of members of Board and committees	This section provides for the payment of the expenses of Board or Committee members.
22.	Seal of Children's Health Ireland	This section provides that following its establishment Children's Health Ireland must acquire a seal. It provides for authentication and the taking of judicial notice of the seal.
Part 4: Chief Executive Officer and Employees of Children's Health Ireland		
23.	Chief Executive Officer	This section provides for the appointment of a CEO by the Board with the consent of the Minister. The CEO of the Children's Hospital Group must be appointed as the first CEO of the Board. The CEO may not hold any other office or position without the consent of the Board and may be removed by the Board for stated reasons.

24.	Functions of Chief Executive Officer	This section sets out the functions of the CEO which include: <ul style="list-style-type: none"> the management and control of the administration of Children's Health Ireland; performing functions as may be determined by the Board; providing the Board with performance information as required. The CEO is accountable to the Board and must when requested in writing give evidence to the Public Accounts Committee. Where appearing before the Committee the CEO will appear as an accountable person and not as an accounting officer. In performing his or her functions the CEO must not question or express an opinion on a Government or Ministerial policy.
25.	Delegation of functions of Chief Executive Officer	This section provides for the delegation of the functions of the CEO to an employee of Children's Health Ireland.
26.	Employees of Children's Health Ireland	This section provides for the appointment of employees in line with the recruitment policies of the Board. It also provides for the determination of the terms and conditions of such employment.
27.	Superannuation	This section contains provisions in relation to the pension schemes of persons transferred to Children's Health Ireland and newly appointed staff under section 26.
Part 5: Transfer of Employees, Land, Property, Rights and Liabilities of Crumlin Hospital to Children's Health Ireland		
28.	Transfer of employees from Crumlin Hospital to Children's Health Ireland	This section provides that the employees who transfer from Crumlin Hospital to Children's Health Ireland will be on terms and conditions of employment (such as tenure and superannuation) which are not less favourable than they were subject to before the transfer.
29.	Transfer of land from Crumlin Hospital to Children's Health Ireland	Section 29 of the Bill provides for the transfer of land from Crumlin Hospital to Children's Health Ireland on commencement of the Part 5 of the Bill without any conveyance or assignment.
30.	Transfer of property of Crumlin Hospital to Children's Health Ireland	This provides that all property from Crumlin will transfer to new body.
31.	Transfer of rights and liabilities of Crumlin Hospital to Children's Health Ireland	This provides for the transfer of the rights and liabilities from Crumlin Hospital to Children's Health Ireland.
32.	Liability for loss occurring before the commencement of this Part	Any liability for loss which occurs before Part 5 of the Bill is enacted will be from Crumlin Hospital to Children's Health Ireland. The situation is different for Tallaght as liability for loss may arise from adult rather than paediatric services.
33.	Provisions consequent upon transfer of land, property, rights and liabilities to Children's Health Ireland	This provides that anything commenced by the Crumlin Hospital which is not completed before the commencement of Part 5 of the Bill will be carried on and completed to Children's Health Ireland.

34.	Preservation of contracts	This provides that provide that contracts, arrangements and agreements made by the Crumlin Hospital will continue to be valid with Children's Health Ireland.
35.	Records	This section provide that relevant records held by the Crumlin Hospital immediately before the commencement of Part 5 must be transferred to Children's Health Ireland on the commencement of Part 5. The records will then be the property of Children's Health Ireland and will be deemed to be held by Children's Health Ireland.
36.	Indemnity for directors of Crumlin Hospital	This provide that the Minister can indemnify a person against all actions or claims however they arise in respect of the discharge by him or her of his or her duties as a director of Crumlin Hospital.
37.	Saving for certain acts	This provides that provide that nothing in this Bill affects the validity of any action relating to paediatric services by Crumlin Hospital done before the commencement of Part 5.
Part 6: Transfer of Employees, Property, Rights and Liabilities of Temple Street Hospital to Children's Health Ireland		
38.	Transfer of employees from Temple Street Hospital to Children's Health Ireland	This section provides that the employees who transfer from Temple Street Hospital to Children's Health Ireland will be on terms and conditions of employment (such as tenure and superannuation) which are not less favourable than they were subject to before the transfer.
39.	Transfer of property of Temple Street Hospital to Children's Health Ireland	This deals with the transfer of certain property from the Temple Street Hospital to Children's Health Ireland. Property includes choses in action.
40.	Transfer of rights and liabilities of Temple Street Hospital to Children's Health Ireland	This provides for the transfer of the rights and liabilities from Temple Hospital to Children's Health Ireland.
41.	Liability for loss occurring before the commencement of this Part	Any liability for loss which occurs before Part 6 of the Bill is enacted will be from Temple Street Hospital to Children's Health Ireland.
42.	Provisions consequent upon transfer of property, rights and liabilities to Children's Health Ireland	This provides that anything commenced by the Temple Street Hospital which is not completed before the commencement of Part 6 of the Bill will be carried on and completed to Children's Health Ireland
43.	Preservation of contracts	This provides that contracts, arrangements and agreements made by the Temple Street Hospital will continue to be valid with Children's Health Ireland.

44.	Records	This section provide that relevant records held by the Temple Street immediately before the commencement of Part 6 must be transferred to Children's Health Ireland on the commencement of Part 6. The records will then be the property of Children's Health Ireland and will be deemed to be held by Children's Health Ireland.
45.	Indemnity for directors of Temple Street Hospital	This provides that the Minister can indemnify a person against all actions or claims however they arise in respect of the discharge by him or her of his or her duties as a director of Temple Street.
46.	Saving for certain acts	This provides that provide that nothing in this Bill affects the validity of any action relating to paediatric services Temple Street done before the commencement of Part 6.
Part 7: Transfer of Certain Employees, Property, Rights and Liabilities of Tallaght Hospital to Children's Health Ireland		
47.	Transfer of certain employees from Tallaght Hospital to Children's Health Ireland	This section provides that the employees who transfer from Tallaght Hospital to Children's Health Ireland will be on terms and conditions of employment (such as tenure and superannuation) which are not less favourable than they were subject to before the transfer.
48.	Transfer of certain property from Tallaght Hospital to Children's Health Ireland	This deals with the transfer of certain property from the Tallaght Hospital to Children's Health Ireland. Property includes choses in action.
49.	Transfer of certain rights and liabilities of Tallaght Hospital to Children's Health Ireland	This provides for the transfer of certain rights and liabilities from Temple Hospital to Children's Health Ireland. These relate to paediatric services.
50.	Liability for loss occurring before the commencement of this Part	This provides that provide that relevant liability for loss which occurs before Part 7 of the Bill is enacted will be transferred from the three hospitals to Children's Health Ireland. The situation is different for Tallaght as liability for loss may arise from adult rather than paediatric services.
51.	Provisions consequent upon transfer of property, rights and liabilities to Children's Health Ireland	This provides that anything commenced by Tallaght Hospital which is not completed before the commencement of Part 7of the Bill will be carried on and completed to Children's Health Ireland
52.	Preservation of contracts	This provides that provide that contracts, arrangements and agreements made by Tallaght Hospital will continue to be valid with Children's Health Ireland.
53.	Records	This section provide that relevant records ¹ held by Tallaght Hospital immediately before the commencement of Part 7must be transferred to Children's Health Ireland on the commencement of Part 7. The records will then be the property of Children's Health Ireland and will be deemed to be held by Children's Health Ireland.

¹ Tallaght also holds the medical records of adult patients and these will not be transferred.

54.	Saving for certain acts	This provides that provide that nothing in this Bill affects the validity of any action relating to paediatric services by Tallaght Hospital done before the commencement of Part 5.
Part 8: Transfer of Certain Employees, Property, Rights and Liabilities of Executive to Children's Health Ireland		
55.	Transfer of certain employees from Executive to Children's Health Ireland	This section provides that employees who transfer from the HSE will be on terms and conditions of employment (such as tenure and superannuation) which are not less favourable than they were subject to before the transfer.
56.	Transfer of certain property, rights and liabilities from Executive to Children's Health Ireland	This deals with the transfer of certain property from the HSE to Children's Health Ireland. Property includes choses in action.
57.	Provisions consequent upon transfer of property, rights and liabilities to Children's Health Ireland	This provides that anything commenced by the HSE which is not completed before the commencement of Part 8 of the Bill will be carried on and completed to Children's Health Ireland
58.	Preservation of contracts	This provides that contracts, arrangements and agreements made by the HSE will continue to be valid with Children's Health Ireland.
59.	Records	Section 59 of the Bill deals with the transfer of records from the HSE to Children's Health Ireland. It provides that records dealing with matters relevant to Children's Health Ireland, held by the HSE and identified by the HSE as appropriate for transfer to Children's Health Ireland, must be transferred to Children's Health Ireland on or after commencement of Part 8 of the Bill. The records will then be the property of Children's Health Ireland and be deemed to be held by Children's Health Ireland.
Part 9: National Paediatric Hospital Development Board		
60.	Definitions	This is a standard provision setting out the definitions used in Part 9 of the Bill.
61.	Amendment of Order	This section provides for a number of amendments to the National Paediatric Hospital Development Board (Establishment) Order 2007 to reflect the provisions in the Bill (for example the establishment of Children's Health Ireland). Of note is the provision for the planning, designing and building of a new maternity hospital .
62.	Transfer of certain property, rights and liabilities of Board to Children's Health Ireland	This section provides for the transfer of certain agreed property, rights and liabilities from the National Paediatric Hospital Development Board to Children's Health Ireland.

