HEALTH ACT 2004

Citation
Section 1.

Commencement
The Act was passed into law on 17th December 2004.

Statutory Instruments

Health Act 2004(Commencement) Order 2005 (S.I. No. 796 of 2005)
Health Act 2004 (Regional Health Forums) Regulations 2005 (S.I. No. 797 of 2005)
Health Act 2004 (Dealings with members of either House of the Oireachtas) Regulations 2005 (S.I. No. 798 of 2005)
Health Act 2004(Commencement) Order 2004 (S.I. No. 886 of 2004)
Health Act 2004 (Commencement)(No.2) Order 2004 (S.I. No. 887 of 2004)

Parliamentary Debates

593 Dail Debates Cols. 67 – 82 (Second Stage)
593 Dail Debates Cols. 110 – 142 (Second Stage Resumed)
593 Dail Debates Cols. 581 – 601 (Second Stage Resumed)
593 Dail Debates Cols. 1045 – 1116 (Second Stage Resumed)
595 Dail Debates Cols. 43 – 93 (Motion to Recommit, Report and Final Stages)
178 Seanad Debates Cols. 2170 – 2217 (Second Stage)
178 Seanad Debates Cols. 2271 – 2322 (Committee Stage)
178 Seanad Debates Cols. 2215 – 2542 (Report and Final Stages)

General Note and Introduction to be inserted directly above Be It Enacted …)

In the Dail the Tanaiste and Minister for Health and Children, Ms. Harney, (“the Minister”) introduced the Bill as one related to the reform of the health management structures by the establishment of a single unified health service (593 Dail Debates Col. 68). Ms. Harney explained that the Bill provided for the establishment of the Health Service Executive and the consequent dissolution of the Eastern Regional Health Authority, the area health boards, the health boards and certain other agencies. The Bill also provided for the establishment of a national health consultative forum and regional health forums.

General Note (to be inserted after Section 1)

Section 1 provides for the citation of the Health Act, 2004 as the Health Act, 2004 and provides for the collective citation of all the Health Acts.
**General Note  (to be inserted after Section 2)**

Section 2 is the interpretation section of the Act and defines various terms used therein.

**General Note  (to be inserted after Section 3)**

Section 3 provides for the commencement of the provisions of the Act by Ministerial order. Sub-section (2) provides for the appointment of different commencement days for the purposes of different sections of the Act. Part 1, Schedule I and section 75 of the Act, for example, came into operation on 23rd December 2004 : Health Act 2004 (Commencement) Order 2005. Parts 2,3,5,6 and 10, inter alia, came into operation on 1st January 2005 : Health Act 2004 (Commencement) (No. 2) Order 2004.

**DEFINITIONS  (to be inserted after section 4)**

“Minister”: section 2(1)
“establishment day”: section 2(1)

**General Note**

This section provides a power for the Minister to appoint an “establishment day” for the purposes of the Act.

**DEFINITIONS to be inserted after Section 5**

“Minister”: section 2(1)

**General Note**

Provision is made for the administration expenses of the Act to be provided from Oireachtas funds, subject to the approval of the Minister for Finance.

**DEFINITIONS to be inserted after Section 6**

“establishment day”: section 2(1)
“Executive”: section 2(1)
“functions”: section 2(1)

**General Note**

Section 6 is the first section of Part 2 of the Act, which provides for the establishment of, and sets out the functions of, the Health Service Executive (“the Executive”). Section 6(1) provides that the Executive shall be established on the establishment day.
Section 6(2) provides that the Executive shall be a body corporate with the power, inter alia, to acquire and dispose of land. Paragraph 1 of Schedule 2 provides for the authentication of the seal of the Executive.

