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**An Bille um Fheidhmeannacht na Seirbhíse Sláinte (Rialachas), 2018**  
**Health Service Executive (Governance) Bill 2018**

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*Mar a tionscnaíodh*

*As initiated*

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HEALTH SERVICE EXECUTIVE (GOVERNANCE) BILL 2018**

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Health Act 1970 (No. 1)  
Health Act 2004 (No. 42)  
Health Acts 1947 to 2018  
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**AN BILLE UM FHEIDHMEANNACHT NA SEIRBHÍSE SLÁINTE (RIALACHAS),  
2018  
HEALTH SERVICE EXECUTIVE (GOVERNANCE) BILL 2018**

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# Bill

*entitled*

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An Act to amend the Health Act 2004 to provide that the Health Service Executive shall be governed by a board and not a directorate and that the Executive shall have a chief executive officer accountable to that board; to provide for the amendment of certain other enactments; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

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## PART 1

### PRELIMINARY AND GENERAL

#### **Short title, commencement, collective citation and construction**

1. (1) This Act may be cited as the Health Service Executive (Governance) Act 2018.
- (2) This Act shall come into operation on such day or days as the Minister for Health may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 15
- (3) This Act, other than *Part 3*, shall be included in the collective citation “Health Acts 1947 to 2018” and shall be read together as one with those Acts. 20

#### **Definition**

2. In this Act, “Principal Act” means the Health Act 2004.

#### **Repeals**

3. Each of the following is repealed:
  - (a) Part 3A of the Principal Act; 25
  - (b) section 22 of the Health Service Executive (Governance) Act 2013.

## PART 2

### AMENDMENT OF PRINCIPAL ACT

#### **Amendment of section 2 of Principal Act**

4. Section 2 of the Principal Act is amended, in subsection (1)—
- (a) by the insertion of the following definition: 5  
“ ‘Committee of Public Accounts’ means the Committee of Dáil Éireann established under the rules and standing orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General;”,
  - (b) by the substitution of the following definition for the definition of “Board”: 10  
“ ‘Board’ has the meaning assigned to it by section 16N;”,
  - (c) by the substitution of the following definition for the definition of “chief executive officer”:  
“ ‘chief executive officer’ has the meaning assigned to it by section 21A;”, 15
  - (d) by the substitution of the following definition for the definition of “member”:  
“ ‘member’, in relation to the Board, includes the chairperson and the deputy chairperson;”,
  - (e) by the substitution of the following definition for the definition of “ordinary member”: 20  
“ ‘ordinary member’ means a member of the Board other than the chairperson or the deputy chairperson;”,
- and
- (f) by the deletion of the definitions of “appointed director” and “appointed member”. 25

#### **Amendment of section 10 of Principal Act**

5. Section 10 of the Principal Act is amended—
- (a) in subsection (1)—
    - (i) by the substitution of “to the Executive or the Board” for “to the Executive”, and 30
    - (ii) in paragraph (c), by the substitution of “that the Executive or the Board, as applicable, is not having sufficient regard to such policy or objective in the performance of the Executive’s functions” for “that the Executive is not having sufficient regard to such policy or objective in the performance of its functions”, 35
  - (b) in subsection (5), by the substitution of “The Executive or the Board, as applicable,” for “The Executive”, and

- (c) in subsection (7), by the substitution of “The chairperson shall inform the Minister of the measures taken by the Executive or the Board, as applicable,” for “The Director General shall inform the Minister of the measures taken by the Executive”.

**Amendment of section 10B of Principal Act** 5

6. Section 10B of the Principal Act is amended, in paragraph (d), by the substitution of “chief executive officer” for “Director General”.

**Board of Executive**

7. The Principal Act is amended by the insertion of the following Part after Part 3A:

“Part 3B 10

BOARD OF EXECUTIVE

**Membership of Board**

16N. (1) The Executive shall have a Board (in this Act referred to as the ‘Board’) consisting of the following members:

- (a) a chairperson; 15
  - (b) a deputy chairperson;
  - (c) 7 ordinary members.
- (2) The chairperson, the deputy chairperson and the ordinary members of the Board shall be appointed by the Minister from among persons who, in the opinion of the Minister, have sufficient experience and expertise relating to matters connected with the functions of the Executive to enable them to make a substantial contribution to the effective and efficient performance of those functions. 20
- (3) The Minister shall, in so far as practicable, endeavour to ensure that among the members of the Board there is an equitable balance between men and women. 25
- (4) The chairperson shall hold office for such period, not exceeding 5 years from the date of appointment, as the Minister shall determine.
- (5) The deputy chairperson shall hold office for such period, not exceeding 5 years from the date of appointment, as the Minister shall determine. 30
- (6) Subject to subsection (7), an ordinary member shall hold office for such period, not exceeding 5 years from the date of appointment, as the Minister shall determine.
- (7) Of the ordinary members of the Board first constituted under this section— 35

