

# DÁIL ÉIREANN

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## AN ROGHFHOCHOISTE UM SHLÁINTE

## SELECT SUB-COMMITTEE ON HEALTH

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*Dé Máirt, 23 Aibreán 2013*

*Tuesday, 23 April 2013*

The Select Sub-Committee met at 5 p.m.

### MEMBERS PRESENT:

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Deputy Regina Doherty,*	Deputy Eamonn Maloney,*
Deputy Robert Dowds,	Deputy Caoimhghín Ó Caoláin,
Deputy Seamus Healy,	Deputy James Reilly (Minister for Health).
Deputy Billy Kelleher,	

\* In the absence of Deputies Mary Mitchell O'Connor and Ciara Conway, respectively.

In attendance: Deputy Peter Mathews.

DEPUTY JERRY BUTTIMER IN THE CHAIR.

## Health Service Executive (Governance) Bill 2012: Committee Stage

**Chairman:** I remind members that mobile telephones should be switched off completely. Apologies have been received from Deputy Mitchell O'Connor, in whose place Deputy Doherty will substitute.

This meeting has been convened for Committee Stage of the Health Service Executive (Governance) Bill 2012. I welcome the Minister for Health, Deputy Reilly, and his officials, Ms Bernadette Ryan, Mr. Peter Lennon and Ms Amanda Young. I thank them for attending. If the Minister does not wish to make an opening remark, we will move to the sections.

**Minister for Health (Deputy James Reilly):** I do not wish to make a long opening statement. Many of the amendments have been addressed in the Seanad and people understand the purpose of the Bill, that is, to make official the removal of the board of the HSE and to put in place a directorate.

*(Interruptions).*

**Deputy Caoimhghín Ó Caoláin:** Is that the Chairman's or someone else's telephone?

**Chairman:** No, mine is turned off.

**Deputy Caoimhghín Ó Caoláin:** There is noise. It is unclear.

Sections 1 to 4, inclusive, agreed to.

### SECTION 5

**Deputy James Reilly:** I move amendment No. 1:

In page 4, lines 28 and 29, to delete paragraph *(b)* and substitute the following:

“and”.

This is a technical amendment that relates to section 10 of the Health Act 2004, which deals with directions to the HSE from the Minister. The Bill as it currently stands would expressly provide that the Minister can, by written direction, amend or revoke any direction issued by him or her under section 10(1)(c). It might be inferred from that express provision that the Minister could not amend or revoke other directions issued by him or her, which would not be the case. Accordingly, the proposed amendment will ensure that all directions issued by the Minister can be amended or revoked by the Minister. The amendment brings the position back into line with the current position under the Health Act 2004.

Amendment agreed to.

Section 5, as amended, agreed to.

### SECTION 6

**Chairman:** Amendments Nos. 2 and 17 are related and may be discussed together by agreement by agreement.

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 2:

In page 5, between lines 13 and 14, to insert the following:

“(4) Before specifying priorities or performance targets under this section the Minister shall consult with the Joint Oireachtas Committee on Health and Children.”.

This is an important amendment that will enhance accountability and the role of the Oireachtas and this committee. The executive is being abolished and more power and responsibility is being vested in the Minister of the day. I have argued consistently, including on Second Stage, that there must be balance, openness and transparency and this forum is the appropriate forum to achieve that. The explanatory memoranda to the Bill state it is “essential the HSE is properly accountable to the Minister for its performance”. So it should be but my question is what about the accountability of the Minister to the Oireachtas and, through the Oireachtas, to the people. That is not provided for and it is important that consultation take place.

I mentioned the Minister of the day, to divorce Deputy Reilly from being the holder of the position now. The opportunities we have during the monthly engagement on ministerial questions and the quarterly engagement here cause a limiting of the committee’s role. Only during the latter engagement does the committee have an opportunity to engage with the Minister on matters of the day. The amendment would enhance all the Minister is proposing in the Bill while making it a more inclusive engagement. It would rightly give this Oireachtas committee its place in the consultation process. I commend the amendment to the Minister and hope he will accept it on its merit.

Amendment No. 17 states:

In page 19, line 43, after “Executive” to insert the following:

“and the Joint Oireachtas Committee on Health and Children”.

This seeks a role for the Oireachtas committee in dealing with the service plan. That would be most particular in that section of the Bill - that there be a requirement for more thorough engagement. We only have an opportunity after the event to reflect on the contents of the annual service plan of the HSE. We are invited to regional presentations for our respective constituencies but the current arrangement is deficient. We, as elected voices, have a role to play and a contribution to make.

This amendment would improve consultation and allow for an engagement. although we appreciate where the final say rests; that is not being questioned. It would, however, be a good practice to establish not only during the Minister’s tenure but for the future Ministers. All the arguments support the proposition.

**Deputy James Reilly:** While I understand the thinking behind the proposed amendments regarding the role of the Joint Committee on Health and Children, I have some difficulties with them. The purpose of section 10(a) is to enable the Minister to specify priorities to which the HSE must have regard in preparing its service plan and establish performance targets in respect of those priorities. This is not done in isolation. Pending the establishment of the new child and family support agency, the Minister must consult with the Minister for Children and Youth Affairs in respect of HSE functions that relate to the functions of that Minister. The Minister

must also consult with the HSE.

Amendment No. 2 is concerned with a role for the joint committee where the Minister is determining priorities and setting performance targets. Priorities and target setting for the HSE seem to me to be matters for the Minister to address in the context of Government policy because the Government sets the policy. The joint committee has an essential role in exercising democratic oversight, bringing any concerns to the attention of the Minister, and monitoring how Government policies affect people. Rightly, the Minister can be held to account by the Oireachtas for the performance of the HSE but that is entirely different from having the Oireachtas committee being involved in the formulation of policy, which is a Government prerogative.

Amendment No. 17 is similar in concept to amendment No. 2 in that it proposes a role for the joint committee in regard to amending the HSE service plan. Any necessary amendment to a service plan submitted to the Minister under section 31 of the Health Act 2004 is essentially a matter for the Minister in consultation with the HSE. It is, however, for the committee to inform matters through evaluating policy and acting as a watchdog.

I am concerned there are also practical difficulties in regard to the amendment given the tight deadline in which the Minister must respond to a service plan submitted by the HSE. This is the subject of a later amendment for discussion today so I do not propose to accept either amendment.

**Chairman:** When the HSE was established, we took away political teeth. I served on the HSE regional forum and it was not worth the paper it was written on. There was no accountability and we were fobbed off with answers that were unsatisfactory. In the context of the HSE, the Minister's presence in office notwithstanding, there is a need for political involvement at local level, whatever about us in the Oireachtas. The health boards may have been misused by certain politicians but a great disservice was done to the body politic in taking away that function of the elected representatives of the people. I say that as someone who has been involved in the Health Service Executive in terms of the forum and this committee. At times, dealing with the HSE is like dealing with the Vatican; it can be very frustrating, although there are very good people there.

**Deputy James Reilly:** In the HSE or the Vatican?

**Chairman:** In the HSE, to be fair. I have not dealt with the Vatican that much. The HSE at local level in Cork is very good. I would like there to be more political involvement at local level. While this is not the point Deputy Ó Caoláin is making, it highlights a missing link.

**Deputy James Reilly:** I fully concur with the Chairman. While I was not involved in politics when the Health Service Executive was established, I was concerned at the time about the democratic deficit to which the HSE gave rise. Notwithstanding the many problems associated with the health board system, at least the health boards held local health officials to account and there was a public forum in place to engage with them. That is not, however, the subject matter of the amendments.