DEFINITIONS (to be inserted after Section 7)

“Executive” : section 2(1)
“functions” : section 2 (1)
“health and personal social services” : section 2(1)

General Note

Section 7 describes the general object of the Executive as being the effective and efficient use of resources to promote and protect the health of the public. Sub-section 3 indicates the sources of the Executive’s functions as this Act and any other enactment. Section 7 (4) provides greater detail and includes within the remit of the Executive the integration of the delivery of health and personal social services, the facilitation of education and training and the provision of advice to the Minister. Section 7 (5) requires the Executive to have regard to, and co-operate with, other bodies providing related services, to have regard to Government objectives and to ensure the most efficient use of available resources. Section 7 (6) empowers the Executive to undertake or commission relevant research projects but cautions against duplication of research projects.

DEFINITIONS (to be inserted after Section 8)

“Executive”: section 2 (1)
“function”: section 2(1)
“public authority”: section 2(1)

General Note

Section 8 provides for the transfer of one or all of the functions of a public authority to the Executive, where the Executive agrees, and the section provides for the corollary situation where the Executive believes one of it’s functions should be performed by a public authority. Public authority has been defined to include a local authority, statutory bodies and State-owned companies. Sub-sections (2) and (4) provide for a transfer of the powers of the transferor, in relation to the transferred function, when an agreement to transfer the function is made. Sub-section (6) provides for the payment of charges by the transferor of its function to the transferee.

DEFINITIONS (to be inserted after Section 9)

“Executive”: Section 2(1)
“functions”: Section 2(1)
“local authority”: Section 2(1)

General Note
Section 9 provides for the assignment of certain duties of a local authority to an employee of the Executive without the need for a formal agreement pursuant to section 8 above. The corollary assignment of duties to an employee of a local authority is provided for in sub-section (2).

DEFINITIONS (to be inserted after Section 10)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note
Section 10 provides for the giving of general directions to the Executive by the Minister in relation to matters governed by the Act. Sub-section (2) empowers the Minister to direct the Executive to report to him/her on any matter relating to Part 7 of the Act or any other aspect of the Executive’s performance of its functions. Part 7 of the Act deals with accountability and the preparation of corporate and service plans. Sub-section (3) states these provisions to be without prejudice to any other Ministerial power within the Act to issue directions. Sub-section (5) provides that the Executive shall comply with any direction issued by the Minister and sub-section (6) provides for a copy of any direction issued to be laid before the Houses of the Oireachtas.

DEFINITIONS (to be inserted after Section 11)

“Executive”: Section 2(1)
“Board” : Section 2(1)

General Note
Section 11 is the first section of Part 3 of the Act, which governs the membership, role and operation of the Board of the Executive. Section 11(1) provides for a 12 member Board of the Executive, 11 of which members will be appointed by the Minister and the other member will be the chief executive officer (“CEO”) of the Executive. In making appointments to the Board the Minister is required by section 11(2) to select from amongst people with expertise in, and experience of, matters relating to the Boards functions. Sub-section (3) renders certain persons, inter alia members of the Houses of the Oireachtas and any local authority, ineligible for appointment. Sub-section (4) provides that the Minister shall try to ensure gender equality in the composition of the Board. Sub-section (5) provides for publication of a notice of appointment of any Board member in Iris Oifigiul.

DEFINITIONS (to be inserted after Section 12)

“Board”: section 2(1)
“chief executive officer”: section 2(1)
“Executive”: section 2(1)
“functions”: section 2(1)
“Minister”: section 2(1)
General Note
Section 12 (1) describes the Board as the governing body of the Executive with authority to perform the functions of the Executive. Sub-section (2) provides for delegation of those functions to the chief executive officer. Where the Board believes any matter requires the Minister’s attention, sub-section (4) obliges the Board to inform the Minister of such matter.

DEFINITIONS (to be inserted after section 13)
“appointed member”: Section 2(1)
“Board”: Section 2(1)
“functions”: Section 2(1)
“member”: Section 2(1)
“Minister”: Section 2(1)

General Note
Section 13(1) provides grounds upon which the Minister may remove any Board member from office.