63.	Dissolution of Board	This section provides for the dissolution of the National Paediatric Hospital Development Board by order of the Minister and the transfer of all property, rights and liabilities arising from contract or commitment to the HSE. It further provides for the continuation of any lease entered into by the National Paediatric Hospital Development Board.
64.	Liability for loss occurring before dissolution day	This section provides that a claim in respect of any loss or injury arising out of the performance by the National Paediatric Hospital Development Board of its functions before dissolution will lie against the HSE after dissolution.
65.	Provisions consequent upon transfer of functions, property, rights and liabilities to Executive	This is a standard provision allowing anything commenced and not completed by the National Paediatric Hospital Development Board to be carried or completed by the HSE after dissolution. It also provides that any statutory instrument and any certificate granted by the National Paediatric Hospital Development Board will continue to have effect after dissolution as if same had been made or granted by the HSE.
66.	Final accounts and final annual report of Board	This section provides that the HSE must prepare and submit to the Minister the final accounts and annual report of the National Paediatric Hospital Development Board which must then be laid before the Houses.
67.	Cessation of membership of Board	This section provides that members of the National Paediatric Hospital Development Board will cease to hold office on the commencement of section 67.

Source: Prepared by the L&RS based on the [Children's Health Bill 2018](#)

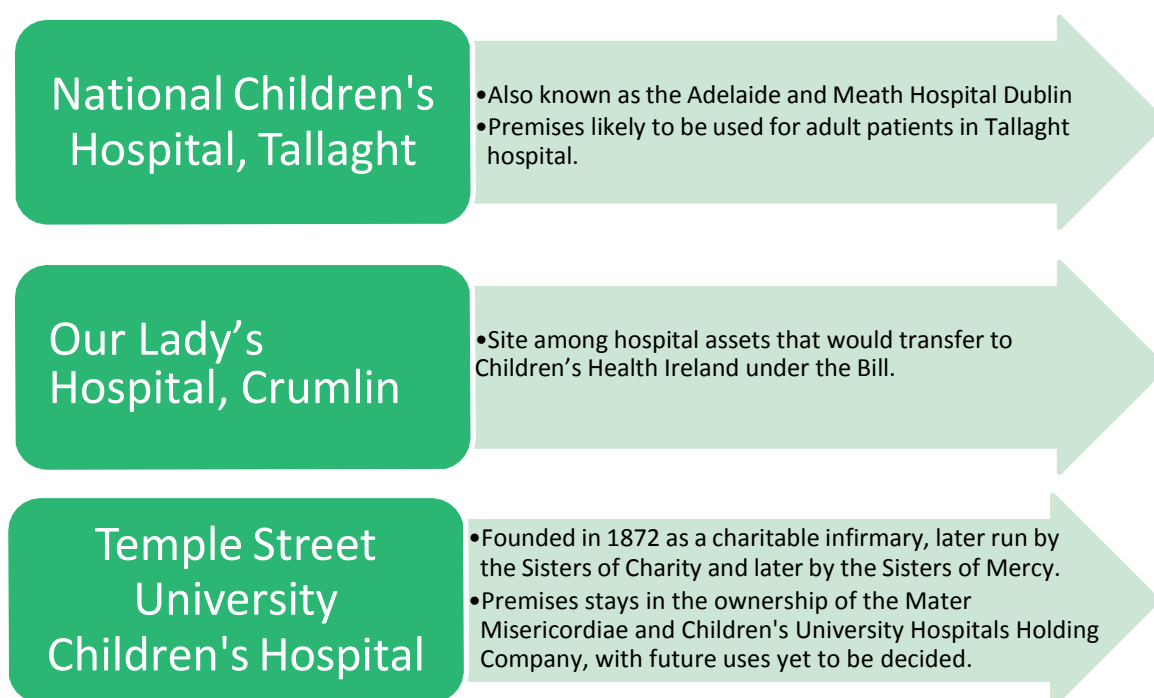
Introduction

Paediatric services in Dublin are currently provided by three different voluntary hospitals: Our Lady's Children's Hospital Crumlin, Temple Street Children's University Hospital and the National Children's Hospital at Tallaght.² Each of the three existing hospitals is a public voluntary hospital which means that while they receive State funding they are owned and run by voluntary bodies.

Voluntary bodies have a long-history of provision of health and social services in Ireland. Minister for Health, Simon Harris, TD, stated in 2017:

"Voluntary and non-statutory providers, including religious and faith-based organisations, have made an enormous contribution to the provision of health and personal social services in Ireland over centuries. Their role in providing care to people, at a time when in many cases the State failed to do so, has led to the complex tapestry that is our current health system."³

Figure 2: Three children's hospital to be merged into Children's Health Ireland



² These services are delivered by an arrangement under section 38 of the *Health Act 2004* which provides that the HSE can enter into an arrangement with a service provider to provide health and personal social services.

<http://www.irishstatutebook.ie/eli/2004/act/42/section/38/enacted/en/html>

³ Department of Health (2017) [Press release: Minister Harris announces independent review group to examine the role of voluntary organisations in publicly funded health services](#); 21 July 2017

Legal status of the current hospitals

The existing hospitals are all separate legal entities established under company law or Charter.

- **Our Lady's Children's Hospital, Crumlin** is a Company Limited by Guarantee, (Number 16035).
- **Temple Street Children's University Hospital** is a LTD, Private Company Limited by Shares, Number 351404, and registered under the name - Children's University Hospital.
- **The Adelaide and Meath Hospital, incorporating the National Children's Hospital (often referred to simply as Tallaght Hospital)** is a body corporate under the Adelaide Hospital Charter 1920 (Letters Patent of the 27th day of November, 1920, granting incorporation to the Adelaide Hospital, Dublin as amended by SI No 374/1980 – the Adelaide Hospital (Charter Amendment) Order, 1980) and SI No. 228/1996– The *Health Act 1970* (Section 76) (Adelaide and Meath Hospital Dublin incorporating the National Children's Hospital) Order, 1996.

Source: [General Scheme of the Bill](#)

Background

Why the need for a new children's hospital?

Temple Street Children's University Hospital was built in 1872 and Our Lady's Children's Hospital Crumlin was built in 1956. Neither hospital's infrastructure is fit for purpose any longer. The National Children's Hospital, Tallaght is geographically isolated from Dublin city centre and is considered small, particularly in relation to the delivery of specialist services.⁴ The new children's hospital will provide national paediatric specialist care (tertiary⁵ and quaternary⁶) for children and secondary general paediatric care for children in the greater Dublin area. Secondary general paediatric care services will make up the greater part of the clinical services to be provided (77.6%). Currently, less than 23% of children admitted to the three children's hospitals come from outside the greater Dublin area.⁷ According to the NPHD Board:

“Much of the current infrastructure in the existing children's hospitals is not compatible with contemporary healthcare needs and the current duplication and triplication of some services across the three paediatric services in Dublin is unsustainable.”⁸

⁴Children's Hospital Group (CHG), The Clinical Case for the New Children's Hospital . The Children's Hospital Group consists of Our Lady's Children's Hospital, Crumlin, Temple Street, Children's University Hospital & the National Children's Hospital at Tallaght Hospital. <http://www.nchplanning.ie/wp-content/uploads/2015/07/3-Clinical-Case-for-New-Childrens-Hospital.pdf>

⁵ Tertiary care can be defined as specialised consultative care, usually on referral from primary or secondary medical care personnel, by specialists working in a centre that has personnel and facilities for special investigation and treatment.