**Chairman:** I accept the Minister's point and to be fair to the Health Service Executive, the joint committee has a meetings with HSE officials, including quarterly meetings, at which the executive engages with committee members. The joint committee has a good relationship with the HSE, although it is not a one-way street. The picture at local level is different, however. If I were a councillor who was not on a health forum or an Oireachtas Member who was not on this

committee, I wonder what would be my relationship, as a practising politician, with the HSE. The health forums were established as a political sop to keep politicians happy and maintain their involvement in the process. They do not have any function or power, which is wrong.

**Deputy Seamus Healy:** I concur with the Chairman's remarks. The establishment of the Health Service Executive ensured there would be little or no accountability of the HSE, either locally or nationally. The local health committees were very helpful to local communities and the health boards. Health staff were members of both the committees and health boards, which provided valuable democratic accountability to local people. We should support Deputy Ó Caoláin's amendment and avail of every opportunity to ensure accountability is provided. Accepting this amendment would be a start.

**Chairman:** The amendment relates to local level rather than the Oireachtas.

**Deputy Seamus Healy:** I accept that.

**Deputy James Reilly:** I have great sympathy with the arguments that have been made. However, the issue under discussion is the establishment of a new directorate and the abolition of the board of the Health Service Executive. These measures will be a stepping stone towards the end of the HSE, which, under my plan, will cease to function either next year or in early 2015. The Chairman is correct to express concern about the democratic deficit. The new structures will have to address this issue because it is important to have accountability and transparency in the operation of the health service at local and national level. However, such accountability must be balanced with the need to avoid the interference which sometimes occurred at local level in the past. This dynamic is at play irrespective of what one does. As soon as establish a new structure, people will find away to enable them to pursue their interests or agendas. I fully accept the concerns the Chairman raises and will take them on board when replacing the current HSE with new structures.

**Deputy Caoimhghín Ó Caoláin:** I congratulate the Chairman on the progress he has made through his comments, with which I concur based on what I have learned from colleagues who serve on the forum in the Dublin north east region.

To return to the proposition, the amendment does not threaten the role of the Minister or his powers and responsibilities. I am seeking a consultation which will enhance the role of this committee and the committee system in general. It would be appropriate for members to be consulted as would give us an opportunity to inject ideas and thoughts and perhaps exert influence when the national service plan and other policy matters are being prepared. The ultimate decision would still rest with the Minister.

It is inappropriate that we are always reacting after events and everything is presented as a *fait accompli*. In such circumstances, members will obviously focus on what they consider to be the flaws or holes in the final document presented to the committee. It would be worthwhile to grant us an opportunity to put forward ideas for consideration, even if few, if any, are ultimately accepted or considered. This consultation process would be available to Ministers and members of the joint committee now and in future and would create a better relationship between the Minister and other elected representatives who have a specific interest in health. The amendments would achieve this objective without threatening anybody.

**Deputy James Reilly:** Níl mé in ann an leasú a ghlacadh. One of the main reasons I will not accept the amendment is that there are no precedents in legislation for involvement by an

Oireachtas committee in regard to amending service and business plans of agencies or setting priorities for agencies. It would not be wise for us to set such a precedent.

Under the Garda Síochána Act 2005, the Minister for Justice and Equality may set priorities and performance targets for the Garda Síochána in consultation with the Garda Commissioner. There is no provision in the Act for other consultation. While several organisations are required to prepare business plans which must be approved by the relevant Minister, for example, the Adoption Authority of Ireland and Dublin Transport Authority, provision is not made in any legislation in regard to ministerial consultation with an Oireachtas committee in this respect. I regret that I will not be able to accept the amendment.

Amendment put and declared lost.

Section 6 agreed to.

## SECTION 7

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 3:

In page 6, line 26, after “Act” to insert the following:

“, one of whom shall be a director of mental health”.

Is amendment No. 3 being discussed on its own? I do not have a list of groupings.

**Chairman:** It is being discussed on its own.

**Deputy Caoimhghín Ó Caoláin:** It is important that the legislation recognise the centrality of addressing mental health. There is concern among people involved in the mental health services and several non-governmental organisations operating in this area that the legislation does not include a stated commitment to ensure one of the directors is a director of mental health. A later amendment refers to the position with regard to the appointment of the holders of directorships and the requirement, as matters stand, that new directors appointed to the Health Service Executive will already have exercised the function of national director within the HSE. We welcome the Government’s intention to improve accountability of the HSE but Mental Health Reform has stated that the Bill does not ensure a director of mental health has the competence to drive the implementation of health policy, including A Vision for Change, and that it should be enshrined in the legislation. In regard to amendment No. 3, I argue for a specific reference to the appointment of director of mental health. I will have to defer my comments on amendment No. 4 until the Chairman asks me to move it.

**Deputy James Reilly:** The director of mental health will be on the directorate, as will be the directors of hospitals, primary care and social care. It is unnecessary to specify mental health on its own in this regard. I do not believe we need to have it spelled out. Section 8 provides that the directorate will consist of a director general and other persons referred to in the Bill as appointed directors. To offer flexibility and allow the size of the governing structure to adapt to changing circumstances, the Bill does not specify a fixed number of members for the directorate, instead providing for a maximum of seven and a minimum of three. I will be bringing further amendments on Report Stage to allow for flexibility in allowing people who are not directors to serve on the directorate, such as the chief operating officer and the chief financial officer. I am happy to confirm that the directorate will include the director of mental health

services, the director of primary care, the director of hospitals, the director of social care and the director of health and well-being. There is no issue in this regard. Why specify one without all the others? It is not something that makes a lot of sense. I appreciate what the Deputy is saying in regard to emphasising mental health and I concur that for far too long mental health has been the Cinderella of the health services. That is certainly not going to remain the case but there is no question of the directorate not including the director of mental health. If I named one person above everybody else, that would lead us into a strange place. I understand what the Deputy is trying to achieve but I would prefer not to take this amendment. I ask him not to press it because I do not want to send the wrong message that we are not regarding mental health as important as every other directorate.

**Deputy Caoimhghín Ó Caoláin:** I moved the amendment against the historic backdrop of mental health being the poor relation within the health services. We have seen ample evidence of this across a succession of Administrations. I do not have to cite instances, even in our current circumstances, in regard to the failure to ring fence mental health and A Vision for Change. There is understandable nervousness in this regard. It might have been a better idea to have named them all, as the Minister has just done, and I welcome that he has confirmed there will be a director of mental health. Perhaps, however, that is just the Minister's call at this point in time. If the legislation does not specify and confirm this, it will be open to change in the future when the same degree of acceptance of the importance of mental health might not apply. That would be absolutely tragic and I hope it never comes to pass. The Minister has the ball at his feet in terms of guaranteeing the position not only during the course of his own tenure, but also beyond it. We would safeguard the importance of mental health by specifically referring to a director of mental health within the new directorate. That is the purpose of the amendment and I am in the Minister's hands.

**Deputy Seamus Healy:** It is important that mental health is covered by the directorate. I take the Minister's assurance that such will be the case but down the road who is to know what will happen with a different Minister? Approximately 12 months ago the HSE transferred acute inpatient psychiatric services from south Tipperary to another hospital and we are now finding that the two hospitals, south Tipperary and Kilkenny, will be in two different networks. That seems an odd situation and it might have helped if there was a director of mental health. It is an important provision. I accept the Minister's assurance but I wonder what would happen under a different Minister with a different view.

**Deputy Regina Doherty:** The spirit of the amendment is warranted in so far as previous Governments have let this area of health down. With regard to this Bill, however, if we are specifically stating a particular directorate we should set out every directorate, and top of the list should be finance given how much we spend in this area. I know the intention is honourable but I am not sure it will have a benefit singularly given all the other directorates on the management team and the amounts we spend.