- (a) 4 members (selected in accordance with subsection (8)) shall hold office for a period of 3 years from the date of appointment to the office, and
  - (b) 3 members shall hold office for a period of 5 years from the date of such appointment. 5
  - (8) The ordinary members who are to hold office for a period of 3 years are, at a meeting of the Board held for the purpose, to be selected by—
    - (a) unanimous agreement of the ordinary members present at the meeting, or
    - (b) if for any reason such unanimous agreement cannot be reached, the drawing of lots by those members. 10
  - (9) Subject to subsection (10), a member of the Board whose term of office expires by the efflux of time shall be eligible for reappointment to the Board.
  - (10) A person who is reappointed to the Board in accordance with subsection (9) shall not hold office for more than 2 consecutive terms and in any event may not serve for a period of more than 10 years. 15
  - (11) A member may resign from office by letter sent to the Minister and the resignation shall take effect on the later of—
    - (a) the date specified in the letter, or 20
    - (b) the date of receipt of the letter by the Minister.
  - (12) The Minister shall, as soon as practicable after an appointment to the Board, publish in *Iris Oifigiúil* notice of the name of the person so appointed.
- Casual vacancies** 25
- 16O.** (1) If a member resigns, dies, ceases to hold office (other than by effluxion of time), ceases to be qualified to hold office or is removed from office, the Minister shall as soon as practicable appoint a person to fill the casual vacancy so arising.
- (2) A person appointed under subsection (1) shall hold office for the unexpired period of his or her predecessor's term of office or such other period as the Minister may determine not exceeding 5 years including such unexpired period. 30
  - (3) A member appointed under subsection (1) is eligible for reappointment to the Board, on the expiry of the unexpired period or other period, as appropriate, referred to in subsection (2), but may not serve for more than 2 further consecutive terms and in any event may not serve for a period of more than 10 years. 35
- Role of Board**
- 16P.** (1) The Board is the governing body of the Executive with authority, in the name of the Executive, to perform the functions of the Executive. 40

- (2) The Board is accountable to the Minister for the performance of its functions (in particular, its function under subsection (1)).
- (3) The Board may delegate in writing to the chief executive officer any of the Executive's functions.
- (4) If a function of the Executive is delegated to the chief executive officer under subsection (3), the delegation remains in force until the Board revokes the delegation by notice in writing given to that officer. 5
- (5) The Board shall notify the Minister in writing of any delegation made under subsection (3) and of any revocation of such delegation.
- (6) The Board shall inform the Minister in writing of any matter that it considers requires the Minister's attention. 10

**Membership of either House of Oireachtas or European Parliament**

- 16Q.** (1) A person is not eligible for appointment as a member of the Board or a committee of the Board if the person is—
- (a) nominated as a member of Seanad Éireann, 15
  - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
  - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, or 20
  - (d) elected or co-opted as a member of a local authority.
- (2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified for membership of the Board or a committee of the Board. 25

**Removal of member of Board**

- 16R.** (1) The Minister may at any time remove from office a member of the Board if, in the Minister's opinion—
- (a) the member has become incapable through ill-health of performing his or her functions, 30
  - (b) the member has committed stated misbehaviour,
  - (c) the member's removal is necessary for the effective and efficient performance by the Board of its functions,
  - (d) the member has contravened section 25(1) or 26 or an applicable provision of the Ethics in Public Office Act 1995, or 35
  - (e) in performing functions under this Act, the member has not been guided by a code of conduct that has been drawn up under section 10(3) of the Standards in Public Office Act 2001 and that relates to the member. 40

- (2) A member of the Board shall cease to be qualified for office and shall cease to hold office if he or she—
- (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment, 5
  - (d) is convicted of any indictable offence,
  - (e) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,
  - (f) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, or 10
  - (g) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or another jurisdiction. 15
- (3) A member who does not, for a consecutive period of 6 months, attend a meeting of the Board ceases at the end of that period to hold office unless the member demonstrates to the Minister’s satisfaction that the failure was due to ill-health. 20
- (4) In this section, ‘applicable provision of the Ethics in Public Office Act 1995’, in relation to a member, means a provision of that Act that, by virtue of a regulation under section 3 of that Act, applies to that member.

**Removal of all members of Board from office** 25

- 16S.** (1) The Minister may remove all the members of the Board from office if—
- (a) the Board fails to achieve a quorum for 3 consecutive meetings,
  - (b) the Board does not comply with a judgment, order or decree of any court, 30
  - (c) the Board does not comply with a direction of the Minister or any other requirement imposed on it by or under any enactment including this Act, or
  - (d) the Minister is of the opinion that the Board’s functions (in particular, its functions under section 16P) are not being performed in an effective and efficient manner. 35
- (2) The Minister may, if he or she is of the opinion that the Board’s functions are not being performed in an effective and efficient manner, appoint a person to—
- (a) conduct an independent review of any matter giving rise to that opinion, and 40

- (b) submit a report to the Minister on the results of the review.
- (3) The Board shall co-operate with a review under subsection (2) and give the person conducting it all reasonable assistance, including access to such premises, equipment and records as the person may require for the purposes of the review. 5
- (4) The removal of the members of the Board from office does not revoke or otherwise affect any delegation of the Executive's functions to the chief executive officer under section 16P(3).