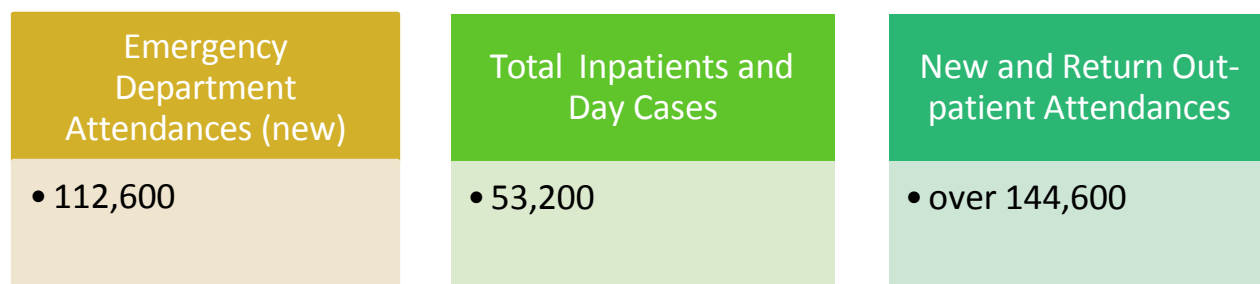
⁶The term quaternary care is sometimes used as an extension of tertiary care in reference to advanced levels of medicine which are highly specialised and not widely accessed. Experimental medicine and some types of uncommon diagnostic or surgical procedures are considered quaternary care.

⁷ http://www.newchildrenshospital.ie/wp-content/uploads/2016/07/Connect_Families_V2_Final.pdf

⁸ https://www.cuh.ie/wp-content/uploads/2016/06/NCH_Factsheet.pdf

Snapshot of current activity

Figure 3: Activity levels in the Children's Hospital Group, 2017



The existing three Dublin children's hospitals have a combined total of 432 beds. Approximately 53% of the in-patient rooms are single rooms. There are 12 theatres and the three Dublin children's hospitals cover a cumulative space of c.75,000 square metres. This will be replaced with the new children's hospital on the campus at St James's Hospital in Dublin 8 of c. 124,000 square metres with 380 inpatient beds, 100% of which will be single en-suite rooms each with a parent bed, 93 day care beds and 18 in-patient and day-care theatres as well as cardiac and interventional radiology suites and two endoscopy suites⁹. According to the Children's Hospital Groups (CHG):

"The fact that there are three stand-alone children's hospitals in Dublin results in splitting of specialist care across the city as well as duplication and triplication of some clinical services within a 14 km distance. This can result in a child with a single condition (which affects different body organs) having to attend different specialists in more than one hospital."

In 2017, there were 112,600 emergency department attendances across the CHG, 53,200 inpatient and day cases, and over 144,600 new and returning out-patient attendances.

The development of the new Children's Hospital has been the subject on longstanding policy development and review. Table 2 summarises the timeline which has led to the publication of this Bill. The Regulatory Impact Assessment (RIA) to the Bill states that:

"In late 2005, a national review of tertiary paediatric services was undertaken by the HSE with the objective of providing an evidence-base to facilitate the development of paediatric services in the best interests of children. The resulting 2006 Report *"Children's Health First"* outlined that there was compelling evidence for one national tertiary paediatric centre based in Dublin, to be co-located with a leading adult academic hospital and for associated outpatient and urgent care centres. The Government accepted these recommendations in 2006.

In November 2012 the Government decided that the new children's hospital should be co-located with St James's Hospital on its campus. In April 2017, the Government approved the construction investment for a new children's hospital on the St James's Hospital campus and two Paediatric Outpatient and Urgent Care Centres located on the campuses

⁹ Children's Hospital Group (CHG) [The Clinical Case for the New Children's Hospital](#) (NCH), Pp. 3

of Tallaght and Connolly Hospitals. These will be staffed by the staff of the existing children's hospitals. The Boards of the existing three hospitals have agreed that the staff and services of the hospitals should come together under a single entity, initially providing services on their existing sites first, and eventually on the new premises when they are developed. The intention is to create a single entity, well in advance of the move to the new facilities, which will oversee the provision of existing services, as well as manage and oversee the work required to effect a positive and safe integration and then transition of such services to the new premises. The existing hospitals have long traditions and a history of commitment to child healthcare; their agreement, commitment and support are fundamental to a successful transition."

Table 2: Timeline of events – developing a new National Children's Hospital

Date	Event
1993	A single tertiary paediatric hospital based in Dublin is proposed by the faculty of paediatrics at the Royal College of Physicians of Ireland (RCPI). It recommended the centre be built on an adult hospital site.
2001	A government publication called <i>'Quality and Fairness: A Health System for you'</i> is published, promising a national review of paediatric services.
2005	<p>September: The then Minister for Health, Mary Harney, TD, initiated a review of tertiary paediatric hospital services (September).</p> <p>October: A month later, then HSE chief executive, Prof. Brendan Drumm addresses the Joint Oireachtas Committee on Health and Children, stating: "While I cannot make a determination in advance of a detailed planned process, the centre [National Paediatric Hospital] should ideally be in the city centre of close to the Mater site."</p> <p>December: The HSE commissioned the Children's Health First (McKinsey) report. The terms of reference specify: "its recommendations will be used to inform HSE future decisions on paediatric care."</p>
2006	<p>February: The McKinsey report was completed in February. It recommended a single national children's hospital, which would mean merging the three existing children's hospitals in Dublin.</p> <p>June: A HSE taskforce picks the Mater campus as the site of the hospital and this is endorsed by the government. There are many objections to this site.</p>
2007	Then Minister for Health, Mary Harney, TD, establishes the National Paediatric Hospital Development Board (NPHDB) for the development of the hospital.
2009	Then Taoiseach, Brian Cowen, TD, announces the hospital will be open by late 2014.
2010	NPHD Board chair Philip Lynch resigns in October. Minister Harney said it was not in the remit of the Board to "revisit the government decision taken on the location of the new hospital."
2011	<p>March: The second chairman of the NPHD Board, John Gallagher, resigns. He said there was a "risk of incurring further material costs in the project without full government support."</p> <p>May: Then Minister for Health, James Reilly, TD, announces an independent team to review the site decision. It reports that the correct site was chosen. A planning application is submitted.</p>
2012	<p>January: An Bord Pleanála defers a decision in relation to the hospital because of the complexity.</p> <p>February: Planning permission is refused. The board said the proposed development would "constitute overdevelopment".</p>

	<p>March: In the wake of the planning decision, Minister Reilly establishes a review group known as the 'Dolphin Group' (after group Chairman Dr Frank Dolphin)..</p> <p>June: The Report of the Review Group on the National Children's Hospital (Dolphin report) is presented to the Minister in June.</p> <p>November: Minister Reilly announces St James' Hospital, Dublin 8 as the new site.</p>
2013	The site is criticised as too small, with poor car access. The project was promised for 2016.
2014	<p>The project brief for the new hospital is approved by the HSE but the planning application experiences delays.</p> <p>The Dáil Public Accounts Committee heard that about €35 million in State funding, which was spent on the development of the original hospital site, had been written off.</p>
2015	<p>August: then Minister for Health, Leo Varadkar, TD, announced a planning application for the €650 million development is to be lodged on 10 August, with the project completed by 2020 if permission is granted.</p> <p>November: An Bórd Pleanála begins a three-week oral hearing into the proposed construction of a children's hospital on the St James' site, which hears submissions from architects as well as opposing views from some local residents.</p>
2016	<p>April: Planning permission is granted for the construction of a new children's hospital on a 12-acre site in the grounds of St James' Hospital.</p> <p>The seven-storey paediatric facility will have capacity for more than 400 beds, and its operation will be supported by satellite clinics in Tallaght and Blanchardstown.</p>

Source: Adapted from Flaherty R and D'Arcy C (2016) 'The national children's hospital: A timeline', *Irish Times*, 28 April 2016.

Financial Implications

The development of the new children's hospital is the largest capital investment in healthcare in the history of the State.¹⁰

The explanatory memorandum to the Bill states that:

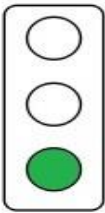
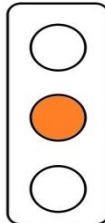
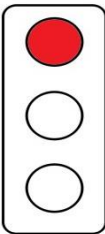
'there are no costs arising directly from the legislation. Costs arising from the integration of three children's hospitals, the extension of services to four sites on opening of the outpatient and urgent care centres, and the transfer of services to the new hospital on the St James's Hospital campus and on the capital construction investment, will be addressed in the context of the normal estimates and capital costs process.'

¹⁰ <http://www.newchildrenshospital.ie/news/delivering-economic-benefits-for-the-local-community-the-new-childrens-hospital/>

Pre-legislative scrutiny

The Joint Oireachtas Committee on Health undertook pre-legislative scrutiny of the General Scheme of the Bill. Its resulting report¹¹ was submitted to the Minister for Health on 6 December 2017. The report made a number of observations in respect of various Heads of the General Scheme. A summary of the main commentary, as compiled by the L&RS, and its relevance to the Bill as published are set out in Table 4 below.

Table 4: ‘Traffic light dashboard’ use to highlight impact of PLS in Table 9.