Section 13(2) provides for automatic cessation of membership of the Board in the event of, inter alia, the bankruptcy or conviction of an indictable offence, of any member. Where a member fails to attend Board meetings for more than six months, other than for reasons of illness, the member ceases to hold office at the end of that six month period.

DEFINITIONS (to be inserted after Section 14)
“Board”: section 2(1)
“chief executive officer”: section 2(1)
“functions”: section 2(1)
“member”: Section 2(1)
“Minister”: section 2(1)

General Note
Section 14(1) provides that the Minister can remove all members of the Board from office in the event that the Board, inter alia, fails to be quorate for three consecutive meetings or fails to comply with a court order or direction of the Minister or, if the Minister is satisfied that the Board’s functions are not being performed effectively. Where the latter is the case sub-section (2) empowers the Minister to appoint someone to carry out an independent review and report to him/her. Sub-section (3) provides for total co-operation with any such review and sub-section (4) confirms that the chief executive officer shall continue in that capacity irrespective of any cessation of office as Board member pursuant to this section. Sub-section (5) confirms that any delegation to the chief executive officer is not affected by the removal of the members from the Board.

DEFINITIONS (to be inserted after Section 15)
General Note
Section 15 provides for the appointment by the Board of committees to assist and advise the Board on the performance of its functions and sub-section (2) states that such committees can include persons who are not Board members but who possess special knowledge and experience relevant to the committee’s purpose. Sub-section (3) empowers the Board to determine the applicable terms and conditions of any such appointment, save any as to remuneration and expenses, which shall be governed by section 16. Section 16(3) provides that all remuneration and expenses of Board and committee members are to be determined by the Minister. The purpose and terms of reference of each committee is to be stated in writing by the Board according to sub-section (4), which must, pursuant to sub-section (5), confirm any act of any committee, unless otherwise stated.

DEFINITIONS (to be inserted after section 16)

“appointed member” : Section 2(1)
“Board” : Section 2(1)
“chief executive officer“ : Section 2(1)
“Executive” : Section 2(1)
“member” : Section 2(1)
“Minister” : Section 2(1)

General Note
Section 16(1) provides that the Executive shall pay such remuneration and allowances for expenses as are determined in accordance with sub-section (3) to the appointed members of the Board and any committee members, other than the chief executive officer. Sub-section (3) requires the consent of the Minister for Finance to any remuneration and expenses determined by the Minister. Sub-section (4) excludes from the ambit of this section the fixing of the remuneration and other financial terms of the chief executive officer, which are governed by section 17.

DEFINITIONS (to be inserted after Section 17)

“appointed member” : Section 2(1)
“Board” : Section 2(1)
“chief executive officer“ : Section 2(1)
“Executive” : Section 2(1)
“Interim Health Service Executive” : Section 2(1)

General Note
Section 17 begins Part 4 of the Act, which governs the office of the chief executive officer of the Health Service Executive. Section 17(1) provides that the appointed members of the Board shall appoint a chief executive officer of the Executive. Sub-section (2) renders certain persons ineligible for such appointment, including members of the Houses of the Oireachtas or any local authority. Notwithstanding sub-section (1), sub-section (3) provides that the Minister shall appoint the first chief
executive officer, on the recommendation of the Board. Sub-section (5) provides for the determination of the chief executive officer’s terms and conditions and sub-section (7) stipulates that if the chief executive officer is suspended or seconded from the role of chief executive officer, his/her membership of the Board shall be identically suspended.

DEFINITIONS (to be inserted after Section 18)
“Board” : Section 2(1)
“chief executive officer “ : Section 2(1)
“Executive” : Section 2(1)
“functions” : Section 2(1)

General Note
Section 18(1) provides for the management of the Executive by the chief executive officer and his/her reporting to the Board on the performance of those functions. Sub-section (3) provides for the appointment by the Board of an employee of the Executive to act as deputy chief executive officer where that position is vacant or the chief executive officer is absent. Sub-section (4) provides that where that power under sub-section (3) is exercised, the provisions of any legislation which deal with the functions of the chief executive officer, shall be read as references to the deputy chief executive officer.