**Committees of Board**

- 16T.** (1) The Board may establish committees, consisting in whole or in part of persons who are members of the Board, to assist and advise it in relation to the performance of any of its functions. 10
- (2) In appointing members of a committee the Board shall have regard to the knowledge and experience necessary for the proper and effective and efficient discharge of the functions of the committee. 15
  - (3) The Board may at any time remove a member of a committee for stated reasons.
  - (4) The acts of a committee shall be subject to confirmation by the Board, unless the Board otherwise determines.
  - (5) The Board may determine the terms of reference and the procedures of a committee. 20
  - (6) The Board may appoint a member of a committee to be the chairperson of a committee.
  - (7) A committee shall provide the Board with such information as the Board may from time to time require, in respect of the committee's activities and operations, for the purposes of the performance by the Board of its functions. 25
  - (8) The Board may at any time dissolve a committee.
  - (9) In this section, 'committee' means a committee established under subsection (1). 30

**Remuneration and expenses of members of Board and committees**

- 16U.** (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, determine the remuneration and expenses payable under this section.
- (2) The remuneration and allowances for expenses, if any, determined in accordance with subsection (1) are payable by the Executive out of funds at its disposal to— 35
    - (a) the members of the Board, and
    - (b) the members of a committee of the Board.
  - (3) The remuneration and allowances for expenses, if any, determined in accordance with subsection (1) are payable by the Minister out of 40

money provided by the Oireachtas to a person appointed under section 16S(2) to conduct an independent review.”.

### Chief executive officer

8. The Principal Act is amended by the insertion of the following Part before Part 5:

“Part 4A

5

#### CHIEF EXECUTIVE OFFICER

##### Appointment of chief executive officer

- 21A.** (1) Subject to subsection (2), the Board shall as soon as practicable after the commencement of *section 8* of the *Health Service Executive (Governance) Act 2018* and thereafter as required, appoint a person recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 to be the chief executive officer of the Executive (in this Act referred to as the ‘chief executive officer’). 10
- (2) Subsection (1) shall not apply to a person deemed under subsection (6) to be the first chief executive officer. 15
- (3) The chief executive officer shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform. 20
- (4) The remuneration and allowances determined under subsection (3) shall be paid out of funds at the disposal of the Executive.
- (5) The chief executive officer shall not hold any other office or employment or carry on any business without the consent of the Board and the Board shall inform the Minister in writing of any such consent given. 25
- (6) Notwithstanding the repeal of Part 3A by *section 3(a)* of the *Health Service Executive (Governance) Act 2018*, the person who was the Director General, immediately before the commencement of the said *section 3(a)*, shall be deemed to be the first chief executive officer— 30
- (a) as if, on that commencement, the Board had appointed under subsection (1) the person to be the chief executive officer for the remaining period, if any, that was left to run for the person to hold the office of such Director General immediately before that commencement, and 35
- (b) on the same terms and conditions (including terms and conditions relating to remuneration, allowances, superannuation and termination of appointment) as the person held office as such Director General immediately before that commencement, 40

and the other provisions of this Act shall be construed accordingly.

- (7) The chief executive officer shall not be a member of the Board or a committee, but he or she may, in accordance with procedures established by the Board or a committee, as the case may be, attend meetings of the Board or a committee and shall be entitled to speak at and advise such meetings. 5

**Resignation, removal or disqualification of chief executive officer**

- 21B.** (1) The chief executive officer may resign from office by giving notice in writing to the Board of his or her resignation.
- (2) The Board may, at any time, remove the chief executive officer from office if, in its opinion— 10
- (a) the chief executive officer has become incapable through ill-health of performing his or her functions,
  - (b) the chief executive officer has committed stated misbehaviour, or
  - (c) the removal of the chief executive officer is necessary for the effective and efficient performance by the Executive of its functions. 15
- (3) If the chief executive officer is removed from office in accordance with subsection (2), the Board shall provide the chief executive officer with a statement of reasons for the removal. 20
- (4) The chief executive officer shall cease to be qualified for office and shall cease to hold office if he or she—
- (a) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (b) is convicted of any indictable offence, 25
  - (c) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
  - (d) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014. 30

**Functions of chief executive officer**

- 21C.** (1) The chief executive officer shall—
- (a) carry on and manage, and control generally, the administration and business of the Executive and perform such other functions as are conferred on him or her by or under this Act or any other enactment, 35
  - (b) provide the Board with such information (including financial information) relating to the performance of his or her functions and the implementation of the policies of the Executive as the Board may require, and 40

(c) assist and provide the accounting officer (other than for the purposes referred to in section 40G) with such information (including financial information and records) relating to the accounting officer's functions within such period as the accounting officer may require. 5

(2) The chief executive officer shall be accountable to the Board for the effective and efficient management of the Executive and for the due performance of his or her functions.