**Deputy James Reilly:** I have stated on the record that there will be a director of mental health. This is the first time that a separate and distinct director of mental health will be appointed. The person appointed will be responsible to the director general for the budget and resources applied to mental health and for advancing the Government's stated policy of implementing A Vision for Change. The idea is to create transparent lines of funding for the various directorates. We all know that mental health crosses a range of areas, which means there is not only a vertical line but also a horizontal line passing through primary care, hospital care, social care and community care. The expert advice I have received indicates this amendment will

cause more problems than it will solve. I absolutely accept the good intentions behind it but I ask that it be withdrawn because I do not want to send a negative message on mental health. I believe mental health is critical to everybody's well-being and people do not know how strong it is until it breaks. I will not be in a position to accept the amendment and rather than have a vote on it, I would prefer it to be withdrawn.

**Chairman:** How stands the amendment?

**Deputy Caoimhghín Ó Caoláin:** I will respond to the Minister briefly by welcoming what he has put on the record. That certainty is important. It should not be confined to this committee, however. I will not press the amendment but I reserve the right to present it again on Report Stage. The Minister's remarks were important and they should be heard in the Dáil. I may revisit the matter on Report Stage and if he gives it further consideration in the interim, so be it. The assurance we have been given is welcome.

Amendment, by leave, withdrawn.

**Chairman:** Amendments Nos. 4, 5, 7 and 14 are related and may be discussed together, by agreement. Amendment No. 5 is an alternative to amendment No. 4. Amendments Nos. 4, 5, 7 and 14 will be discussed together.

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 4:

In page 6, to delete lines 31 to 34.

This amendment would delete the proposed new section 16A(3).

Section 16A(3) reads: "A person may not be appointed as an appointed director unless he or she is a person who is an employee of the Executive holding the grade of national director in the Executive." I would be of a mind to be not only greatly sympathetic to that view and the application of it in most circumstances but I have it to say that I believe there is a basis for concern in respect of the area regarding mental health and this is the focus of my amendment. It is imperative that we appoint the best available person to take up this role and responsibility and that person might not be currently within the HSE service. That person may have been previously or may have been in any other walk of life as things are but he or she may have the necessary feel for it, commitment to it and the abilities and the unquestionable interest. There are people available who would certainly fit that bill and there have been instances of appointments recently of people from roles that have given them great expertise. At the meeting of this committee last week we heard of the instance in respect of the child and family agency, as it will be known, and the appointment of a former senior face and voice within the non-governmental sector.

There is merit in not holding strictly to what section 16A(3) seeks to achieve and that the criteria should stipulate someone who is absolutely committed and with the proven track record of interest in and support for not only the development of mental health services but the successful roll-out at the earliest possible time of A Vision for Change. I commend amendment No. 4 to the Minister and the committee.

**Deputy James Reilly:** The effect of Deputy Ó Caoláin's amendment would mean there would be no requirement that members of the directorate be drawn from employees and senior management positions in the HSE. As the directorate is to be the new governing structure of the

HSE, it is essential that its members come from senior management in the executive. I should also clarify that it was not the intention that appointed directors be drawn only from current HSE employees. In other words, the intention was that appointed directors be drawn from HSE employees irrespective of when the person may have been appointed to the grade. Therefore, I do not propose to accept amendment No. 4.

Deputies will be aware from my amendments that I am no longer proposing that membership of the directorate should be limited only to persons holding the grade of national director. In this regard amendment No. 5 deals with eligibility for appointments to the directorate. The Bill currently provides that appointed directors must be HSE employees holding the grade of national director. However, as I signalled on Second Stage, in light of the approval of some new necessary top management positions covering issues other than service areas I believe that eligibility for membership of the directorate should be widened to give a greater degree of flexibility in determining the ideal composition of the directorate and enable other relevant employees as well as employees in charge of service areas to be part of the governing body of the HSE. Specifically, the amendment provides that appointed directors must be employees holding the grade of national director or another grade not less than the grade of national director.

I wish to inform the committee of a potential amendment relating to directorate membership on Report Stage to which I alluded earlier. Amendment No. 5, which I have just outlined, widens eligibility for membership of the directorate to allow senior employees in addition to national directors to be members of the directorate. Under the Bill, however, the maximum number of directors of the directorate, including the director general, is seven. However, under the Health Act 2004 the number of board members was 12. I am still in favour of a tight ship when it comes to the directors but I believe there is scope for a slight increase in the total number of directorate members. I believe this will allow relevant service heads and a small number of other key senior employees to form the governing body of the HSE. Accordingly, and subject to legal advice, I will be bringing an appropriate amendment on Report Stage. However, I wish to assure the committee that there will be no additional costs associated with this amendment.

Amendment No. 7 is consequential on amendment No. 5. Amendment No. 14 is to ensure the Minister can appoint an appointed director's second-in-command to act as a temporary member of the directorate during an extended absence, for example, through illness, of the appointed director. Section 16L(2) currently allows the Minister to appoint a HSE employee to the directorate where, by reason of an extended absence by an appointed director, there is not in the opinion of the Minister a sufficient number of appointed directors of the directorate available to enable the directorate to perform its functions effectively. However the Bill provides that only employees in the grade of national director or, with the amendment recently discussed, another no-less-senior grade are eligible to serve on the directorate. Should there be an extended absence of an appointed director, amendment No. 14 will allow another HSE employee to temporarily replace the appointed director on the directorate, the governing body, even though that employee may not be a national director or a person holding an equivalent grade. This flows from a common sense approach to management and the need to consider practical situations that might arise. My amendments, if accepted, will have no financial implications.

**Deputy Caoimhghín Ó Caoláin:** Will the Minister elaborate in respect of the numbers he intends to provide for in the amendment on Report Stage? We had heretofore understood the number would be seven, but clearly the Minister will extend that. Has the Minister made a decision on what number he intends to propose?

It is welcome that the Minister is willing to look at others within the HSE rather than only

current holders of national director roles but the Minister goes on to state in amendment No. 7 that if such a person ceases to be employed by the executive then he will also cease to be an appointed director. The Minister is holding absolutely rigidly to the situation that members of the board, the directorate, will be employees of the HSE. The Minister has widened the scope of possible appointees from the national director role to any other level - this is clear from what he has put forward - but I believe he should take the further step. I do not believe we should be harnessing it in respect of current employees of the HSE. The expertise is what we require. We need the best person and he or she may be outside the HSE loop at this point and the Minister should be willing to consider that.

My concerns are principally in the mental health area but it is equally applicable to any and all of the positions. It cannot be beyond the Minister's gift to accept that it should be an open application. Clearly, people within the HSE would have a distinct advantage because of their knowledge, experience and direct involvement within the service, but we could be surprised by the capacity and abilities of those who might express an interest coming from outside the HSE. I do not believe we should close the door on that experience and interest. I believe it is all to the good and that it should be an open opportunity. That is my position and I appeal to the Minister to reconsider.

**Chairman:** There was an oversight on my behalf at the beginning of the meeting. I should have informed the meeting and made members aware that the Minister must leave at 6.30 p.m.

**Deputy James Reilly:** It is not often that Deputy Ó Caoláin and I agree. This is one of the occasions we agree although perhaps not in the same way. I am happy to share with Deputy Ó Caoláin my thoughts on the Report Stage amendment because I am clear in what I am trying to achieve. Its purpose is to accommodate precisely what Deputy Ó Caoláin was talking about and it alludes to what I was talking about some moments ago. Currently we have the director general, the hospitals director, the primary care director, the social care director, the mental health director and the director of health and well-being. That is six people. We also have a chief operations officer in place, bringing the total to seven. We are advertising for a chief financial officer, who has not yet been appointed. This comes back to the point that they must be employees to go on the directorate, and most people here would agree that any organisation would want its chief financial officer involved at the directorate or managerial level, which is precisely why I am talking about a Report Stage amendment to accommodate that.