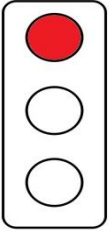
L&RS categorisation of the Department’s response in the Bill to the Joint Committee’s key issue	‘Traffic light dashboard’ used in Table 11 to highlight impact of the Committee’s PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue <u>or</u> the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

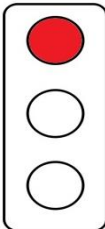
Source: L&RS

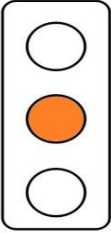
Table 5 below has been compiled by the Library & Research Service and sets out the L&RS’ summary of each Committee conclusion (in relation to the General Scheme of the Bill) and its relevance (to the Bill as published). The information under the column outlining the response to each conclusion was provided directly by the Department of Health on foot of a request by the Library & Research Service. The Department’s responses have been quoted verbatim in some incidences and summarised in others. They are categorised by the L&RS in accordance with the traffic light system set out above. **It should be noted that some of the recommendations made by the Committee would not generally be part of legislation.**

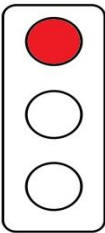
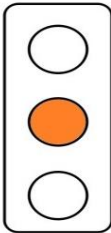
¹¹ <https://webarchive.oireachtas.ie/parliament/media/committees/health/reports/report-on-the-pre-legislative-scrutiny-on-the-general-scheme-of-the-childrens-health-bill-2017.pdf>

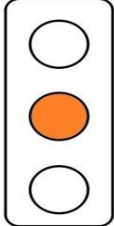
Table 5: Committee's Recommendations on the General Scheme *Children's Health Bill 2018* compared with the Bill as published on 11 July 2018

No.	Recommendation	Response from Department of Health whether addressed (either in whole or in part) in the Bill	
1.	The Committee is of the opinion that health and safety is paramount. It recommends that all measures should be taken to ensure that the new buildings are of the highest standards and that all advice listed in An Bord Pleanála's report is incorporated into the new building.		<p><i>Not appropriate for inclusion in the Bill.</i></p> <p><i>Rationale:</i> The National Paediatric Hospital Development Board (NPHDB) has statutory responsibility for the design, building and equipping of the new children's hospital and associated outpatient and urgent care centres on the campuses of Tallaght and Connolly Hospitals.</p> <p>The NPHDB is committed to building and equipping a modern, state-of-the-art hospital designed, built and equipped in a manner which will enable clinicians and staff, who have informed the design, to do their jobs to the best of their ability, in an environment where health and safety are paramount.</p> <p>In relation to fire safety precautions, the provisions incorporated into the design exceeded all national regulations. An Bord Pleanála's October 2017 decision went over and beyond the proposed precautions. The NPHDB will comply with the fire safety requirements associated with the decision to require that sprinklers should be installed throughout the hospital rather than in priority areas.</p>
2.	It is the Committee's preference that employees are offered contracts that are no less favourable to their current terms and conditions.		<p>Sections 28, 38, 47 and 55 refer.</p> <p><i>Rationale:</i> The Bill provides for the transfer to the new body of the employees of Crumlin Hospital, Temple Street Hospital, and designated employees of Tallaght Hospital and of the HSE</p> <p>The Bill provides that an employee who transfers to the new body under the legislation will not, on the day of transfer, be subject to less beneficial terms and conditions of employment, including those relating to tenure of office, or of</p>

			remuneration, than those terms of conditions of service or of remuneration to which the person was subject immediately before the transfer to the new body.
3.	The Committee recommends that the transition process is continually reviewed and updated and that staff are kept aware of any changes to their work and to the practices and services they provide.		<p><i>Not appropriate for inclusion in the Bill.</i></p> <p><i>Rationale:</i> The Children's Hospital Group (CHG), established in 2013, is responsible for overseeing the integration of the three children's hospitals in advance of the move to the new children's hospital. In tandem with the three hospitals, it is working to guide and support staff in the clinical, operational and cultural integration of the three hospitals.</p> <p>The work to standardise, integrate and safely transition clinical, non-clinical and corporate services provided by the three hospitals has begun in advance of the legal establishment of the new entity and the move to the new facilities, and will continue on a phased basis until such time as the new services are operational. The extensive programme of work of the CHG recognises and reflects the complexities in bringing three hospitals together, and the need to keep staff informed about the programme and how it affects them. This includes work relating to cultural alignment and integrated working, staff rotation and workforce planning.</p> <p>The workforce planning strategy for the new children's hospital and two satellite centres was commenced in 2015 by the CHG as part of the planning and analysis to support the business case for the development of paediatric services for children and young people in the Greater Dublin Area and when appropriate, national paediatric services. This workforce planning involved engagement with clinical leaders and management across the three children's hospitals and was guided by the HSE approved National Model of Care for Paediatric and Neonatology Healthcare Services.</p>

			The workforce planning strategy is a dynamic 5 year planning process required to support the staffing requirements, change management and staff training requirements. In addition, it will enable a robust resource strategy to ensure the hospital has the right number of staff in the right place at the right time to support the vision for paediatric services.
4.	The Committee recommends that further consideration and clarity be given in relation to the utilisation of fundraising funds and, in particular, whether such funds would be used in remunerating management.		<p>Section 7(2)(h) refers - <i>(h) to engage in or support fundraising and philanthropy in relation to Children's Health Ireland and the provision of paediatric services in the hospital in pursuit of the object of Children's Health Ireland;</i></p> <p><i>Rationale:</i> It had always been anticipated that philanthropic funding would be part of the new children's hospital project. This is consistent with approaches in other countries, where philanthropy is an important source of funds for healthcare and educational developments.</p> <p>In particular, philanthropy is expected to be a main source of funding for the development of the Children's Research and Innovation Centre. There is also long-term potential to continue to support developments and enhancements in the hospital when it is operational through an on-going philanthropy strategy.</p> <p>It is therefore expected that the new Board will establish a charitable foundation, to be set up under the <i>Charities Act 2009</i>. This foundation will be tasked with raising funds to support the Board in its remit.</p> <p>Section 26 (2) refers: "<i>Children's Health Ireland, with the approval of the Executive [HSE] given with the consent of the Minister [for Health] and the approval of the Minister for Public Expenditure and Reform, will determine the terms and conditions of employment, including those relating to remuneration and allowances of employees. As stated above, employees who transfer to the new entity</i></p>

			through the legislation will transfer on their existing terms and conditions, including remuneration.
5.	<p>The Committee recommends that the car park is constructed with regard to the following considerations:</p> <ul style="list-style-type: none"> a) Sufficient space to meet the needs of attendees, especially with regard to those unloading medical equipment; b) Facility to allow a “drop and run” option at emergency departments; c) Derogation in respect of parking charges for hardship cases and long-term patients; and d) Minimising costs for attendees. 		<p><i>Not appropriate for inclusion in the Bill.</i></p> <p><i>Rationale:</i> Access to the children's hospital at the St James's campus is well served by public transport, however the plans and design for the hospital recognise the need of most families to access the hospital by car.</p> <p>The plans for the hospital provide for 1,000 car parking spaces, of which 675 will be dedicated for use by families, three times the number of spaces currently available at the three Dublin children's hospitals combined. The car park will be located in the basement of the new children's hospital. Parents will be able to reserve their space ahead of arriving at the hospital.</p> <p>The 1000 spaces also include 31 drop-off emergency spaces at ground level outside of the Emergency Department.</p> <p>Of the 675 family spaces at the new children's hospital, up to 100 of these spaces will be reserved for concessionary use, such as in the case of long stay patients or those under financial pressure.</p>
6.	<p>The Committee recommends that consideration be given to establishing gender-balance on the new Board of the new hospital group.</p>		<p>Section 14(8) refers - (15) <i>The Board and the Minister shall, in so far as is practicable, endeavour to ensure that among the members of the Board there is an equitable balance between men and women.</i></p> <p><i>Rationale:</i> The Bill clearly states the intention that there would be gender balance. However, it was considered that providing that there must be gender balance on the Board at all times might militate at any given time against the competency-based appointment of the “right woman” or “right man” purely by virtue of their gender.</p>

7.	The Committee also recommends that consideration be given to ensuring fair representation of various groups on the new Board.		<p>Section 12(3) refers - <i>(3) Persons appointed to the Board shall be persons who have, in the opinion of the Minister, experience or expertise in matters connected to the functions of Children's Health Ireland or to corporate governance and management generally.</i></p> <p><i>Rationale:</i> While the Bill does not mandate representation on the Board from any group <i>per se</i>, this is not to say that such representation is precluded from membership of the Board, other than elected representatives under section 20. In preparing the Bill, it was decided that the best governance model for this Board, given the breadth and depth of its functions, was one that allowed significant flexibility in the selection of persons for appointment to the Board, subject to the requirements set out in section above. In addition, section 14(1) prescribes that the nomination or selection of persons to sit on the Board will be made following consultation between the Minister and the chairperson of the Board as to the experience and expertise required.</p> <p>The Bill also provides for the establishment of Committees of the Board, where it is also possible for persons from a given group to be appointed. Section 19(1) and (2) state: <i>(1) The Board may establish committees to assist and advise it on matters relating to its functions and may determine the membership and terms of reference of each committee.</i></p> <p><i>(2) The Board may appoint to a committee of the Board persons who are not members of the Board but have special knowledge and experience related to the purpose of the committee.</i></p>
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Principal provisions of the Bill

The Digest does not look at every section of the Bill in detail.