### **Delegation and subdelegation of functions**

**21D.** (1) (a) Subject to paragraph (b), the chief executive officer may— 10

(i) delegate any of his or her functions under section 21C in writing to an employee of the Executive, which employee shall be specified by name, grade, position or otherwise, and

(ii) to the extent specified in a delegation made under this subsection, authorise the subdelegation of any or all of the functions delegated under subparagraph (i) to or by other employees of the Executive. 15

(b) The Board may issue directions in writing to the chief executive officer in respect of the exercise of his or her power under paragraph (a) and the chief executive officer shall comply with such directions. 20

(2) Any function delegated or subdelegated under this section to an employee of the Executive shall be performed by the employee under the general direction and control of the chief executive officer and in compliance with such directions, limitations and guidelines as may be specified by— 25

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

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

(3) The delegation of a function does not preclude the chief executive officer from performing the function. 30

(4) The chief executive officer may—

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

(b) revoke the delegation, or 35

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

(5) On varying or revoking the delegation or subdelegation of a function, the chief executive officer shall, as soon as practicable, inform each employee to whom the function was delegated or subdelegated of its variation or revocation. 40

- (6) An employee of the Executive who subdelegates a function delegated or subdelegated to the employee under this section—
  - (a) may—
    - (i) vary the subdelegation, including by modifying the geographical area to which it relates, or 5
    - (ii) may revoke the subdelegation,
      - and
  - (b) is not precluded from performing the function.
- (7) On varying or revoking the subdelegation of a function under subsection (6), the employee who subdelegated the function shall, as soon as practicable, inform each employee to whom the function was subdelegated of its variation or revocation. 10

**Accountability of chief executive officer to committees of Houses of Oireachtas**

- 21E.** (1) Subject to subsection (2), the chief executive officer shall, at the request in writing of a Committee, attend before it to give an account of the general administration of the Executive. 15
- (2) The chief executive officer shall not be required to give an account before a Committee of any matter relating to the general administration of the Executive which is, or has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State. 20
  - (3) Where the chief executive officer is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which subsection (2) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive officer is before it, the information shall be so conveyed in writing. 25
  - (4) Where the chief executive officer has informed a Committee of his or her opinion in accordance with subsection (3) and the Committee does not withdraw the request referred to in subsection (1) in so far as it relates to a matter the subject of that opinion— 30
    - (a) the chief executive officer may, not later than 42 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (2) applies, or 35
    - (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,
      - and the High Court shall determine the matter. 40

- (5) Pending the determination of an application under subsection (4), the chief executive officer shall not attend before the Committee to give account for the matter the subject of the application.
- (6) If the High Court determines that the matter concerned is one to which subsection (2) applies, the Committee shall withdraw the request referred to in subsection (1), but if the High Court determines that subsection (2) does not apply, the chief executive officer shall attend before the Committee to give account for the matter. 5
- (7) In the performance of his or her duties under this section, the chief executive officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 10
- (8) With the permission of the Chairperson of a Committee making the request under subsection (1), either—
- (a) the chairperson of the Board, or 15
- (b) an employee of the Executive nominated by the chief executive officer,
- may attend before the Committee in place of the chief executive officer to give an account of the general administration of the Executive, and in that case a reference in subsections (2) to (7) to the chief executive officer shall be read as including a reference to the person attending in his or her place. 20
- (9) In this section, ‘Committee’ means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than— 25
- (a) the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann, or
- (b) a subcommittee of a committee referred to in paragraph (a).
- Membership of either House of Oireachtas or European Parliament** 30
- 21F.** (1) A person is not eligible for appointment as the chief executive officer if the person is—
- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, 35
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, or
- (d) elected or co-opted as a member of a local authority.
- (2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of 40

the European Parliament or of a local authority shall, while he or she is so entitled or is such a member, be disqualified for being the chief executive officer.

**Acting chief executive officer**

- 21G.** (1) Subject to subsection (2), the Board may appoint such other employee of the Executive to perform the functions of the chief executive officer during— 5
- (a) any period or periods when the chief executive officer is absent from duty or from the State or is, for any other reason, unable to perform the functions of chief executive officer, 10
  - (b) any suspension from office of the chief executive officer, or
  - (c) any vacancy in the office of chief executive officer.
- (2) The Board may at any time terminate an appointment under this section.”.

**Amendment of section 22 of Principal Act** 15

- 9.** Section 22 of the Principal Act is amended by the insertion of the following subsection after subsection (6):

“(7) This section shall not apply to the appointment of the chief executive officer under section 21A.”.

**Amendment of section 23 of Principal Act** 20

- 10.** Section 23 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “chief executive officer” for “Director General”, and
- (b) in subsection (5), by the substitution of “chief executive officer” for “Director General”. 25

**Amendment of section 25 of Principal Act**

- 11.** Section 25 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) A person shall maintain proper standards of integrity, conduct and concern for the public interest while performing functions under this Act or any other enactment as— 30

- (a) a member of the Board or a committee of the Board (including the audit committee established under section 40H),
- (b) the chief executive officer,
- (c) an employee of the Executive, 35

- (d) a person engaged by the Executive as an adviser under section 24,  
or
- (e) an employee of a person referred to in paragraph (d).”,

and

- (b) in subsection (3), by the substitution of “the Board shall” for “the Directorate shall”. 5