In essence, I am in agreement but the language is a little different. People must be employed first before going on the directorate. It is a technicality but I have highlighted the area in the past as there is a great deficiency in that regard throughout the system concerning a lack of people with financial training being involved in the control of the finances of an organisation. If memory serves, approximately 10% of people in charge of accountancy functions within the HSE have financial training, which is a cause of grave concern. We have set about addressing that and we have appointed somebody new in the Department, through the four regions and in the primary care reimbursement service. We need a new chief financial officer in the new directorate.

**Deputy Caoimhghín Ó Caoláin:** The Minister's comments suggest he is only looking at the chief financial officer, but my wish is to consider all opportunities. My focus was particularly on mental health, which I still hold strongly. I do not have anybody in mind, and this is not to aid and abet anybody's career prospects. Far from it, I would not be party to such a process. I hope that by opening up this matter we would be able to ensure the best possible choice and selection. That is in the interest of the service, mental health in particular and best practice.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

**Deputy James Reilly:** I move amendment No. 5:

In page 6, line 34, to delete “grade of national director in the Executive.” and substitute the following:

“grade of national director or other grade in the Executive which is not less senior than the grade of national director.”.

Amendment agreed to.

**Chairman:** Amendments Nos. 6 and 9 are related and will be discussed together by agreement.

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 6:

In page 6, line 39, after “determine” to insert the following:

“, but the total annual remuneration for each director shall be no more than €100,000”.

I had the rare opportunity to take Leaders’ Questions last Thursday, as it has not fallen to my lot for some time. I availed of the opportunity to ask the Tánaiste about matters concerning Croke Park II. Of course, he did not answer but at the end he asked me if I would support legislation to cap public service pay. I responded that it is an absolute given and we have argued this consistently. At this first opportunity following that debate, I am expressing the same sentiments. With all the difficulties currently applying, it is very important that salaries at the highest levels within the public service are capped and I am making the case very clearly that we should ensure that higher pay levels are curtailed at a particular level. The €100,000 figure is the one we have argued for, as have other voices in society, trade unions and elsewhere. I do not anticipate the Minister will accept, as he has demonstrated a contrary view time and again, but so be it.

**Deputy James Reilly:** It is important to be clear that an appointed director will not receive any additional remuneration by virtue of the appointment to the directorate. An appointed director will be remunerated for his or her substantive post of national director or other senior grade. Posts at national director level in the HSE are senior management positions which encompass significant responsibilities and accountability. These senior managers will collectively be responsible for managing a budget of approximately €13 billion and staff of almost 100,000 people. They will be expected to achieve significant savings and system reform. In these circumstances and cognisant of Government policy on public service pay, the posts have been approved at national director level 2, with a salary of €158,296. That salary level, as with other salary levels in the public service, has been reduced in recent years.

The remuneration package for the director general must reflect the fact that the position encompasses significant and onerous responsibilities. As well as chairing the directorate, the director general will be responsible for the management and control of the HSE. The director general will also be required to ensure the achievement of national performance targets, prepare the HSE for further change and deliver on Government reform plans for the sector. Having regard for current Government pay policy, the cap on public sector salaries of €200,000 and the need for appropriate headroom between the levels of senior management, the intended salary

level for the post is €195,000, subject to final agreement with the Minister for Public Expenditure and Reform. It must be noted that this salary is significantly lower than the salary levels paid to previous HSE chief executive officers, which were upwards of €300,000 per annum plus additional benefits.

The Deputy is quite right that I will not be accepting the amendment.

**Chairman:** Will the Deputy also speak to amendment No. 9 in replying?

**Deputy Caoimhghín Ó Caoláin:** The amendment states:

In page 6, line 39, after “determine” to insert the following:

“, but the total annual remuneration for each director shall be no more than €100,000”.

This is definitely influenced by the fact that low to middle income earners across the public service in particular have had to bear the greatest burden-----

**Chairman:** We should stick to the amendment rather than broader economic issues.

**Deputy Caoimhghín Ó Caoláin:** This would ensure a greater sharing of the weight of all that has befallen us as a people in recent years. High income earners have a responsibility to play a greater role in helping us through these times. Others are shouldering more than they can carry. My consistent position is that those who are on a higher income are entitled to take a greater share of that burden. This amendment is consistent with that logic so I commend it to the committee and the Minister.

Amendment put and declared lost.

**Deputy James Reilly:** I move amendment No. 7:

In page 7, to delete lines 6 to 9 and substitute the following:

“(4) Upon an appointed director ceasing to be employed by the Executive in a grade referred to in section 16A(3), that person shall cease to be an appointed director.”.

**Deputy Caoimhghín Ó Caoláin:** I am concerned about this. The earlier amendment-----

**Chairman:** This has been discussed with amendment No. 4 so there can be no discussion now.

Amendment put and declared carried.

**Chairman:** Amendments Nos. 8 and 10 are related and will be discussed together, by agreement.

**Deputy Billy Kelleher:** I move amendment No. 8:

In page 9, line 15, to delete “Subject to subsection (4),”.

This is in the context of the thrust of Deputy Ó Caoláin’s comments and amendments. The issue of concern here is that we are hamstringing the appointment process in view of the fact that those who can be appointed to this new directorship, the director general and the directors, can come from the existing positions. The Minister has announced that he intends to table an

amendment but that is only in the context of additional directors being appointed, like the chief financial officer or one or two others whom the Minister may wish to appoint.

The Minister held the same view as me. He once described the HSE as a dysfunctional and self-serving organisation. I do not want to make overtly political points but that is the fact of the matter. By virtue of this legislation the Minister is ensuring that the Public Service Management (Recruitment and Appointments) Act 2004 is bypassed and there will not be an open recruitment process whereby people would make an application, present their credentials and the best person would be selected. This is not casting any aspersions on any individual who is entitled under this proposal to put his or her name forward. With an issue of such importance and with such a large budget and such significant responsibilities being placed on people, surely there should be an open recruitment process.

The Minister intends to abolish the HSE in the near future but in the meantime it has an onerous task, with which the Minister has charged it, to present a proper health Estimate every year to carry out the functions and the running of the HSE. It is completely unacceptable. I am amazed that more people are not concerned about this. In the context of this and some of the provisions in section 7 with regard to the removal of directors, this is allowing the Minister extensive and sweeping powers. It is making people who have very serious decisions to make beholden to the Minister. To quote one section: “The Minister may issue a direction to the Directorate in relation to the delegation of the Executive’s functions to the Director General.” The Minister, by issuing a direction to the directorate, can bypass it, and the director can make the decision because of delegation of powers.

The Bill also states: “The Minister may at any time remove an appointed director from office as a member of the Directorate if ... the removal of the person as an appointed director appears to the Minister to be necessary for the Directorate to perform its functions in an effective manner.” This goes to the heart of issues. No Minister should have this authority, unless there are serious breaches of ethics and standards, to remove somebody of senior significance. It is akin to giving the Minister authority to remove the Secretary General of a Department. It is akin to giving the Minister authority to sack senior officials in the Department of Health. I have major concerns about this. This is not casting aspersions on the Minister.

**Deputy James Reilly:** I hate to interrupt the Deputy. On a point of order, we are discussing an amendment relating to the appointment of the first director, not the issues the Deputy is raising.