DEFINITIONS (to be inserted after Section 19)
“Board” : Section 2(1)
“chief executive officer “ : Section 2(1)
“Executive” : Section 2(1)
“functions” : Section 2(1)

General Note
Section 19(1) provides for delegation by the chief executive officer of his functions to other employees of the Executive, subject to any constraints imposed by the Board. Sub-section (2) stipulates that any function so delegated is to be performed under the control and direction of the chief executive officer. Sub-section (3) confirms that no such delegation is to deprive the chief executive officer of capacity to act in regard to the delegated function. Sub-section (4) provides for a variation or revocation of the delegation. This was described by the Minister as having the advantage of providing clarity for employees on their roles and responsibilities (593 Dail Debates Col. 70).

DEFINITIONS (to be inserted after Section 20)
“chief executive officer “ : Section 2(1)
“Executive” : Section 2(1)
General Note

Section 20 has the effect of rendering the chief executive officer responsible for the preparation and submission of the Executives accounts.

DEFINITIONS (to be inserted after Section 21)

“chief executive officer” : Section 2(1)
“Executive” : Section 2(1)
“Oireachtas Committee” : Section 21(11)

General Note

Section 21 obliges the chief executive officer to attend, upon receipt of written request, and give an account to an Oireachtas Committee on the general administration of the Executive. Sub-section (2) relieves that chief executive officer of the obligation to give an account of any matter which might form part of court or tribunal proceedings. Sub-section (6) provides a determination mechanism for the High Court to resolve any difference of opinion between the Oireachtas Committee and the chief executive officer as to whether a matter is governed by sub-section (2). Sub-section (9) precludes the chief executive officer, when carrying out his duties under this section, from expressing any opinion on Government or Ministerial policy. Sub-section (10) provides for the chairperson of the Board or an Executive employee to attend in the place of the chief executive officer, if the chairperson of the Oireachtas Committee agrees to that substitution.

DEFINITIONS (to be inserted after Section 22)

“Executive” : Section 2(1)
“Minister” : Section 2(1)
“Oireachtas Committee” : Section 21(11)

General Note

Sections 22(1) and (2) provide for the appointment of Executive employees in accordance with the Public Service Management (Recruitment and Appointments) Act 2004. Sub-section (4) provides for the fixing of terms and conditions of employment by the Executive, subject to the approval of the Minister with the consent of the Minister for Finance. Sub-section (5) renders certain persons, including members of the Houses of the Oireachtas, ineligible for appointment as employees.

DEFINITIONS (to be inserted after Section 23)

“Executive” : Section 2(1)
“Minister” : Section 2(1)
“superannuation benefit” : Section 2(1)

General Note
Section 23(1) provides that the Executive shall prepare and submit at least one superannuation scheme to the Minister for the benefit of Executive employees. Sub-section (2) provides that the scheme must fix the terms of retirement for all, or different classes of, persons. Sub-section (4) stipulates that the approval of the Minister and consent of the Minister for Finance are required. Sub-section (7) obliges the Minister to lay such an approved scheme before the Houses of the Oireachtas and sub-section (8) empowers either House to annul such a scheme.

DEFINITIONS (to be inserted after Section 24)

“Executive” : Section 2(1)
“functions” : Section 2(1)

General Note

Section 24 provides a power for the Executive to engage advisers and to pay their fees.

DEFINITIONS (to be inserted after Section 25)

“Board” : Section 2(1)
“chief executive officer “ : Section 2(1)
“Executive” : Section 2(1)
“functions” : Section 2(1)
“member” : Section 2(1)

General Note

Section 25(1) begins Part 6 and imposes on all employees, advisers, Board members and the chief executive officer duties of integrity, proper conduct and concern for the public interest. Sub-section (3) provides for the issuance of codes of conduct by the Executive to, inter alia, certain employees and advisers, which codes will indicate the standards of integrity and conduct to be maintained by them. Sub-section (6) gives such codes the status of terms and conditions of the persons employment or retention.