**Prohibition on unauthorised disclosure of confidential information**

12. The Principal Act is amended by the substitution of the following section for section 26:

- “26. (1) Subject to subsection (2), a person shall not disclose confidential information obtained by him or her while performing functions as— 10
- (a) a member of the Board or a committee of the Board (including the audit committee established under section 40H),
  - (b) the chief executive officer or any other employee of the Executive,
  - (c) a person engaged by the Executive as an adviser under section 24,
  - (d) an employee of a person referred to in paragraph (c), or 15
  - (e) a person appointed under section 16S(2) to conduct an independent review,
- unless he or she is required by law, or duly authorised by the Executive or, in the case of a person referred to in paragraph (e), the Minister, to do so. 20
- (2) A person does not contravene subsection (1) by disclosing confidential information if—
- (a) the disclosure is made to the Board,
  - (b) the disclosure is made to the Minister by or on behalf of the Executive, or by or on behalf of the person referred to paragraph 25  
(e) of subsection (1), or in compliance with a requirement of this Act, or
  - (c) the disclosure is a protected disclosure under Part 9A or the Protected Disclosures Act 2014.
- (3) A person who contravenes subsection (1) is guilty of an offence. 30
- (4) In this section, ‘confidential information’ means—
- (a) in the case of persons referred to in paragraphs (a) to (d) of subsection (1)—
  - (i) information that is expressed by the Executive to be confidential either as regards particular information or as regards 35  
information of a particular class or description, and

- (ii) information relating to proposals of a commercial nature or tenders submitted to the Executive by contractors, consultants or any other person,

and

- (b) in the case of a person referred to in paragraph (e) of subsection (1)— 5

- (i) information that is expressed by the Minister to be confidential either as regards particular information or as regards information of a particular class or description, and

- (ii) information relating to proposals of a commercial nature or tenders submitted to the Executive by contractors, consultants or any other person.”. 10

### **Amendment of section 27 of Principal Act**

**13.** Section 27 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “A member of the Board or a member of a committee of the Board (including the audit committee established under section 40H)” for “A member of a committee of the Directorate”, and 15
- (b) in subsection (2), by the substitution of “chief executive officer” for “Director General”.

### **Amendment of section 28 of Principal Act**

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**14.** Section 28 of the Principal Act is amended, in subsection (1), by the deletion of the definition of “Committee of Public Accounts”.

### **Amendment of section 31 of Principal Act**

**15.** Section 31 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (6): 25

“(6) If the Executive fails to submit a service plan to the Minister before the expiry of the specified period, the Minister may, in writing, issue a direction, directing the Executive to prepare and submit a service plan to him or her not later than—

- (a) 10 days after the date on which the Minister issues the direction to the Executive, or 30

- (b) such earlier date as may be specified in the direction.”,

- (b) by the insertion of the following subsection after subsection (6):

“(6A) (a) Subject to paragraph (b), if the Executive fails to comply with a direction under subsection (6), the Minister may, in writing, issue a direction, directing the chief executive officer to prepare and submit a service plan to him or her not later than— 35

(i) 10 days after the date on which the Minister issues the direction to the chief executive officer, or

(ii) such earlier date as may be specified in the direction.

(b) For the purposes of the chief executive officer preparing and submitting a service plan to the Minister in accordance with a direction issued under paragraph (a), references to the Executive in subsections (3), (5), (8) and (9) (other than in subsection (9)(d)) shall be read as including references to the chief executive officer.”, 5

(c) in subsection (7), by the substitution of “chief executive officer in compliance with subsection (6A)” for “Director General in compliance with subsection (6)”, and 10

(d) in subsection (11), by the substitution of “chief executive officer” for “Director General”.

**Amendment of section 34A of Principal Act** 15

16. Section 34A of the Principal Act is amended by the substitution of “chief executive officer” for “Director General” in both places that it occurs.

**Amendment of section 34B of Principal Act**

17. Section 34B of the Principal Act is amended by the substitution of “chief executive officer” for “Director General” in both places that it occurs. 20

**Amendment of section 35 of Principal Act**

18. Section 35 of the Principal Act is amended—

(a) in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) the structure of the Executive, including the roles and responsibilities of the Board and the chief executive officer,”, 25

(b) in subsection (2), by the substitution of “Subject to subsection (2A), the Executive shall” for “The Executive shall”, and

(c) by the insertion of the following subsection after subsection (2):

“(2A) The Executive shall, as soon as practicable after the commencement of *section 18 of the Health Service Executive (Governance) Act 2018* and without prejudice to the generality of subsection (2), revise the code of governance to take account of the amendment made to subsection (1) by that section.”. 30

**Amendment of section 40G of Principal Act** 35

19. Section 40G of the Principal Act is amended by the substitution of “chief executive officer” for “Director General”.

**Audit committee**

20. The Principal Act is amended by the substitution of the following section for section 40H:

- “40H.(1) As soon as practicable after the commencement of *section 20* of the *Health Service Executive (Governance) Act 2018*, the Board shall establish an audit committee to perform the functions specified in section 40I. 5
- (2) The audit committee shall be appointed by the Board and shall consist of—
- (a) one of the Board members, and 10
- (b) subject to subsection (3), not fewer than 4 other persons who, in the opinion of the Board, have the relevant skills and experience to perform the functions of the committee, at least one of whom shall hold a professional qualification in accountancy or auditing.
- (3) A person is not eligible for appointment to the audit committee pursuant to subsection (2)(b) if that person is an employee of the Executive. 15
- (4) The Board shall designate one of the persons appointed pursuant to subsection (2)(b) to be the chairperson of the audit committee.
- (5) The duration of a person’s membership of the audit committee shall be determined by the Board when appointing that person. 20
- (6) A member of the audit committee may resign from the committee by letter addressed to the chairperson of the Board.
- (7) The Board may at any time remove a member of the audit committee for stated reasons. 25
- (8) The Minister may, with the consent of the Minister for Public Expenditure and Reform, determine the remuneration and expenses payable under this section.
- (9) The remuneration and allowances for expenses, if any, determined in accordance with subsection (8) are payable by the Executive out of funds at its disposal to a member of an audit committee. 30
- (10) The chief executive officer shall ensure that the audit committee is provided with the necessary secretarial and other resources to enable it to perform its functions.”.

