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PART 1

Preliminary and General

Head 1 Short title, commencement, collective citation and construction

To provide that

(1) This Act may be cited as the Health (Amendment) Act 2019.

(2) This Act shall come into operation on such day or days as the Minister for Health may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(3) This Act shall be included in the collective citation "Health Acts 1947 to 20-" and shall be read together as one with those Acts.

Explanatory Note

Head 1 is a standard Head to provide for the short title, commencement, collective citation and construction.

PART 2

Amendment of Health Act 2004

Head 2 Interpretation

To provide that

In this Part, 'Principal Act' means the Health Act 2004.

Explanatory Note

Head 2 is the interpretation Head for Part 2.

Part 2 amends the Health Act 2004 which established the HSE and sets out accountability arrangements for the HSE including regarding its corporate plan, annual service plan and capital plan. Head 2 defines Principal Act as meaning the Health Act 2004.

Head 3 Repeals

To provide that

Each of the following is repealed:

(a) section 10A of the Principal Act;

(b) section 31 of the Principal Act;

(c) section 32 of the Principal Act.

Explanatory Note

Head 3 is the repeals Head. It is proposed to repeal sections 10A, 31 and 32 of the Health Act 2004.

Section 10A of the 2004 Act provides that the Minister may specify priorities to which the HSE shall have regard in preparing or amending its service plan. The Minister may also specify performance targets as respects any priorities specified. It is proposed to repeal section 10A as the Minister will now be required to provide a Statement of Health Priorities under a new section (section 30B in Head 15). This will replace the provisions currently in section 10A of the Act.

Section 31 of the Health Act 2004 provides for the HSE to prepare and submit a service plan for the Minister's approval and section 32 provides for amendments to an approved service plan. It is proposed to repeal sections 31 and 32 of the Act as these will be replaced by new sections on the annual Performance Delivery Plan and amending an annual Performance Delivery Plan in operation (sections 32A and 32B in Head 16).

Head 4 Amendment of section 2 of Principal Act

To provide that

Section 2 of the Principal Act is amended in subsection (1) by the inclusion of the following definition:

“performance delivery plan in operation’ means a performance delivery plan in operation pursuant to section 32A(8);”.

Explanatory Note

Section 2 of the Health Act 2004 is the interpretation section for that Act.

It is proposed to amend section 2 of the 2004 Act to include a definition of performance delivery plan in operation. The term is used in Head 16 (new section 32B), Head 17 (amending section 33 of the Health Act 2004), Head 22 (amending section 43 of the Health Act 2004) and Head 23 (amending section 51 of the Health Act 2004).

Head 5 Amendment of section 7 of Principal Act

To provide that

Section 7 of the Principal Act is amended in subsection (5), by the substitution of the following paragraph for paragraph (c):

“(c) the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Government or any Minister of the Government to the extent to which those policies may affect or relate to the functions of the Executive.”.

Explanatory Note

Section 7 of the Health Act 2004 sets out the object and functions of the HSE. Subsection (5)(c) as amended by the Health Service Executive (Governance) Act 2019 provides that the HSE must have regard to the policies (whether set out in codes, guidelines or other documents, or any combination thereof) and objectives of the Government or any Minister of the Government to the extent that those policies and objectives may affect or relate to the functions of the HSE. This Head amends section 7(5)(c) to refer to relevant expenditure Circulars and Budget documentation in the description of documents setting out Government or Ministerial policies. This amendment is intended to ensure internal consistency of language in the Health Act 2004, in line with amendments elsewhere in the General Scheme where reference is made to documents relating to Ministerial or Government policies. These amendments are in Head 8 (amendment of section 16P - functions of Board), Head 9 (amendment of section 21C - functions of CEO), Head 12 (amendment of section 29 – Corporate Plan), Head 16 (new sections 32A and 32B on the Performance Delivery Plan), Head 17 (amendment of section 33 – implementation of Performance Delivery Plan) and Head 19 (amendment of section 34A - Functions of Chief Executive Officer and Board under this Part and new section 34AA - Amendment of corrective action proposals).