Preliminary and General

Part I of the Bill deals with the short title of the Bill, commencement information and definitions to be used in the Bill.

Short title and commencement

Section 1(1) of the Bill states that when enacted the Bill can be cited as the *Children's Health Act 2018*. The Minister can appoint different days for different parts of the Bill to come into operation.

Expenses

Section 3 of the Bill is a standard provision setting out that the expenses incurred by the Minister in the administration of the Bill will be paid with monies provided by the Oireachtas. The amount will be sanctioned by the Minister for Public Expenditure and Reform.

Definitions

Section 2 of the Bill deals with definitions and these are mostly standard. However, section 2 of the Bill does not give definitions for 'child', 'children' or '*paediatric*'. These are deliberate omissions which were explained in the notes to the General Scheme of the Bill as follows:

The notes state that:

'Page 5 of the Executive Summary of the National Model of Care for Paediatric Healthcare Services in Ireland, states: 'There is agreement among departments that there should be a 'cut off age' for admission to paediatric services, and that this age should be 16 years. There are many issues in managing older adolescents in a paediatric environment.

The three existing children's hospital currently provide services to persons under the age of 16, but as it is also recognised that it may be appropriate to continue to provide care in a paediatric setting for young people aged 16 or older where it is deemed clinically more appropriate for the patient to be treated with paediatric treatments and /or in a paediatric setting by their caregiver, the three hospitals do sometimes provide services to persons over the age of 16.

Therefore, a definition with a single cut off age does not give the flexibility required for these services, and it would be necessary to define child with reference to a number of

caveats..... It therefore appears preferable to either not define children for the purposes of this legislation, or else to define it in terms of the general policy guiding the provision of services, and be non-specific about age.¹²

Age cut-off for access to the new children's hospital

The cut-off age for access to the new children's hospital was approved by the HSE, the Faculty of Paediatrics, the Royal College of Physicians of Ireland and the Department of Health and Children.

Access is planned for:

1. Care of all children up to their 16th birthday;
2. Care of children between the ages of 16-18 years who are already patients of the hospital and support of them during their transition to adult services and;
3. Care of children aged 16-18 years, not already patients of the children's hospital, where there is a clinical indication that they should be treated in a paediatric hospital.

There are specific areas where flexibility in the above criteria is in the best interests of young people. This applies in particular to young adults with severe disability who often continue to attend paediatric units into their third decade. There is a requirement for the development of more appropriate facilities for these young people in adult hospitals. Another area is in relation to inpatient child and adolescent mental health care, for children between the ages of 16 and 18 years. The 20 bed child and adolescent mental service inpatient unit in the new hospital will form part of a national network of inpatient units. Access to this specialised inpatient unit is governed by mental health legislation.

Article 1 of the UN Convention on the Rights of the Child¹³ defines a child as '**every human being below the age of eighteen years** unless under the law applicable to the child, majority is attained earlier'. Ireland's National Policy Framework for Children and Young People 2014-2020 '*Better Outcomes, Better Futures*' defines a 'child' as any person under the age of 18 years, in line with the United Nations Convention.¹⁴

The Children's Rights Alliance¹⁵ has called for the definition of a child for the purposes of the Bill to be all people under 18 years of age. They highlight the Bill as an opportunity for hospital services to children under 18 to be improved upon:

"Most crucially, Article 1 of the UN Convention states that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

¹² Department of Health (2017) [General Scheme of the Children's Health Bill](#).

¹³ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁴ Department of Children and Youth Affairs (2014) [Better Outcomes, Better Futures - National Policy Framework for Children and Young People 2014-2020](#).

¹⁵ Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. See: <http://childrensrights.ie/>

The Alliance went to state¹⁶ that:

“The National Children’s Hospital should provide facilities and treatment for all children up to 18 years, consistent with the definition of a child in the *National Children’s Strategy*, the key policy document relating to children, and with the provisions in legislation affecting children such as the *Child Care Act 1991*, and the *Children Act, 2001*.

The age of 18 years should be the minimum cut-off point in the new hospital. In addition, flexibility is required in the case of a young people over 18 years who is developmentally delayed, it may be more appropriate that they continue to be cared for in a paediatric setting.

Currently, the three children’s hospitals in Dublin have a formal cut-off age of 16 years, with some flexibility for children that are already within the system and deemed not ready to transfer to adult services. The new children’s hospital provides an opportunity to address the anomaly in children’s hospital services, and bring them in line with the national and international definitions of childhood, by providing services for all children up to 18 years. The decision to provide services to children up to age 18 will have design implications, in terms of capacity and design/decoration choices. Given this, the cut-off age must be defined at the earliest possible stage of the consultation process.

Providing services for children up to age 18 would go some way towards addressing the well documented gap in adolescent health services in the existing children’s hospitals.

While it is not the purpose of this submission to propose a new system of adolescent services, it is important to note that hospital services and design should be sympathetic to the changing needs of children as they grow older, for example, teenagers’ desire for privacy should be recognised and respected.”

¹⁶ Children’s Rights Alliance (2009) *Submission to the National Paediatric Hospital Development Board*
<http://thenewchildrenshospital.ie/wp-content/uploads/2011/09/SubNPHDBreChildrensHospital270309.pdf>

Establishment and functions Children's Health Ireland

Part 2 of the Bill deals with the establishment of Children's Health Ireland (CHI). It sets out its object and functions. Part 2 also gives details about partnerships, fundraising and borrowings.

Section 4 provides that the Minister must appoint a day to be the establishment day for the purposes of the proposed Act. Section 5 of the Bill provides that on that day a body to be known as Children's Health Ireland will be established to perform the functions conferred on it by or under the proposed Act.

Object and functions

Section 6 of the Bill sets out **the object** of the new body and also its functions. The overall object of Children's Health Ireland will be:

“to improve, promote and protect the health and well-being of children in a manner that embodies the values of child-centred, compassionate and progressive care provided with respect, excellence and integrity and in doing so it shall have the right and responsibility to promote the culture and traditional principles of voluntarism in the conduct of its internal and external affairs”

Terms used in section 6 such as voluntarism or child-centred are not further defined in the Bill.

The [explanatory memorandum](#) to the Bill states that:

‘The object of Children's Health Ireland recognises and reflects the tradition, commitment and values of the three hospitals coming together in providing child-centred, compassionate and progressive care with respect, excellence and integrity.’

Section 6 of the Bill sets out **the functions** of Children's Health Ireland as follows:

- a) to plan, conduct, maintain, manage, provide and develop paediatric services in the hospital;
- b) to provide for patient safety and quality of patient care in the hospital;
- c) to promote excellence in the practice and provision of paediatric services and provide leadership in the advancement, development, organisation and delivery of paediatric services in an integrated clinical network for paediatric services;
- d) to facilitate, foster and promote, through educational and other programmes, the personal and professional development of its employees and to provide paediatric medical, nursing and health and social care professional training and education;
- e) to facilitate, foster, promote and carry out research and innovation aimed at improving paediatric services and advancing medical and scientific knowledge relating to paediatric services through research and scientific investigation and inquiry;
- f) to provide information, advice, advocacy, and assistance in relation to paediatric services to the Minister, the Executive, the Health Information and Quality Authority, and such other persons as have involvement in the provision of paediatric services, as may be necessary;
- g) to advocate on behalf of children and young people about healthcare issues;
- h) to engage in or support fundraising and philanthropy in relation to Children's Health Ireland and the provision of paediatric services in the hospital in pursuit of the object of Children's Health Ireland; and
- i) to carry out such other functions as are necessary to provide paediatric services in the hospital.

In performing its statutory functions Children's Health Ireland is obliged to have regard to the following:

- i. the objectives of the public health system and the role of Children's Health Ireland within that system;
- ii. the promotion of equity of access to paediatric services and of improved patient outcomes in the hospital;
- iii. the need to secure the most beneficial, effective and efficient use of the resources available to it, and
- iv. the views of children and young people in the development and delivery of services to them in hospital.

Section 6 provides that Children's Health Ireland will have such powers as are necessary or expedient for the performance of its functions.