**Provisions supplementary to section 40H**

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21. The Principal Act is amended by the insertion of the following section after section 40H:

- “40HA.(1) The Minister shall, by order, appoint a day to be the relevant day for the purposes of section 40H.
- (2) The old audit committee shall stand dissolved on the relevant day.

- (3) Anything commenced and not completed before the relevant day by or under the authority of the old audit committee may, in so far as it relates to a function of the new audit committee, be carried on or completed on or after that day by the new audit committee.
- (4) Every document granted or made, by the old audit committee, if and in so far as it was operative immediately before the relevant day, shall have effect on and after that day as if it had been granted or made by the new audit committee. 5
- (5) Each record held by the old audit committee immediately before the relevant day shall, on that day, stand transferred to the new audit committee and shall, on and after that day, be the property of the new audit committee and be regarded as being held by the new audit committee. 10
- (6) In this section and section 40I—
- ‘new audit committee’ means the audit committee established pursuant to section 40H after the commencement of *section 20* of the *Health Service Executive (Governance) Act 2018*; 15
- ‘old audit committee’ means the audit committee established pursuant to section 40H before the commencement of *section 20* of the *Health Service Executive (Governance) Act 2018*; 20
- ‘relevant day’ shall be construed in accordance with subsection (1).”.

### Functions of audit committee

22. The Principal Act is amended by the substitution of the following section for section 40I:

- “40I. (1) The audit committee shall, on and after the relevant day—
- (a) advise the chief executive officer on financial matters relating to his or her functions, 25
- (b) report in writing at least once in every year to the chief executive officer on those matters and on the activities of the committee in the previous year, and
- (c) provide a copy of that report to the Board and the Minister. 30
- (2) The audit committee shall, on and after the relevant day—
- (a) advise the Board on financial matters relating to its functions,
- (b) report in writing at least once in every year to the Board on those matters, and
- (c) provide a copy of that report to the Minister. 35
- (3) The audit committee’s functions under subsections (1)(a) and (2)(a) include advising on the following matters:
- (a) the proper implementation by the Executive of Government guidelines on financial issues;

- (b) compliance by the Executive with—
  - (i) sections 33 and 33B, and
  - (ii) any other obligations imposed by law relating to financial matters;
- (c) compliance by the chief executive officer with section 34A; 5
- (d) the appropriateness, effectiveness and efficiency of the Executive’s procedures relating to—
  - (i) public procurement,
  - (ii) seeking sanction for expenditure and complying with that sanction, 10
  - (iii) the acquisition, holding and disposal of assets,
  - (iv) risk management,
  - (v) financial reporting, and
  - (vi) internal audits.
- (4) Subject to subsection (7), the audit committee shall meet at least 4 15
  - times in each year and may invite any person it considers appropriate (whether that person is or is not an employee of the Executive) to attend a meeting of the committee.
- (5) The chief executive officer shall—
  - (a) ensure that the audit committee is provided with all of the 20
    - Executive’s audit reports, audit plans and monthly reports on expenditure, and
  - (b) if he or she has reason to suspect that any material 25
    - misappropriation of the Executive’s money, or any fraudulent conversion or misapplication of the Executive’s property, may have taken place, report that matter to the audit committee as soon as practicable.
- (6) The chief executive officer shall furnish to the audit committee 30
  - information on any financial matter or procedure necessary for the performance of its functions by the committee when requested to do so by the audit committee and where such information relates to—
  - (a) any contract that the Executive proposes to enter into involving 35
    - expenditure of an amount in excess of a threshold specified by the committee, and
  - (b) any legal proceedings taken or threatened against the Executive that may give rise to potential financial liability.
- (7) A meeting of the old audit committee held in the same year as the year in which the relevant day falls shall count as a meeting of the new audit committee for the purposes of subsection (4).”.

### **Amendment of section 51 of Principal Act**

23. Section 51 of the Principal Act is amended, in subsection (4), by the substitution of “chief executive officer” for “Director General”.