**Deputy Billy Kelleher:** I can deal with them in terms of section 7. I can be repetitive if people want me to be. I will stick directly to the amendment in this case, but it is the general thrust of the appointment process. We are now charging a person who is running the HSE, which has a budget of €13 billion every year, and we are saying there should be no open recruitment process. We are recruiting from an organisation that the Minister has previously described as dysfunctional and self-serving, and in the context of what Deputy Ó Caoláin and others said, there should be an open recruitment process for the director general and directors, and it should be done at one remove from this very constrained legislation. It is the case in almost every other area that a person who is charged with this kind of accountability would be appointed through the Public Service Management (Recruitment and Appointments) Act of 2004.

**Deputy James Reilly:** Under subsection (4), the first director general is appointed by the Minister. Subsequent directors general will be appointed by the Minister following a recruitment process under the Public Service Management (Recruitment and Appointments) Act 2004. There are precedents in legislation which provide that the first person appointed to a new office

may be appointed as envisaged in subsection (4). This is the most practical way to advance the new director's arrangements, which are temporary. I do not, therefore, intend to accept amendment No. 10 and consequently will not accept the related amendment No. 8.

**Deputy Billy Kelleher:** I intend to make one further point. We are restructuring the health services, as is the Minister's right and he said he received a mandate to do so. However, I am very concerned that while the Minister says it is temporary, we cannot foretell what will happen in the future. In the meantime, there must be one remove at least in the appointment process to ensure it would be open, transparent and would go to the person most eminently qualified who applies for the position. That is the key issue at stake. I will refer to the broader issues in section 7 but I am pressing the amendment because I genuinely believe, as Deputy Ó Caoláin said, that we should allow anybody who feels they are eminently qualified to apply for the positions through the recruitment process. There may be precedents, but the Minister is subsuming the HSE into the Department of Health. In the context of the precedents the Minister mentioned, he would be taking functions from a Department and moving them out, sometimes with a board and accountability. Here it is the exact opposite and that is something on which people should reflect.

**Deputy James Reilly:** The precedents include legislative provisions for the Charities Regulatory Authority, the Residential Institutions Statutory Fund Board, the Qualifications and Quality Assurance Authority of Ireland and the National Tourism Development Authority. There is nothing new in this and we all know this is a short, temporary arrangement that will last a couple of years at most and I want to expedite it, ensure we have a smooth transition and ensure services are maintained. That is why I have gone about it as I have, and no other reason. We have in position an individual who is excellently suited to the role.

**Deputy Billy Kelleher:** I am not insinuating that the Minister is acting with any ulterior motives. It is just fundamentally wrong.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 9:

In page 9, line 24, after "determine" to insert the following:

" , but the total annual remuneration of the Director General shall be no more than €100,000".

Amendment put and declared lost.

**Deputy Billy Kelleher:** I move amendment No. 10:

In page 9, to delete lines 25 and 26.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

**Deputy Billy Kelleher:** I move amendment No. 11:

In page 10, line 17, after "opinion," to insert the following:

“such opinion being corroborated by independent written medical advice,”.

I do not want to make a huge issue of this but this is in the context of independent corroboration of medical evidence. There are many reasons a person may want to be removed from a board for whatever reasons. The medical evidence presented should be independently validated.

One never knows the reason a person may want to be removed but in the context of ensuring it is done in accordance with best practice, that independent medical evidence should be corroborated.

**Deputy James Reilly:** I thank the Deputy for his amendment. There are many examples in legislation relating to the removal of a person from office where in the opinion of the body or person with responsibility for the matter that the office holder has become incapable through ill-health of effectively performing his or her duties. The provision in the Bill is based on those precedents and I do not see the need to go further, as proposed by the Deputy. I, therefore, do not intend to accept the amendment.

Amendment, by leave, withdrawn.

**Chairman:** Amendments Nos. 12 and 13 are related and may be discussed together by agreement.

**Deputy James Reilly:** I move amendment No. 12:

In page 11, to delete lines 22 to 40 and substitute the following:

“(4) Where the Director General is absent the functions of the Director General referred to in subsection (1) may be performed by such appointed director as may be designated by the Director General from time to time, with the consent of the Minister.

(5) If the office of Director General is vacant, the functions of the Director General referred to in subsection (1) may be performed by such appointed director as may be designated by the Minister for the purposes of this subsection.

(6) For the purposes of subsections (4) and (5), where in this Act or in any other enactment functions are assigned to the Director General or provision is made in this Act or in such enactment as to the manner in which a function so assigned is to be performed by the Director General any such reference to the Director General shall be construed as including a reference to the appointed director designated by the Director General under subsection (4) or, as the case may be, the Minister under subsection (5) for so long as that appointed director stands so designated and entitled to perform the functions of the Director General.

(7) Where the Director General resumes duty the person designated under subsection (4) shall cease to perform the functions of the Director General.”.

Section 16G of the 2004 Act provides for the general functions and the role of the director general. These include managing and controlling the business of the HSE. In these operational aspects of his or her role, the DG is answerable to the directorate as the governing authority for the HSE. Section 16G(1) provides that in addition to his or her functions as a member of the directorate and as the chairperson of the directorate, the DG shall carry on, manage and control generally the administration and business of the HSE, perform such other functions as may be delegated to him or her by the directorate and perform such functions as may be assigned to him

or her under this Act or any other enactment.

Under section 16G(2), the DG is responsible to the directorate for the performance of his or her CEO type functions, that is, carrying on, managing and controlling generally the administration and business of the HSE, performing such functions as may be delegated to him or her by the directorate and perform such other functions as may be delegated to him or her by the directorate and perform such functions as may be assigned to him or her under this Act or any other enactment. He or she is also responsible to the directorate for the implementation of its policies.

However, under section 16G(3), this responsibility to the directorate does not apply to the DG's functions as a member of the directorate and as the chairperson of the directorate. Legislation generally provides for a deputy to act in the absence of the CEO or when the office of CEO is vacant. Section 16G(4) currently provides that in the extended absence of the DG or if the office of DG is vacant, the functions of the DG may be performed for such period not exceeding six months by an appointed director, that is, a member of the directorate designated by the Minister. This came about in part because the Department did not want to give weight to the idea of a standing grade of deputy DG. However, the HSE has expressed a concern that in any event there should be provision in the Bill for the DG to be able to nominate a stand in even where he or she is absent for only a short period.

Amendment No. 12 deals with the absence of the DG and a vacancy in the office of DG and provides for designation by the DG options and the Minister to address those situations. Amendment No. 13 is consequential and deals with the chairing of meetings of the directorate in the absence of the DG or a vacancy in that office where a designation has been made.

**Deputy Caoimhghín Ó Caoláin:** I have a concern. The wording the Minister seeks to amend includes, importantly, under section 16G(4), "...the functions of the Director General referred to in subsection (1) may be performed, for such period not exceeding 6 months". The amendment and the Minister's comments make no reference to that important point. It is not included for no good reason. The Minister is seeking to delete this but he did not refer to this in his commentary and it is not addressed in the substitute subsection, which states, "may be performed by such appointed director as may be designated by the Director General from time to time, with the consent of the Minister". The DG might not be in a position to do so from time to time. This is a loose and open provision. We have had all sorts of time-related concerns in public life in recent years and I thought that was a particular protection that the Minister had presented initially because he was time constraining this provision. It was not open and the position could not be abused or carried on indefinitely. He needs to clarify and explain why he is taking away this important requirement.

**Deputy James Reilly:** Under section 16K, the Bill currently provides that in the extended absence of a DG or if the office of DG is vacant, the functions of the DG may be performed for such period not exceeding six months by an appointed director, that is, a member of the directorate designated by the Minister. However, on further reflection, there is a need to address absences by the DG that are not extended absences and it is important that even a short absence by the DG should not leave the executive without someone who could clearly and authoritatively exercise the important functions of the DG. Given this proposed change to cover short absences, from an operational and practical perspective, the DG is better placed to designate someone to act in his or her absence. However, such designation is subject to the consent of the Minister. For completeness, when the DG returns to duty, the designated director automatically

ceases to perform the functions of the DG.