Policy directions and guidelines

Section 7 of the Bill provides that Children's Health Ireland must have regard to Government policy to the extent that it may affect or relate to any of its functions and **must comply with any policy direction or guidelines notified to it by the Minister**.

Subsidiaries and partnerships

Section 8 of the Bill provides that Children's Health Ireland may form, establish or acquire one or more subsidiaries, partnerships, joint ventures or other corporate vehicles **for the purposes of:**

- managing relationships with multiple academic partners;
- pursuing philanthropic activities;
- pursuing fund raising activities, and
- such other purposes, relating to the functions of Children's Health Ireland, as the Minister may approve.

A subsidiary, partnership or other body may only be formed with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform and for the purposes set out above. Any subsidiary, partnership or other body established under section 8 of the Bill will be obliged to submit reports to the Board of Children's Health Ireland and the Board will be obliged to report to the Minister on the operation of such bodies (as and when requested). Section 8 further provides that Children's Health Ireland may, with the approval of the Minister, and the prior consent of the Minister for Public Expenditure and Reform, acquire, hold and dispose of shares or other interests in a company, or become a member of a company.

Land, property, gifts and borrowing

Section 9 of the Bill deals with land, property, gifts and borrowing. It provides that Children's Health Ireland may acquire, hold and dispose of land with the consent of the HSE. Children's Health Ireland may also borrow money for capital or current purposes with the consent of the Minister for Health, Minister for Public Expenditure and Reform, and Minister for Finance. Section 9 also provides that Children's Health Ireland can accept gifts. Where a gift is offered subject to a condition, the condition must be consistent with its object or functions. Any gifts made to any of the three children's hospitals, on or after the commencement of the relevant Parts of the Bill will be deemed to have been made to Children's Health Ireland.

Accounts and annual reports

Section 10 of the Bill deals with accounting obligations of Children's Health Ireland and section 11 deals with annual reports. Children's Health Ireland must keep accounts setting out all income and expenditure of Children's Health Ireland, the source of the income and the subject matter of the expenditure, and the property, assets and liabilities of Children's Health Ireland. These accounts must be submitted to the Comptroller and Auditor General for audit within 3 months of the end of each financial year. The audited accounts will be laid before the Houses of the Oireachtas.

Children's Health Ireland must also prepare and adopt an annual report in relation to the performance of its functions no later than the 31st May, following the first complete calendar year, after its establishment. Subsequent reports must be prepared and adopted before the 31st May of that year. Annual reports must be laid before the House of the Oireachtas.

Board of Children's Health Ireland

Part 3 of the Bill (Sections 12 - 22) deal with the Board of the proposed Children's Health Ireland. The Board will have 12 members and this includes the chairperson. All of the Board members will be appointed by the Minister on the basis of their:

‘experience or expertise in matters connected to the functions of Children's Health Ireland or to corporate governance and management generally.’

The [explanatory memorandum](#) to the Bill states that:

‘It is proposed that the specific skills should not be exhaustively identified in the legislation so as to allow the necessary flexibility in identifying the need for specific competencies on the Board at different times.’

The Bill does not set out how the Board will be composed – for example it does not say that a certain number of members must be patient representatives or paediatricians. Neither does the Bill give any further information about how Board members will be appointed, for example should it be done through the States Boards Agency.

Section 12(4) sets out the duties of the Board as follows:

- (a) to ensure that the object (as set out in section 6(1) of the Bill) of Children's Health Ireland is fulfilled and that its functions are performed efficiently, effectively and to the highest standards,
- (b) to set the strategic objectives of Children's Health Ireland consistent with the object and functions of Children's Health Ireland,
- (c) to ensure that the appropriate systems and procedures are in place to achieve Children's Health Ireland's strategic objectives, fulfil its object and perform its functions.

The Board must act in utmost good faith with care, skill and diligence when carrying out its duties. It must provide information on the performance of its functions to the Minister when requested.

Section 12 of the Bill also provides that the day-to-day running of Children's Health Ireland and any of its functions can be delegated to the CEO and the Board will be responsible for monitoring, approving or reviewing performance of such functions by the Chief Executive Officer.

Membership of Board

There will be different terms of membership for members appointed to the inaugural Board of the Children's Health Ireland (the Board on establishment day) and to subsequent Boards.

The explanatory memorandum to the Bill states that:

'The practice among the existing children's hospitals of nominating Board members and electing the Chairperson from among the membership is reflected in the Bill. However, the Chairperson's appointment is conditional on the Minister's consent. In addition, the Minister has the power to approve the process for nominations by the Board and the power to remove Board members, thereby allowing for the essential ultimate accountability to the political system while respecting the integrity of the selection process.'

Board on establishment day

Section 13 of the Bill deals with membership of the Board on establishment day. On that day the chairperson and ordinary members of the **Children's Hospital Group Board** will be appointed by the Minister to be the chairperson and ordinary members of the Board.¹⁷ Currently, the Children's Hospital Group Board is chaired by Dr Jim Browne and led by the CEO Eilish Hardiman.¹⁸

The [explanatory memorandum](#) to the Bill states that:

'The Children's Hospital Group Board, a non-statutory administrative Board established in 2013, is currently overseeing the complex integration of the three hospitals and transition of existing services into one single entity. The Children's Hospital Group Board, whose

¹⁷ In this section "Children's Hospital Group Board" means the non-statutory board appointed by the Minister and in place immediately before the establishment day.

¹⁸ <http://www.newchildrenshospital.ie/the-project/the-childrens-hospital-group/>

membership includes representatives of the Boards of the three children's hospitals, a representative from Northern Ireland and international expertise, will become the first Board of Children's Health Ireland, thereby maintaining continuity, and with the required competencies to undertake the leadership role required over the next few years'.

If there are fewer than 11 ordinary members of the Children's Hospital Group Board or if there is no chairperson of that Board then the Minister must appoint a person to fill the vacancy on the Board on, or as soon as possible after, the establishment day.

Members of the Board appointed on the establishment day will hold office for terms set out in the Bill:

- The chairperson will hold office for a term of **5 years** from the date of his or her appointment;
- 5 ordinary members will hold office for a term of **5 years** from the date of appointment;
- 6 ordinary members will hold office for a term of **3 years** from the date of appointment.

It will be decided by lottery at the first meeting which of the ordinary members will hold office for 3 years and which members will hold office for 5 years. The difference in terms means that the Board will not lose all of its members and the institutional knowledge at same time. The Minister will fix the time, date and place of the first meeting of the Board to be held after the establishment day.

Subsequent Boards

Section 14 of the Bill sets out how members will be appointed to subsequent Boards. It provides that appointments will be made by the Minister, after consultation with the Chairperson. Board members appointed to subsequent Boards will be for a term of office **not exceeding 4 years**.

Where a vacancy arises because a Board Member's term of office ends then the Minister will appoint 6 persons to be members of the Board:

- **4 Members** will be appointed on the nomination of the Board; and
- **2 Members** will be chosen by the Minister.

The number of members appointed by the Minister on the nomination of the Board must not exceed 8 persons at any time. The selection process for picking members to be nominated by the Board will be approved by the Board with the consent of the Minister.

The explanatory memorandum to the Bill states that:

'Under this section, Board members will be appointed for terms of 4 years, with the intention that every 2 years, the term of office of half of the 12-person Board comes to an end. These 6 persons will be reappointed or replaced by persons appointed by the Minister, on the basis of 2 persons selected by the Minister, and 4 nominated by the outgoing Board. This means that in the usual course of events, the 12 members on the Board will comprise 8 Board nominees and 4 selected by the Minister.'

The Bill provides that the Board and the Minister must try, as far as it is **practicable**, to ensure that there is an equitable balance between men and women on the Board. However, the Board does not have to have equal numbers of male and female members.

A person may not be a member of the Board for more than 2 consecutive terms but is otherwise eligible for reappointment. Employees of Children's Health Ireland are not eligible for membership of the Board.

Casual vacancies on the Board

Section 15 of the Bill deals with casual vacancies on the Board which will arise when a member of the Board dies, resigns, or ceases to hold office for any reason. A person will be appointed by the Minister to fill the casual vacancy in the same way as the former Board member was appointed. There is a difference in how casual vacancies are appointed to the original and subsequent Boards. The explanatory memorandum to the Bill notes that:

‘However, where a casual vacancy is occasioned by a person appointed to a Board entirely nominated by the Minister, such as the first Board or a Board appointed on foot of the Minister exercising his powers under Section 18 [where the Minister removes the entire Board], such vacancy will be filled on nomination of the Board and selection by the Minister, alternating. A person who fills or occasions a casual vacancy will be deemed to have served a full term.’

A person who fills a casual vacancy is considered to have served a term as a member of a Board even though he or she will have served only part of a term.