### **Amendment of section 55S of Principal Act**

24. Section 55S of the Principal Act is amended by the deletion of subsections (2), (3) and (4). 5

### **Effect of delegation and subdelegation of functions**

25. The Principal Act is amended by the substitution of the following section for section 76:

- “76. (1) If a function of the Executive is delegated by the Board to the chief executive officer under section 16P(3), references in a provision of this Act or any other enactment that assign that function to the Executive or that regulate the manner in which the function is to be performed are to be construed as including references to the chief executive officer. 10
- (2) If a function of the chief executive officer under section 21C is delegated by him or her to an employee of the Executive under section 21D(1)(a)(i) or is subdelegated by an employee authorised to do so under section 21D(1)(a)(ii), references in any provision of this Act or any other enactment that regulates the manner in which that function is to be performed are to be construed as including references to the employee to whom the function is delegated or subdelegated. 15 20
- (3) If a function is delegated under section 16P(3) or section 21D or subdelegated under section 21D, the delegation or subdelegation is to be taken to include the delegation or subdelegation of any duty or power incidental to or connected with that function. 25
- (4) An act or thing done by the chief executive officer pursuant to a delegation by the Board under section 16P(3) has the same force and effect as if done by the Board.
- (5) An act or thing done by an employee of the Executive pursuant to a delegation or subdelegation under section 21D has the same force and effect as if done by the chief executive officer. 30
- (6) The revocation of a delegation by the Board or the chief executive officer does not affect a subdelegation authorised under section 21D, unless the Board or chief executive officer, as the case may be, otherwise directs. 35
- (7) A delegation or subdelegation of a function does not cease to have effect solely because the person who delegated or subdelegated the function or authorised its subdelegation no longer holds the position that the person held when the function was delegated, subdelegated or authorised to be subdelegated.”. 40

**Amendment of section 77 of Principal Act**

26. Section 77 of the Principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by the substitution of “chief executive officer” for “Director General”, and 5

(ii) by the substitution of the following paragraph for paragraph (c):

“(c) is signed by the chairperson,”,

(b) in subsection (2), by the substitution of the following paragraph for paragraph (d):

“(d) is signed by the chief executive officer or an employee of the Executive who has subdelegated a specified function of the Executive delegated or subdelegated to him or her under section 21D,” 10

and

(c) in subsection (3), by the substitution of “the chairperson, the chief executive officer or” for “an appointed director, the Director General or”. 15

**Amendment of section 79 of Principal Act**

27. Section 79 of the Principal Act is amended, in subsection (4), in the definition of “confidential information”, by the substitution of “section 26(4)” for “section 26(3)”.

**Amendment of Principal Act - insertion of sections 81 to 83** 20

28. The Principal Act is amended by the insertion of the following sections after section 80:

**“Savers**

81. (1) Subsection (2) applies where the Executive commenced but did not complete before the relevant date—

(a) the performance of a function under this Act or any other enactment, or 25

(b) the taking of an action or the doing of a thing for the purposes of this Act or any other enactment.

(2) The Board may, on or after the relevant date, complete—

(a) the performance of that function, or 30

(b) the taking of that action or the doing of that thing,

to the extent that to do so is not inconsistent with, in the case of paragraph (a), the Board’s functions under this Act or any other enactment and, in the case of paragraph (b), the actions that the Board may take or the things that the Board may do for the purposes of this Act or any other enactment. 35

- (3) Subsection (4) applies where the Director General commenced but did not complete before the relevant date—
- (a) the performance of a function under this Act or any other enactment other than an excluded function, or
  - (b) the taking of an action or the doing of a thing for the purposes of this Act or any other enactment other than an excluded action or thing. 5
- (4) The chief executive officer may, on or after the relevant date, complete—
- (a) the performance of that function, or 10
  - (b) the taking of that action or the doing of that thing,
- to the extent that to do so is not inconsistent with, in the case of paragraph (a), the officer’s functions under this Act or any other enactment and, in the case of paragraph (b), the actions that the officer may take or the things that the officer may do for the purposes of this Act or any other enactment. 15
- (5) Subject to subsection (6), a relevant delegation or relevant subdelegation shall, subject to its terms, continue to have effect on and after the relevant date.
- (6) The chief executive officer may vary or revoke a relevant delegation or relevant subdelegation made by the Director General. 20
- (7) In this section—
- ‘excluded action or thing’, in relation to the Director General, means an action taken, or a thing done, by the Director General for the purpose of this Act or any other enactment in his or her capacity as a member of the Directorate or as the chairperson of the Directorate; 25
- ‘excluded function’, in relation to the Director General, means a function of the Director General in his or her capacity as a member of the Directorate or as the chairperson of the Directorate;
- ‘relevant date’ means the date of commencement of *section 28* of the *Health Service Executive (Governance) Act 2018*; 30
- ‘relevant delegation’ means a delegation made in accordance with this Act before the relevant date and which was in force immediately before that date;
- ‘relevant subdelegation’ means a subdelegation made in accordance with this Act before the relevant date and which was in force immediately before that date. 35

## Offences

- 82.** (1) A person guilty of an offence under this Act shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or 40

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5

**References to Board and chief executive officer** 10

**83.** Unless the context otherwise requires—

(a) a reference to the Board which was, before the commencement of *section 3(b)* of the *Health Service Executive (Governance) Act 2018*, construed, by virtue of section 22 of the Health Service Executive (Governance) Act 2013, as a reference to the Directorate shall, on and after that commencement, be construed as a reference to the Board, and 15

(b) a reference to the chief executive officer which was, before the commencement of the said *section 3(b)*, construed, by virtue of such section 22, as a reference to the Director General shall, on and after that commencement, be construed as a reference to the chief executive officer.”. 20

**Amendment of Schedule 2 to Principal Act**

**29.** Schedule 2 to the Principal Act is amended—

(a) in paragraph 1, by the substitution of the following subparagraph for subparagraph (2): 25

“(2) The seal of the Executive must be authenticated—

(a) by the signature of 2 members of the Board, or

(b) by the signature of both—

(i) a member of the Board, and 30

(ii) an employee of the Board authorised by the Board to authenticate the seal.”,

and

(b) by the insertion of the following paragraphs after paragraph 1:

**“Meetings of Board** 35

**2A.** (1) The Minister, in consultation with the chairperson, shall fix the date, time and place of the first meeting of the Board.