Head 6 Amendment of section 10 of Principal Act

To provide that

Section 10 of the Principal Act is amended in subsection (2) by the substitution of the following paragraph for paragraph (c):

“(c) subject to section 10AA(1) and (3), one or more than one health needs assessment (within the meaning of section 10AA(8)) to be implemented by the Executive in the performance delivery plan prepared in accordance with section 32A.”.

Explanatory Note

This is a consequential amendment arising from the move from a service plan to a performance delivery plan. Section 10(2)(c) is amended to refer to the performance delivery plan instead of to the service plan.

Section 10(2)(c) of the Health Act 2004 was included in that Act under the Health Service Executive (Governance) Act 2019. It provides that the Minister may issue directions to the HSE to submit health needs assessments to be implemented by the HSE in its service plan.

Head 7 Amendment of section 10B of Principal Act

To provide that

The Principal Act is amended by the substitution of the following section for section 10B:

‘Limitation as to exercise of powers under sections 10 and 30B

The Minister shall not give a direction under section 10, specify a health priority or performance target under section 30B or issue a direction under section 34AA, as respects -

- (a) any function of the Executive relating to the provision of treatment or a health or personal social service to any particular person,
- (b) any function of the Executive relating to a decision concerning –
 - (i) whether or not a particular person is eligible for a particular health or personal social service (including the payment of a grant or allowance), or
 - (ii) the extent to which and the manner in which a person is eligible for any such service,
- (c) any function of the Executive relating to a decision concerning the making or recovery of a charge for the provision of a health or personal social service by or on behalf of the Executive to a particular person or concerning the amount of such charge,
- (d) any function of the Executive that has been specified in any enactment to be a function of the chief executive officer relating to a function referred to in paragraphs (a) to (c).”.

Explanatory Note

This is a consequential amendment to section 10B of the Health Act 2004, arising from the Statement of Health Priorities and from directions on corrective actions. Section 10B of the Health Act 2004 (Limitation as to exercise of powers under sections 10 and 10A) provides that directions, priorities or performance targets cannot relate to HSE or CEO functions concerning individuals, for example the provision of services to an individual or decisions on eligibility of an individual for services. This Head amends section 10B to refer to the Minister’s health priorities and performance targets under section 30B and the Minister’s directions on corrective action proposals directions under section 34AA.

Head 8 Amendment to section 16P of the Principal Act, as inserted by section 9 of the Health Service Executive (Governance) Act 2019

To provide that

Section 16P of the Principal Act, as inserted by section 9 of the Health Service Executive (Governance) Act 2019, is amended in paragraph (a) of subsection (2) –

(a) by the substitution of the following for subparagraph (ii) -

“(ii) for the internal performance management and accountability of the Executive in respect of the Executive’s -

(I) performance of its functions,

(II) achieving objectives in accordance with the corporate plan, and

(III) delivery of health and personal social services in accordance with this Act, and

(IV) exercising the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and employee resources,”.

and

(b) by the substitution of the following for subparagraph (iii) –

“(iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) of the Government or any Minister of the Government to the extent to which those policies may affect or relate to the functions of the Executive.”.

Explanatory Note

This Head amends section 16P(2)(a)(ii) of the Health Act 2004, which provides for some HSE Board functions. Section 16P(2)(a)(ii) currently provides that the Board must satisfy itself that appropriate systems, procedures and practices are in place for internal performance management and accountability in the HSE in respect of the HSE’s

(I) performance of its functions,

(II) achieving objectives in accordance with the corporate plan, and

(III) delivery of health and personal social services in accordance with the 2004 Act.

Related provisions in the Health Act 2004 are in section 21C of the Act which requires the CEO to ensure that these appropriate systems are in place.

Section 16P(2)(a)(ii) is now being amended to require the Board to also satisfy itself that the HSE has appropriate systems, procedures and practices to exercise the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and staffing resources.