DEFINITIONS (to be inserted after Section 26)

“Board” : Section 2(1)
“chief executive officer “ : Section 2(1)
“confidential information” : Section 26(3)
“Executive” : Section 2(1)
“functions” : Section 2(1)
“member” : Section 2(1)

General Note

Section 26 provides that confidential information must not be disclosed by any person where it has been obtained by virtue of their being, inter alia, a member of the Board or any committee of the Board, the chief executive officer, an employee or an adviser.
Sub-section (2) exempts disclosures, inter alia, authorised by the Executive or made to the Board.

DEFINITIONS (to be inserted after Section 27)

“Board” : Section 2(1)
“chief executive officer “ : Section 2(1)
“Executive” : Section 2(1)
“member” : Section 2(1)

General Note

This section provides for automatic disqualification from the positions of chief executive officer, Executive employee, Board member or Board committee member where a person is, inter alia, elected as a member of either House of the Oireachtas or nominated for the Seanad. In the case of an employee being affected by the section, s/he will be seconded from employment with the Executive, without any remuneration from the Executive.

DEFINITIONS (to be inserted after Section 28)

“approved service plan” : Section 28(1)
“approved corporate plan” : Section 28(1)
“capital plan” : Section 28(1)
“financial year” : Section 28(1)

General Note

Section 28 is an interpretation section for the purposes of Part 7.

DEFINITIONS (to be inserted after Section 29)

“establishment day” : Section 2(1)
“Executive” : Section 2(1)
“Minister“ : Section 2(1)

General Note

Section 29(1) requires the Executive to prepare a three year corporate plan and submit it to the Minister for approval. Sub-section (2) provides that this must be done, inter alia, within six months of the establishment day. The establishment day appointed was 1st January 2005, pursuant to S.I. No. 885 of 2004. Sub-section (3) provides that the corporate plan must include, inter alia, the key objectives of the Executive for the next three years and methods for assessing the extent of their achievement. Sub-section (4) obliges the Executive to take account of relevant policies of Government or a Minister when preparing the corporate plan. Sub-section (5) gives the Minister three months to approve, or refuse to approve, the plan. Amendments to an approved corporate plan are provided for in sub-section (6).

DEFINITIONS (to be inserted after Section 30)
“approved corporate plan” : Section 28(1)
“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 30(1) obliges the Minister to lay a copy of an approved corporate plan, or any amendment thereto, before the Houses of the Oireachtas within 21 days of its approval, or amendment. Sub-section (2) requires the Executive to publish the approved corporate plan on the Internet or to publish it in some other way specified by the Minister. Sub-section (3) requires the Executive to provide the Minister with progress reports on the implementation of an approved corporate plan. Sub-section (4) disapplies the Freedom of Information Acts 1997 and 2003 from records containing the corporate plan, any draft thereof or any draft amendment thereto.

DEFINITIONS (to be inserted after Section 31)

“approved service plan” : Section 28(1)
“chief executive officer” : Section 2(1)
“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 31(1) requires the Executive to prepare, adopt and submit a service plan to the Minister for approval. Sub-section (3) provides that the service plan shall include, inter alia, any capital plans proposed by the Executive and estimates of the number of Executive employees. If the Executive fails to prepare and submit a service plan, the Minister can, pursuant to sub-section (6), require the chief executive officer to do so. Sub-section (8) empowers the Minister to approve the service plan or to direct amendments thereto pursuant to sub-section (9). The Executive must also submit to the Minister estimates of income and expenditure in accordance with sub-section (12). Copies of an approved service plan must be laid before the Houses of the Oireachtas and published on the Internet or elsewhere, in accordance with sub-sections (13) and (14) respectively.