In the different scenario of a vacancy in the office of the DG, the amendment provides that the Minister will designate the appointed DG who will act in an interim capacity. The designation of an appointed director to act as DG in the event of a vacancy is temporary. Under section 16L(1), the Minister is required to take steps to fill the vacancy as soon as may be practicable. Amendment No. 13 is consequential. When the DG is not present or the office is vacant, the appointed director designated by the DG for the purpose of his or her absence or in the case of a vacancy, or the appointed director designated by the Minister, if any has been so designated, will, if present, chair meetings of the directorate.

**Deputy Caoimhghín Ó Caoláin:** That does not explain why the Minister is seeking to delete the provision for a six-month cap relating to that absence. We have many examples across the public service of people in high office who are merely acting in the respective role that they occupy. Several local authority county managers are acting up and they have not been designated. Their predecessors have not been properly replaced. I fear that someone could be in such a position for an extended period. Six months is a long time and the HSE is responsible for the largest chunk of public money in the context of the overall health budget. Where somebody is acting in the capacity of the DG, a safety net is required in order there are not extended periods of stewardship where people for whatever reason have not been appointed to the position. It is not beyond the bounds of possibility that the DG duly appointed could be *in absentia* for a variety of reasons for much longer periods.

**Deputy James Reilly:** Section 16G(4) of the original Act states: “Where the Director General is absent for an extended period or the office of Director General is vacant, the functions of the Director General referred to in subsection (1) may be performed, for such period not exceeding 6 months as may be specified by the Minister...”. The extended period is not qualified here and, therefore, the amendment is seeking to cover the shorter periods where, say, the DG is on holidays for two weeks. It says no longer than six months but it does not cover the shorter period. It is only for the clarity of that. Not exceeding six months is still in there.

**Deputy Caoimhghín Ó Caoláin:** It is not.

**Deputy James Reilly:** It is.

**Chairman:** We will not have a criss-cross.

**Deputy Caoimhghín Ó Caoláin:** The Minister proposes to delete lines 22 to 40, inclusive. I am sorry, the Minister is wrong. It is not fair. He came in at the end with that after two efforts to explain why it was being removed. I am merely doing my job in highlighting something here.

**Chairman:** I appreciate that.

**Deputy Caoimhghín Ó Caoláin:** The Minister is making the claim that it is still there. It is patently not still there. It is being removed and there is no explanation of it. It is not about two-week holiday periods. It is about any number of situations that could arise where there would be periods of absence of six months or more.

This is not the local penny arcade of which we speak. For God’s sake, it is the Health Service Executive. It requires more serious address. I would ask members to reflect on the seriousness of the matter that I have highlighted.

**Deputy James Reilly:** Deputy Ó Caoláin is correct. The six months proviso has been removed. I do not have an issue with the six months proviso being included but I would need to take more advice on that. We will come back to it at Report Stage.

The point of this was to ensure that the shorter absences are covered without leaving it open-ended where, for example, the person could be gone for a year and that somebody would be acting up for a year.

**Deputy Caoimhghín Ó Caoláin:** That could happen.

**Deputy James Reilly:** Deputy Ó Caoláin is correct.

**Chairman:** Will the Minister withdraw the amendment?

**Deputy James Reilly:** I will withdraw the amendment until Report Stage and take advice.

**Deputy Caoimhghín Ó Caoláin:** I welcome the fact that the Minister has responded. It was not my amendment. I was pointing out what I saw to be a deficiency. That is the purpose of this exercise.

**Deputy James Reilly:** Correct.

**Chairman:** Okay. Amendment No. 12-----

**Deputy Caoimhghín Ó Caoláin:** I accept and welcome that and look forward to seeing it corrected at Report Stage. The Chairman is not happy to let me have my moment.

**Chairman:** I am sorry. I am anxious to expedite the passage of the Bill, if we can.

**Deputy James Reilly:** It is clear we will not be finished by half past six.

**Chairman:** That is fine. We will adjourn at 6.30 p.m.

Amendment, by leave, withdrawn.

**Deputy James Reilly:** I move amendment No. 13:

In page 15, to delete lines 3 to 8 and substitute the following:

“(b) if and for so long as the Director General is not present, or if that office is vacant, the appointed director designated by the Director General for the purposes of section 16G(4) or, as the case may be, the appointed director designated by the Minister for the purposes of section 16G(5) shall, if present, chair the meeting, or”.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 14:

In page 15, to delete lines 37 to 44 and substitute the following:

“(2) Notwithstanding section 16A(3), where by reason of an extended absence by an appointed director there are not, in the opinion of the Minister, a sufficient number of appointed directors of the Directorate available to enable the Directorate to perform its functions effectively, the Minister may appoint a person who is an employee of the Executive (whether or not holding a grade referred to in section 16A(3)) to act as a tem-

porary appointed director of the Directorate.”.

Amendment agreed to.

Question proposed: “That section 7, as amended, stand part of the Bill.”

**Deputy Billy Kelleher:** At the risk of being repetitive, there are a few points that I must make in the context of section 7.

This gives sweeping powers to the Minister and there is no point in us pretending that is not the case. Section 16D(3) states, “The Minister may at any time remove an appointed director from office as a member of the Directorate if ... (c) the removal of the person as an appointed director appears to the Minister to be necessary for the Directorate to perform its functions in an effective manner,”. I have no difficulty with a Minister having powers to remove persons at certain juncture but in the context where the Minister deems it necessary for the Directorate to perform its functions in an effective manner, who decides what is an effective manner? Clearly, this is important.

If there was a situation whereby the Minister had the power to remove the Secretary General of a Department, many Members of the House would have major concerns. It is important that there are lines of demarcation where staff are not beholden to the Minister in the context of their stated employment, which is the case under this Bill where the Minister can remove them. Under the Bill as drafted, persons who are in very senior positions and who are charged with significant responsibilities are beholden to the Minister of the day. Whereas the Vatican may be run by an infallible person, I am not suggesting the Minister is always infallible. He may be fallible from time to time. It is important that staff have the confidence, and are not beholden to a Minister, to be able to say to the Minister they believe what he is doing is wrong for obvious reasons.

**Chairman:** Is that what Fianna Fáil was doing?

**Deputy Billy Kelleher:** No.

**Chairman:** I am sorry, the Chair should not say that.

**Deputy Billy Kelleher:** It is critically important that we look at this in a serious manner. The section gives the Minister of the day sweeping powers to dismiss a director, and a person who is appointed by whatever mechanism should be in a position where he or she does not feel beholden and can safely say to the Minister that the advice he or she is giving to the Minister is not in accordance with his or her wishes for stated reasons. When one couples that with the proviso regarding the Minister being in a position to-----

**Chairman:** Is this on the section?

**Deputy Billy Kelleher:** Yes. It is a large section.

Section 16C(8) states, “The Minister may issue a direction to the Directorate in relation to the delegation of the Executive’s functions”. If the directors have a concern about a certain issue, the Minister can bypass them and delegate the functions of the directorate directly to the director general. Am I misreading it? There must be certain lines of demarcation. That is my issue of concern.

There is one other issues about which I have concerns. The section states that a person shall

not be eligible for appointment as director general if he or she “has made a composition or arrangement with his or her creditors”. I can understand it in the context of bankruptcy, but does that mean that there has been a readjustment of his or her mortgage? Is his or her mortgage split and put in abeyance, and a certain amount of it warehoused for a period of time? What exactly is meant by “a composition or arrangement with his or her creditors”? It could be the grocery shop down the road with whom he or she has made a settlement? We need clarity on this.