Meetings of Board

Section 16 of the Bill deals with meetings of the Board. It provides that the Board must hold a minimum of 6 meetings in each 12 month period, and as many meetings as are necessary for the performance of its functions. A failure to hold the 6 mandated meetings can result in the entire Board being replaced by the Minister. The chairperson will generally call a meeting of the Board but the Bill provides that 6 members of the Board may also convene a meeting. The quorum for a meeting of the Board is 6 members. The Chairperson will generally have the casting vote and decisions are made by majority vote.

Conditions of office of members of Board

Section 17 of the Bill provides that a person is not qualified to be a Board member, and will cease to be qualified and to hold office, if he or she is:

- (a) adjudicated bankrupt;
- (b) convicted of an indictable offence;
- (c) convicted of an offence involving fraud or dishonesty;
- (d) is subject to an order disqualifying him or her from acting as a director or an auditor or

managing companies under Section 160¹⁹ of the *Companies Act 1990* or a disqualification order;²⁰

(e) is sentenced to a term of imprisonment by a court; or

(f) is removed by a competent authority for any reason (other than failure to pay a fee) from a professional register.

A Board member who does not attend a Board meeting for a consecutive period of 6 months will cease to be a member at the end of that period, unless the absence has been approved by the chairperson with the consent of the Minister, or is due to illness. A Board member can resign by letter to the Minister and should also notify the chairperson.

Removal from the Board

Section 17(4) provides that the Minister can, at the request of the Board or following consultation with the chairperson, remove at any time a member from office if:

- (a) the member has become incapable through ill-health of performing his or her functions;
- (b) the member has committed stated misbehaviour (this is not further defined in the Bill); or
- (c) the removal of the member appears to the Minister to be necessary for the effective performance by the Board of its functions.

Removal of all members of the Board

Section 18 of the Bill provides that the Minister can remove all the members of the Board from office in certain circumstances. These are where:

- the Board does not reach a quorum of 6 members for 3 consecutive meetings;
- the Board does not comply with a final judgment, order or decree of a court; or
- the Minister is satisfied, following an independent review that the Board's functions are not being performed in an effective manner.

If the Minister believes that the Board's functions are not being performed in an effective manner then she or he can appoint a person to conduct an independent review of any matter giving rise to that opinion. That person must submit a report to the Minister on the results of the review. The Board are obliged to co-operate with any review and give the person conducting it all reasonable assistance, including access to such premises, equipment and records as are required for the purposes of the review. A copy of the report must be submitted to the members of the Board within 21 days of the Minister's receipt of it. The Bill does not set out what the content of the report should be or that the report should recommend whether the Board should be removed in its entirety.

¹⁹ <http://www.irishstatutebook.ie/eli/1990/act/33/section/160/enacted/en/html>

²⁰ Within the meaning of Chapter 4 of Part 14 of the *Companies Act 2014*

If the Minister removes all the members of a Board from office then she or he must appoint persons with experience or expertise as she or he thinks the Board requires. The new Board (appointed under section 18(6)) will nominate a chairperson to be approved by the Minister. It will be selected by lottery as to which of the new members will hold office for 3 years (6 members) and who will hold office for 5 years (5 members).

Committees of Board

Section 19 of the Bill will allow the Board to establish committees to assist and advise it on matters relating to its functions. Committee members do not have to be Board Members but must have special knowledge and experience related to the purpose of the committee. The Board may at any time dissolve a committee of the Board established under this section.

Membership of either House of Oireachtas or European Parliament or local authority

Section 20 of the Bill is a standard provision which provides that a Board member or a committee member cannot be appointed or remain as such if she or he is or becomes a Member of the Oireachtas, European Parliament or local authority. It also provides that the CEO may not be a Member of the Oireachtas, European Parliament or local authority.

Expenses of members of Board and Committees

Section 21 of the Bill is a standard provision which provides that Board and Committee members may be paid such expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform may approve. The explanatory memorandum notes that:

‘The Bill does not provide for the payment of fees to Board and Committee members, reflecting the voluntary ethos and practice of the three children’s hospitals coming together under this entity.’

Seal of Children’s Health Ireland

Section 22 of the Bill provides that Children's Health Ireland must provide itself with a seal²¹ as soon as possible after the establishment day. The seal must be authenticated by the signature of any two members of the Board or the signatures of a member of the Board and an employee of Children's Health Ireland authorised by the Board to authenticate the seal.

²¹ Murdoch's Irish Legal Companion notes that 'sealing is a solemn mode of expressing consent to a written instrument.'
<http://www.milc.ie/NXT/gateway.dll?f=templates&fn=default.htm>

Chief Executive Officer and employees of Children's Health Ireland

Part 4 of the Bill deals with the Chief Executive Officer (CEO) and employees of Children's Health Ireland. Section 23 of the Bill provides for the appointment of the CEO. The CEO will be appointed by the Board with the consent of the Minister, in accordance with such procedures as are determined by the Board. The Bill does not give any further information about these procedures. The CEO will hold office on terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) which are determined by the Board.²² The first CEO will be the person who is CEO of the Children's Hospital Group immediately before establishment day.

Section 24 sets out the functions of CEO. These are to:

- (a) carry on, manage, and control generally, the administration and business of Children's Health Ireland;
- (b) perform such other functions as may be determined by the Board,
- (c) provide the Board with such information (including financial information) relating to the performance of his or her functions as the Board may require.

The CEO will be accountable to the Board for:

- (a) the performance of his or her functions, and
- (b) the implementation of the Board's strategic plan in the most efficient and effective manner.

The CEO must appear before the Public Accounts Committee (PAC) of the Houses of the Oireachtas, whenever required in writing to do so. The CEO must provide the Committee with information about the economy and efficiency of Children's Health Ireland in the use of its resources, and the systems, procedures and practices employed by Children's Health Ireland for the purpose of evaluating the effectiveness of its operations.

Section 24(7) provides that when the CEO appears before PAC that she or he must not question or express an opinion on the merits of any policy of the Government or of a Minister of the Government, or the objectives of such a policy.²³

Section 25 provides that the CEO can delegate any of his or her functions to a specified employee of Children's Health Ireland. That person will be accountable to the CEO for the performance of the functions so delegated.

²² With the approval of the HSE given with the consent of the Minister and the approval of the Minister for Public Expenditure and Reform

²³ This has become a standard provision

Employees of Children's Health Ireland

Section 26 of the Bill provides that Children's Health Ireland can appoint employees and determine the terms and conditions of service with the approval of the HSE (given with the consent of the Minister and the Minister for Public Expenditure and Reform). Employees will be paid by Children's Health Ireland out of funds at its disposal.

Section 27 deals with superannuation of staff and provides that employees who are eligible for the Single Public Service Pension Scheme will be members of that Scheme. All other employees will remain or become members of the Voluntary Hospital Superannuation Scheme.

Transfer of staff, assets and liabilities

Sections 28-59 (Parts 5-8) of the Bill deal with the transfer of staff, assets and liabilities to Children's Health Ireland from the three hospitals and the HSE. These are technical provisions which are standard for mergers and transfers and are summarised in Table 3 below.

Table 3: Transfer of staff, assets and liabilities

	Crumlin Hospital	Temple Street Hospital	Tallaght Hospital	HSE
Transfer of employees	Section 28	Section 38	Section 47	Section 55
Transfer of land	Section 29			
Transfer of property	Section 30	Section 39	Section 48	Section 56
Transfer of rights and liabilities	Section 31	Section 40	Section 49	Section 56
Liability for loss occurring before Part 5 enacted	Section 32	Section 41	Section 50	
Provisions consequent upon transfer of land and/or property, rights and liabilities	Section 33	Section 42	Section 51	Section 57
Preservation of contracts	Section 34	Section 43	Section 52	Section 58
Records	Section 35	Section 44	Section 53	Section 59
Indemnity for Directors	Section 36	Section 45		
Saving of certain acts	Section 37	Section 46	Section 54	

Transfers of employees to Children's Health Ireland

The Bill provides that employees who transfer from Crumlin (Section 28), Temple Street Hospital (Section 38), Tallaght Hospital (Section 47) and the HSE (Section 55) will be on terms and conditions of employment (such as tenure and superannuation) which are not less favourable than they were subject to before the transfer.²⁴

It also provides that previous service of any employee transferred will be reckonable for the

²⁴ Unless there is a collective agreement to the contrary

purposes of:

- the *Redundancy Payments Acts 1967*²⁵ to 2014;
- the *Protection of Employees (Part-Time Work) Act 2001*,²⁶
- the *Protection of Employees (Fixed-Term Work) Act 2003*,²⁷
- the *Organisation of Working Time Act 1997*,²⁸
- the *Terms of Employment (Information) Acts 1994 to 2014*,²⁹
- the *Minimum Notice and Terms of Employment Acts 1973*³⁰ to 2005;
- the *Unfair Dismissals Acts 1977*³¹ to 2015;
- the *Maternity Protection Acts 1994*³² and 2004;
- the *Parental Leave Acts 1998*³³ and 2006;
- the *Adoptive Leave Acts 1995*³⁹ and 2005;
- the *Carer's Leave Act 2001*.³⁴

The Oireachtas Joint Committee on Health's Report on the Pre-Legislative Scrutiny on the General Scheme of the Children's Health Bill 2017³⁵ noted that:

'The integration of the three existing independent children's hospitals will result in much change for staff. The Committee is aware that negotiations with staff are underway to settle any disparities with regard to staff terms and conditions as they are re-located to the new workplace.