DEFINITIONS (to be inserted after Section 32)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 32(1) provides for a direction by the Minister to the Executive to amend an approved service plan. Where that sub-section is invoked, sub-section (2) provides that Sections 31(4) to (11) inclusive shall apply. Sub-section (4) requires the Executive to submit the amended service plan to the Minister within 5 days of its adoption. Sub-section (5) empowers the Minister, within 21 days, to direct further amendments, in the absence of which direction, sub-section (6) provides that the
amended service plan shall be deemed approved. Sub-sections (8) and (9) provide for the laying of the amended service plan before the Houses of the Oireachtas and for it’s publication on the Internet or elsewhere.

DEFINITIONS (to be inserted after Section 33)

“approved service plan” : Section 28(1)
“Executive” : Section 2(1)
“health and personal social services” : Section 2(1)

General Note

Section 33 provides for the implementation by the Executive of the health and personal social services contained in the approved service plan.

DEFINITIONS (to be inserted after Section 34)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

This section requires the Executive to seek the prior written permission of the Minister in advance of committing to any capital spending in excess of an amount specified by the Minister with the consent of the Minister for Finance.

DEFINITIONS (to be inserted after Section 35)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

This section requires the Executive to submit to the Minister for approval a code of governance which includes, inter alia, an outline of its guiding principles, it’s structure and internal controls. Sub-section (2) provides for periodic review and revision of the code of governance. Sub-section (4) provides for publication of the current code.

DEFINITIONS (to be inserted after Section 36)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 36(1) requires the Executive to keep accounts of money spent and received and sub-section (2) requires the Executive to prepare annual financial statements in accordance with accounting standards specified by the Minister. Sub-section (5) requires the Executive to submit copies of financial statements to the Comptroller and
Auditor General and to the Minister upon their adoption. The financial statements are audited and the report of the audit is copied to the Executive by the Comptroller and Auditor General in accordance with sub-section (6). Sub-section (7) provides for the laying before the Houses of the Oireachtas of the audited financial statements and the report.

DEFINITIONS (to be inserted after Section 37)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 37(1) requires the Executive to prepare and adopt an annual report each year before 30th April on the performance of its functions during the preceding year. Sub-section (2) provides that the annual report shall include, inter alia, a general statement of the health and personal social services provided during the preceding year, reports on the implementation of the service and corporate plans and the report required by section 55 of this Act. Section 55 (2) requires the establishment of a complaints procedure. Sub-sections (3) and (4) require the Executive to submit a copy of the annual report to the Minister within 21 days and the Minister to lay it before the Houses of the Oireachtas within the same time period. Sub-section (5) provides for publication of the annual report on the Internet or elsewhere.

DEFINITIONS (to be inserted after Section 38)

“Executive” : Section 2(1)
“Minister” : Section 2(1)

General Note

Section 38 empowers the Executive to enter into an arrangement with another person for the provision by that person on its behalf of health and personal social services. Sub-section (2) requires the Executive, before entering into such arrangements, to fix the amount of funding available for that arrangement and the level of service it expects in return. Section 38(3) requires the service provider, inter alia, to keep proper accounts of money received and expenditure incurred by it and to produce annual audited accounts, at their own expense according to sub-section (4). Sub-section (5) empowers the Executive to exempt a service provider from these requirements, for example, where the amounts of money are below a level set by the Minister. Sub-section (7) provides that the Executive may seek from a service provider any information it considers material to the provision of the health and personal social services.

DEFINITIONS (to be inserted after Section 39)

“Executive” : Section 2(1)
“Minister” : Section 2(1)
General Note

The Executive is empowered, subject to certain conditions, to provide assistance to any body or person providing a service ancillary, or similar, to a service provided by the Executive. Sub-section (2) clarifies that the assistance may include, inter alia, a contribution to the person or body’s expenses or permitting the use of premises maintained by the Executive.

DEFINITIONS (to be inserted after Section 40)

“Executive” : Section 2(1)
“functions” : Section 2(1)

General Note

Section 40 permits the acceptance of gifts by the Executive but sub-section (2) stipulates that any terms or conditions attached must not be inconsistent with the Executives functions or object.