This is in the context of where we are as a people. We are trying to encourage persons back into society and the Minister is saying here, in this subsection, that a person shall not be eligible if he or she has made a composition or arrangement with his or her creditors. One’s creditor could be anybody. They are not specified here and I do not think they are specified anywhere else.

Surely this is bizarre in view of the fact that the Government has just announced a personal insolvency scheme where a person can have a composition or arrangement with his or her creditors and we are saying that they should be able to partake in normal everyday society. That is a matter on which I seek clarity.

**Chairman:** As we are approaching 6.30 p.m. the Minister should reply.

**Deputy James Reilly:** I can stay a few minutes. I must leave before 6.45 p.m. because I have an important meeting to attend.

**Chairman:** It was my fault at the beginning that I did not make that comment.

**Deputy James Reilly:** To deal with Deputy Kelleher’s last point first, this is a standard provision for posts of this nature. There is nothing new about it. I am advised it applies to anybody in a senior position of that nature and one would know by the language that is a standard legalese that applies because of the responsible position that he or she holds.

**Deputy Billy Kelleher:** What exactly is the definition of a composition or arrangement? What defines a composition or arrangement? In what Act is it defined?

**Deputy James Reilly:** I can provide the Deputy with the legal interpretation of what this means, at a later date but before Report Stage.

Second, on Deputy Kelleher’s contention about being able to hire and fire at will, natural justice applies in this country and it would be a serious matter for a Minister or anyone else to behave in the way he outlined because one would be leaving oneself open to legal challenge. A Minister would always act with responsibility in these matters because he or she is open to challenge. We all will be aware that there is much history of persons going to court over unfair dismissal, constructive dismissal and various other types of dismissal. I do not think that is a concern and I am not accepting the amendment.

**Deputy Billy Kelleher:** There is no amendment.

**Deputy James Reilly:** I do not fear that this section is unwarranted. I believe it is reasonable.

**Chairman:** We have had a great deal of debate on it.

**Deputy Billy Kelleher:** We had. This is a new departure, that senior officials who are charged with significant responsibility are beholden. The Minister cannot walk into his office

and dismiss the civil servant. Legally, he cannot do that.

**Deputy James Reilly:** One cannot do this unless one has reasonable justification. The laws of natural justice apply here.

**Deputy Billy Kelleher:** I accept that, but we are now enshrining in this legislation that the Minister may at any time remove an appointed director from office as a member of the Directorate if the removal-----

**Deputy James Reilly:** It is a temporary structure.

**Deputy Billy Kelleher:** I oppose the section in that context. It is far-reaching. It brings pressure on-----

**Chairman:** Deputy Kelleher made his point well.

**Deputy Billy Kelleher:** It puts pressure on senior officials to be subservient when they believe not that the Minister is acting in an inappropriate way, but that he is going down a policy route not in accordance with the best outcomes for the HSE.

Question put and declared carried.

Sections 8 to 11, inclusive, agreed to.

## SECTION 12

**Chairman:** Amendments Nos. 15, 16 and 18 are related and will be discussed together.

**Deputy James Reilly:** I move amendment No. 15:

In page 19, lines 26 and 27, to delete “in accordance with subsections (1) to (5)” and substitute the following:

“before the expiry of the period referred to in subsection (2)”.

Under section 31 of the Health Act 2004 the HSE must submit a service plan within 21 days of the Government publishing the Estimates for the financial year, or in such other period as the Minister may allow. The Bill allows a Minister to direct the director general to prepare and submit a service plan if the HSE has failed to submit a service plan in accordance with various provisions of the section. This is based on a similar provision in the Health Act 2004 with regard to the CEO. The intention of the 2004 Act was that the CEO would be directed to prepare and submit a service plan only if the HSE had not submitted one in the specified time period and not for other reasons. This will be clarified by amendment No. 15. Amendment No. 18 provides that the director general must comply with such a direction.

With regard to amendment No. 16, section 31(8) of Health Act 2004 provides that within 21 days of receiving the service plan, the Minister must either approve it or issue a direction to amend it. The Health Service Executive (Governance) Bill amends section 31. Under the Bill the Minister must, having consulted with the Minister for Children and Youth Affairs, approve the service plan in the form in which it was submitted, or approve the service plan with such amendments as the Minister, having consulted with the HSE, may determine, or issue a direction to the HSE to amend the plan. The Health Service Executive (Governance) Bill does not specify a time period within which the Minister must take one of these three steps. To address

this situation, amendment No. 16 provides that the Minister must act within 21 days of receiving the service plan from the HSE. This time period is in line with current provisions in the 2004 Act. For completeness, it is intended the requirement for the Minister to consult the Minister for Children and Youth Affairs will be repealed in the legislation establishing the proposed child and family support agency.

Amendment put and declared carried.

**Deputy James Reilly:** I move amendment No. 16:

In page 19, line 36, to delete “Subject to subsection (10)” and substitute the following:

“Not later than 21 days after receiving a service plan under this section”.

Amendment agreed to.

**Deputy Caoimhghín Ó Caoláin:** I move amendment No. 17:

In page 19, line 43, after “Executive” to insert the following:

“and the Joint Oireachtas Committee on Health and Children”.

This is about consulting the committee and giving it a greater role. At the end of the day it does not in any way dilute the Minister’s hold on the matter. It is worthy of our support.

Amendment put and declared lost.

**Deputy James Reilly:** I move amendment No. 18:

In page 20, to delete lines 24 and 25 and substitute the following:

“(11) The Director General shall comply with a direction issued to him or her under this section.”.

Amendment agreed to.

Section 12, as amended, agreed to.

Sections 13 to 16, inclusive, agreed to.

## SECTION 17

**Deputy James Reilly:** I move amendment No. 19:

In page 22, line 36, to delete “committee.” and substitute the following:

“committee, at least one of whom shall hold a professional qualification in accountancy or auditing.”.

This relates to membership of the audit committee of the HSE. Given the nature and role of the audit committee, a range of skills and experience is useful among the membership and it is best not to be overly prescriptive. Following debate on the matter in the Seanad, however, I propose that special reference be made to people with professional qualifications in auditing or accounting. Amendment No. 19 will achieve this outcome but still allows the scope needed for

a wide mix of relevant skills.

Amendment agreed to.

**Chairman:** Amendments Nos. 20, 21 and 23 to 25, inclusive, are related and will be discussed together.

**Deputy James Reilly:** I move amendment No. 20:

In page 23, between lines 25 and 26, to insert the following:

“(2) The audit committee shall—

(a) advise the Directorate on financial matters relating to its functions,

(b) report in writing at least once in every year to the Directorate on those matters, and

(c) provide a copy of that report to the Minister.”.

Amendment No. 20 is a substantive amendment designed to give the audit committee a role in advising the directorate on financial matters relating to its functions. This is in addition to the role the audit committee has in advising the director general. As the provision stands in the Bill, the role of the audit committee is focused exclusively on the director general, who will be the Accounting Officer. However, it is appropriate the audit committee should also have a role in advising the directorate on financial matters relating to its functions, such as with regard to the annual financial statement of the HSE. Amendment No. 20 provides for this role.

Amendments Nos. 21 and 23 to 25, inclusive, are technical amendments to renumber subsections consequential to the widening of the committee’s functions.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 21:

In page 23, to delete lines 26 to 28 and substitute the following:

“(3) The audit committee’s duties under subsections (1)(a) and (2)(a) include advising on the following matters:”.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 22:

In page 23, line 32, to delete “by the Executive” and substitute “by the Director General”.

This is a technical amendment.