The officials from the Children's Hospital Group stated that they have set up a formal engagement framework process with all the official trade unions that have negotiating rights. The officials also confirmed that negotiations with staff are underway.'

Transfer of land

Section 29 of the Bill provides for the transfer of land from Crumlin Hospital to Children's Health Ireland on commencement of the Part 5 of the Bill without any conveyance or assignment. The explanatory memorandum notes that land includes houses and buildings, and any estate, right or interest in or over land. There are no transfers of land from the other hospitals.

Transfer of property

These sections (s.30, s. 39, s. 48 and s. 56) deal with the transfer of property from the hospitals and the HSE to Children's Health Ireland. Property includes choses in action.³⁶ All property from Crumlin will transfer to new body but not all property will transfer from Tallaght, Temple Street or the HSE.

²⁵ <http://www.irishstatutebook.ie/eli/1967/act/21/enacted/en/html>

²⁶ <http://www.irishstatutebook.ie/eli/2001/act/45/enacted/en/html>

²⁷ <http://www.irishstatutebook.ie/eli/2003/act/29/enacted/en/html>

²⁸ <http://www.irishstatutebook.ie/eli/1997/act/20/enacted/en/html>

²⁹ <http://www.irishstatutebook.ie/eli/1994/act/5/enacted/en/html>

³⁰ <http://www.irishstatutebook.ie/eli/1973/act/4/enacted/en/html>

³¹ <http://www.irishstatutebook.ie/eli/1977/act/10/enacted/en/html>

³² <http://www.irishstatutebook.ie/eli/1994/act/34/enacted/en/html>

³³ <http://www.irishstatutebook.ie/eli/1998/act/30/enacted/en/html>

³⁴ <http://www.irishstatutebook.ie/eli/2001/act/19/enacted/en/html>

³⁵ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_health/reports/2017/2017-12-06_report-pre-legislative-scrutiny-of-the-children-s-health-bill-2017_en.pdf (December 2017)

³⁶ Murdoch's Irish Legal Companion defines a chose in action as 'a right of proceeding in law to procure the payment of a sum of money or to recover pecuniary damages for a wrong inflicted.' This is a right to sue.

Transfer of rights and liabilities

These sections (s.31, s.40, s.49 and s.56) provide for the transfer of the rights and liabilities from the three hospitals and the HSE to Children's Health Ireland.

Liability for loss occurring before Part 5, 6, or 7 enacted

These sections (s.32, s.41 and s.50) provide that any liability for loss which occurs before Part 5 of the Bill is enacted will be transferred from the three hospitals to Children's Health Ireland.

Tallaght is liable for loss arising from its paediatric services only.

Provisions consequent upon transfer of land and/or property, rights and liabilities

These sections (s.33, s. 42, s.51 and s. 57) provide that anything commenced by the three hospitals and the HSE which is not completed before the commencement of Part 5 of the Bill will be carried on and completed by Children's Health Ireland.

Preservation of contracts

These sections (s.34, s.43, s.52 and s. 58) provide that contracts, arrangements and agreements made by the three hospitals and the HSE will continue to be valid with Children's Health Ireland.

Records

The Bill makes a distinction between 'records' and 'medical records'. Medical records are defined in Section 2 of the Bill as 'records created, used and stored principally for the purposes of patient care and treatment containing data concerning health or genetic data within the meaning of the General Data Protection Regulation and any associated biological materials.'

These sections (s. 35, s.44, s.53 and s.59) provide that relevant records³⁷ held by the three hospitals immediately before the commencement of Part 5 must be transferred to Children's Health Ireland on the commencement of Part 5. The records will then be the property of Children's Health Ireland and will be deemed to be held by Children's Health Ireland.

Every relevant medical record held by the hospitals immediately before the commencement of Part 5, 6, and 7 must be transferred to Children's Health Ireland on the commencement of those Parts. The records will then be the property of Children's Health Ireland and will be deemed to be held by Children's Health Ireland. The personal information in any medical records transferred can be processed by Children's Health Ireland only for purposes compatible with the purposes for which the information was originally obtained. This is necessary under the General Data Protection Regulation.³⁸

³⁷ Tallaght holds the medical records of adult patients and these will not be transferred.

³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Section 59 of the Bill deals with the transfer of records from the HSE to Children's Health Ireland. It provides that records dealing with matters relevant to Children's Health Ireland, held by the HSE and identified by the HSE as appropriate for transfer to Children's Health Ireland, must be transferred to Children's Health Ireland. The records will then be the property of Children's Health Ireland and be deemed to be held by Children's Health Ireland.

Indemnity for Directors of Crumlin and Temple Street Hospitals:

These sections (s.36 and s.45) provide that the Minister can indemnify a person against all actions or claims in respect of the discharge by him or her of his or her duties as a director of Temple Street Hospital or Crumlin Hospital. This will be done where the Minister is satisfied that a director of Temple Street Hospital or Crumlin Hospital has discharged his or her duties in pursuance of the functions of that hospital in good faith.

Saving of certain acts

These sections (s.37, s.46 and s. 54) provide that nothing in this Bill affects the validity of any action relating to paediatric services by the hospitals done before the commencement of Parts 5, 6 and 7. Once these parts have been commenced those actions will be regarded as if they were done on behalf of or by Children's Health Ireland.

National Paediatric Hospital Development Board

Part 9 of the Bill deals with the **National Paediatric Hospital Development Board**³⁹ (NPHD Board) which is responsible for overseeing the building of the new hospital. It was established by statutory instrument⁴⁰ in 2007.

Section 60 sets out the definition for words used in Part 9 of the Bill. References to the Board in Part 9 of the Bill refer to the NPHD Board rather than the Board of Children's Health Ireland.

Section 61 of the Bill amends the National Paediatric Hospital Development Board Order 2007. One of changes reflects that it will be Children's Health Ireland rather than the three children's hospitals who will be providing for consultation on the development of the new facilities. It also amends the nomination process for membership of the NPHD Board. Section 61 also gives the Board the additional function of planning, equipping and furnishing a **new maternity hospital** which will be located on the St James's Hospital campus next to the new children's hospital. The explanatory memorandum to the Bill states that this function is given:

“with the view that this function would only be commenced if a future decision is taken that the Board is the appropriate body to do this.”

Transfer of certain property, rights and liabilities of NPHD Board to Children's Health Ireland

Sections 62, 64 and 65 are similar to those in Parts 5-8 of the Bill. Section 62 allows for the transfer of certain property, rights and liabilities from the National Paediatric Hospital Development Board to the Children's Health Ireland. The explanatory memorandum to the Bill notes that:

‘Given the functions of the [NPHD] Board in, for example, equipping the hospital, it is considered prudent to make provision for the transfer of contracts etc. relating to those matters to the new entity prior to dissolution, as and when appropriate, rather than to the HSE on dissolution.’

Section 64 deals with liability for loss occurring before dissolution day and provides that any claim for loss which was transferred to the HSE will be continued following transfer. Section 65 provides that the HSE can continue with and complete any action commenced by the NPHD Board which is not completed before dissolution day.

Dissolution of NPHD Board

Section 63 provides that the Minister can dissolve the National Paediatric Hospital Development Board by way of a Ministerial order. The NPHD Board and any committee of the Board will be

³⁹ <http://www.newchildrenshospital.ie/the-project/national-paediatric-hospital-development-board/>

⁴⁰ National Paediatric Hospital Development Board Order 2007 <http://www.irishstatutebook.ie/eli/2007/si/246/made/en/print>

dissolved. All property, rights and liabilities of the Board transfer on that day to the HSE.

Cessation of membership of NPHD Board

Section 67 of the Bill provides that members of the NPHD Board who hold office immediately before the commencement of this section will on commencement cease to hold office.

Final accounts and final annual report of NPHD Board

Section 66 provides that the HSE must complete the Board's final accounts and final annual report within 6 months of the dissolution of the NPHD Board. These documents must be laid before the Houses of the Oireachtas.



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