(2) The Board shall hold such and so many meetings as may be necessary for the due fulfilment of its functions, but in each year shall hold not fewer than one meeting in each of 11 months of that year. 40

- (3) The chairperson may at any reasonable time call a meeting of the Board.
- (4) Any 5 or more members may call a meeting of the Board if the chairperson—
  - (a) refuses to call a meeting after being presented with a requisition for that purpose signed by not fewer than 5 members, or
  - (b) without refusing to call a meeting, does not call one within 7 days after being presented with such requisition.
- (5) The members present at a meeting called under subparagraph (4) shall choose one of their number to chair the meeting.

**Quorum and procedures**

- 2B.** (1) The quorum for a meeting of the Board shall be 4 ordinary members of the Board and—
- (a) subject to paragraph (b), the chairperson, deputy chairperson or other member chosen in accordance with subparagraph (2)(c) to be the chairperson of the meeting, or
  - (b) for such a meeting called in accordance with paragraph 2A(4), the member chosen under paragraph 2A(5) to chair the meeting.
- (2) Subject to paragraph 2A(5), at a meeting of the Board—
- (a) the chairperson shall, if present, be the chairperson of the meeting,
  - (b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the deputy chairperson shall, if present, be the chairperson of the meeting, or
  - (c) if and so long as the chairperson is not present or the office of chairperson is vacant and the deputy chairperson is not present or the office of deputy chairperson is vacant, the other members of the Board who are present shall choose one of their number to be chairperson of the meeting.
- (3) Every question at a meeting of the Board shall be determined by a majority of the votes of the members of the Board present and voting on the question, and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
  - (4) Subject to subparagraph (1), the Board may act notwithstanding one or more vacancies among its members.
  - (5) Subject to the provisions of this Act, the Board shall regulate its procedure by rules or otherwise.”

PART 3

MISCELLANEOUS

**Amendment of Health Act 1970**

30. (1) Section 47 of the Health Act 1970 is amended, in subsection (1), by the substitution of “chief executive officer of the Health Service Executive” for “Director General of the Health Service Executive”. 5
- (2) *Subsection (1)* shall come into operation on the commencement of section 2 of the Health (General Practitioner Service) Act 2014.

**Amendment of Unfair Dismissals Act 1977**

31. Section 2 of the Unfair Dismissals Act 1977 is amended, in subsection (1), by the substitution of the following paragraph for paragraph (k): 10
- “(k) the chief executive officer of the Health Service Executive appointed under section 21A of the Health Act 2004,”.

**Amendment of Children First Act 2015**

32. The Children First Act 2015 is amended— 15
- (a) in section 21(3)(d), by the substitution of “chief executive officer” for “Director General”, and
- (b) in section 24(2)(d)(ii), by the substitution of “chief executive officer” for “Director General”.

**Amendment of European Union (Cosmetic Products) Regulations 2013**

33. The European Union (Cosmetic Products) Regulations 2013 (S.I. No. 440 of 2013) are amended— 20
- (a) in Regulation 2(1), in paragraph (b) of the definition of “relevant person”, by the substitution of “chief executive officer” for “director general”, and
- (b) in Regulation 12— 25
- (i) in paragraph (1), by the substitution of “chief executive officer” for “director general”, and
- (ii) in paragraph (7), by the substitution of “chief executive officer” for “director general”.

**Amendment of European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016**

34. Regulation 42 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) is amended— 30
- (a) in paragraph (1), by the substitution of “chief executive officer” for “Director General”, 35

- (b) in paragraph (6), by the substitution of “chief executive officer” for “Director General”, and
- (c) in paragraph (9), by the substitution of “chief executive officer” for “Director General”.



An Bille um Fheidhmeannacht na Seirbhíse  
Sláinte (Rialachas), 2018

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do leasú an Achta Sláinte, 2004 chun socrú a dhéanamh gur bord seachas stiúrthóireacht a dhéanfaidh Feidhmeannacht na Seirbhíse Sláinte a rialú agus go mbeidh príomhoifigeach feidhmiúcháin ag an bhFeidhmeannacht a bheidh cuntasach don bhord sin; do dhéanamh socrú maidir le hachtacháin áirithe eile a leasú; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Seanadóir Diarmuid Ó Buitiméir a thíolaic thar  
ceann An Aire Sláinte,*

*23 Iúil, 2018*

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Health Service Executive (Governance) Bill  
2018

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# BILL

*(as initiated)*

*entitled*

An Act to amend the Health Act 2004 to provide that the Health Service Executive shall be governed by a board and not a directorate and that the Executive shall have a chief executive officer accountable to that board; to provide for the amendment of certain other enactments; and to provide for related matters.

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*Presented by Senator Jerry Buttimer on behalf of the  
Minister for Health,*

*23rd July, 2018*

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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
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