**Deputy Caoimhghín Ó Caoláin:** Will the Minister comment further?

**Deputy James Reilly:** The section refers to advice regarding compliance with section 22 of

the Exchequer and Audit Departments Act 1866 and section 19 of the Comptroller and Auditor General (Amendment) Act 1993. Compliance with these sections relates to Accounting Officers. The amendment is required because the director general will be the Accounting Officer who must comply with the legislation in question.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 23:

In page 24, line 3, to delete “(3) The audit committee” and substitute “(4) The audit committee”.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 24:

In page 24, line 8, to delete “(4) The Director General” and substitute “(5) The Director General”.

Amendment agreed to.

**Deputy James Reilly:** I move amendment No. 25:

In page 24, line 21, to delete “(5) The Director General” and substitute “(6) The Director General”.

Amendment agreed to.

Section 17, as amended, agreed to.

Sections 18 to 21, inclusive, agreed to.

SECTION 22

**Deputy James Reilly:** I move amendment No. 26:

In page 26, lines 32 and 33, to delete all words from and including “a” in line 32 down to and including “to—” in line 33 and substitute the following:

“a reference in this Act, in any other enactment, in any statutory instrument made under this Act or any other enactment, or in any contract, to—”.

Section 22 provides that references in legislation to the board and CEO of the HSE are to be read as references to the directorate and director general. Amendment No. 26 is a technical amendment and its purpose is to ensure section 22 encompasses statutory instruments and to broaden the provision to also encompass references in contracts.

Amendment agreed to.

Section 22, as amended, agreed to.

NEW SECTION

**Deputy Billy Kelleher:** I move amendment No. 27:

In page 26, before section 23, but in Part 2, to insert the following new section:

“23.—Any officer or employee of the Executive shall be tax resident in Ireland for the duration of his or her employment with or by the Executive.”.

The purpose of the amendment is to ensure any officer or employee of the executive shall be tax resident in Ireland for the duration of his or her employment with or by the executive. The amendment has been tabled because of issues raised in the Dáil by Deputy Martin and others with regard to people who, to all intents and purposes are ministerial special advisers but have been engaged through a consultancy. Such people are involved in legitimate tax avoidance. The amendment would address this issue with regard to people who are, in everything but name, advisers to the Minister. They provide consultancy through companies not registered in the country for this purpose. It leads to cynicism and is not in accordance with what we should be trying to encourage. If a person is an adviser, he or she should be called an adviser and we should not faff around the edges and pretend the person is a consultant. We should call these people what they are, and disentangle this web whereby they are able to provide a consultancy service and avoid the taxation code of the State.

**Deputy Caoimhghín Ó Caoláin:** I support Deputy Kelleher as his amendment, as tabled, is worthy of my support. It reflects the overwhelming opinion of ordinary decent Irish people who are greatly offended by such incidents. In the past people were employed directly within agencies of the State but avoided paying tax because of arrangements they had cleverly devised with their advisers. That is simply unacceptable. The health service budget should not be a party to this, nor any other public moneys. It should be stamped out. Go raibh maith agat.

**Deputy James Reilly:** People may be alluding to something that has nothing to do with the HSE. Can I correct any misapprehension? People who are hired by the Department to be advisers to the special delivery unit are not my advisers.

The amendment, as worded, seems to suggest that all officers and employers engaged by the HSE must be tax resident in the State before they are engaged by the HSE. If that is the case then the proposal would fall foul of EU anti-discriminatory legislation.

If the concern here is that the income accruing to individuals engaged by the HSE who are not resident in the State would fall out of charge to tax in the State, the following is the likely tax treatment of such income. Notwithstanding any other provision of the tax Acts, the income would be chargeable to tax by virtue of section 19 of the Taxes Consolidation Act 1997 as an “annuity, pension or stipend payable out of public revenue of the State.” This charge is unfettered by considerations of residence of the individual or where the duties are performed.

Where the individual is tax resident in a country with which this State has a tax treaty, the income will generally remain taxable in the state where the duties are performed. I can only assume that in the vast majority of cases the HSE employees will perform their duties in this State.

Where the individual is tax resident in a country with which this State does not have a tax treaty, the income will be taxable in this State. Some individuals employed by the HSE may have non-HSE income. The taxation of such income is provided for in the Taxes Consolidation Act. Therefore, I do not accept the amendment.

**Deputy Billy Kelleher:** The Taoiseach has expressed concern about the matter, so it is not

just Deputy Ó Caoláin and me. In a sense the Minister referred to the specific case of the special delivery unit.

**Chairman:** I ask the Deputy to please not name people.

**Deputy Billy Kelleher:** I shall not name people. The Minister referred to the unit and I am trying to broaden the issue. An adviser is an adviser by any other name. Let us be clear. I assume that the special delivery unit reports to the Minister and then consultants-----

**Chairman:** We are dealing with a Health Service Executive Bill rather than the special delivery unit.

**Deputy Billy Kelleher:** We have been led to believe that it is all becoming one, that the trinity is being merged. In order to send out a strong signal, we must ensure that those who hold office, engaged or employed by the HSE or otherwise, operate in a system that allows them not to be advisers but consultants. They may be advisers but in a broader context they may offer consultancy from outside of the State.

**Chairman:** The Deputy made his point already.

**Deputy Regina Doherty:** I do not see the relevance of the point.

**Deputy Billy Kelleher:** It is the amendment.

**Deputy Regina Doherty:** The Deputy's comment is totally irrelevant to the legislation.

**Chairman:** One speaker at a time, please.

**Deputy Billy Kelleher:** I made the point. As I said, the matter was raised in the Dáil where concerns were expressed and I am pushing my amendment.

**Deputy Peter Mathews:** I wish to bring a new pair of eyes and ears to the discussion. Do we envisage that there may be officers or employees who will not live in Ireland while they carry out their officership or their employment contract? The answer is very simple. If they live in Ireland for more than a year then they shall be tax resident here.

**Deputy James Reilly:** I wish to make two comments. With regard to the last comment, there are a lot of people in this country who work in the health service but reside in Northern Ireland, a different jurisdiction.

There has been an attempt to confuse people about the role of consultants that are employed by the Department of Health for various purposes. It has been claimed that they are all now suddenly my advisers. I reject that utterly, as anyone with common sense would. It was a nice try by the Deputy.

With regard to the tax status of persons who have a contract for services with the Department of Health, persons provide tax clearance certificates prior to their engagement as required by their contracts. Their tax affairs outside of Ireland are a matter for them and the relevant tax authorities. That is the same issue for all. I do not accept the amendment, I reject it.

**Deputy Caoimhghín Ó Caoláin:** Can I make a brief comment?

**Chairman:** One sentence.

SELECT SUB-COMMITTEE ON HEALTH

**Deputy Peter Mathews:** Some advisers are different from consultants.

**Deputy Regina Doherty:** Not according to Deputy Kelleher.

**Chairman:** I ask the Deputies not to go into specifics.

**Deputy Caoimhghín Ó Caoláin:** It is unfair to refer to what some would describe as cross-frontier workers, in the North-South region, in the Health Service Executive as falling into this particular realm. That is not the case. They are tax compliant in this State because they are employed here.

**Chairman:** The Minister also made a point about tax compliance.

**Deputy Peter Mathews:** An employee or an officer of the HSE is not a company or other vehicle who would provide services. An officer is a person. An employee is a person, not a company.

**Deputy Caoimhghín Ó Caoláin:** Correct.

Amendment put and declared lost.

Section 23 agreed to.

Title agreed to.

**Chairman:** I thank the Minister and his officials, Ms Ryan, Mr. Lennon and Ms Young, and members of the committee for their attendance.

Bill reported with amendments.

### Message to Dáil

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Sub-Committee on Health has completed its consideration of the Health Service Executive Governance Bill 2012 and has made amendments thereto.

The select sub-committee adjourned at 6.50 p.m. until 6 p.m. on Tuesday, 2 July 2013.