Authorised financial resources are the maximum amount of net non-capital expenditure that may be incurred for a financial year or part of the year i.e. the section 30A(1) determination under the Health Act 2004 and the maximum amount of capital expenditure notified to the HSE under section 33B(1)(b) of the Act.

Provisions in regard to authorisation of HSE employment levels are in section 22(4) of the Health Act 2004. Terms and conditions of employment (including terms and conditions relating to remuneration and allowances), the grades of HSE employees and the numbers of employees in each grade are determined by the HSE, subject to the approval of the Minister for Health, given with the consent of the Minister for Public Expenditure and Reform.

Section 16P(2)(a)(iii) currently provides that the Board must satisfy itself that appropriate systems, procedures and practices are in place in order to enable compliance with Government and Ministerial policies (whether set out in codes, guidelines or other documents, or any combination thereof). The description of other documents is being amended to expressly include expenditure Circulars and Budget documentation.

Head 9 Amendment of section 21C of the Principal Act, as inserted by section 10 of the Health Service Executive (Governance) Act 2019

To provide that

Section 21C of the Principal Act, as inserted by section 10 of the Health Service Executive (Governance) Act 2019, is amended in subsection (1) by the substitution of the following for paragraph (b) –

“(b) to ensure that appropriate systems, procedures and practices are in place –

(i) to achieve the Executive’s objective

(ii) for the internal performance management and accountability of the Executive in respect of the Executive’s -

(I) performance of its functions,

(II) achieving objectives in accordance with the corporate plan, and

(III) delivery of health and personal social services in accordance with this Act, and

(IV) exercising the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and employee resources,

and

(iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) of the Government or any Minister of the Government to the extent to which those policies may affect or relate to the functions of the Executive.”.

Explanatory Note

This Head is consequential to Head 8. It amends section 21C(1)(b)(ii) of the 2004 Act to require the CEO to ensure that appropriate systems, procedures and practices are in place in the HSE to exercise the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and staffing resources.

It also amends section 21C(1)(b)(iii). Section 21C(1)(b)(iii) currently provides that the CEO must ensure that appropriate systems, procedures and practices are in place in order to enable compliance with Government policies (whether set out in codes, guidelines or other documents, or any combination thereof). As with earlier Heads, it is amended to also expressly refer to relevant expenditure Circulars and Budget documentation.

Head 10 Amendment to section 28 of Principal Act

To provide that

Section 28 of the Principal Act is amended in subsection (1) –

(a) by the insertion of the following definition:

“ ‘strategic direction statement’ means the statement made by the Minister under section 28A.”,
and

(b) by the deletion of the definitions of ‘approved capital plan’ and ‘approved service plan’.

Explanatory Note

Section 28 of the Health Act 2004 is the interpretation section for Part 7 of that Act.

It is proposed to amend section 28 of the 2004 Act to include a definition of ‘strategic direction statement’.

It is also proposed to remove the definitions of ‘approved capital plan’ and ‘approved service plan’. This is consequential to Ministerial approval not being required for the capital plan and consequential to the move to a Performance Delivery Plan.

Head 11 Strategic Direction Statement

To provide that

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

“Strategic direction statement

28A. (1) Subject to subsections (2) to (5), the Minister shall prepare a strategic direction statement to guide the Executive in the preparation of its corporate plan under section 29 (in this section referred to as the ‘relevant corporate plan’).

- (2) The strategic direction statement -
 - (a) shall specify the Minister’s health priorities for the Executive for the period to which the relevant corporate plan relates, and
 - (b) may specify the related goals and outcomes for that period.
- (3) The Minister shall provide the strategic direction statement to the Board from time to time as determined by the Minister and, in any case, not later than 3 months before the end of the period to which the current approved corporate plan relates.
- (4) The Minister may amend a strategic direction statement at any time during the period to which a corporate plan relates.
- (5) The Minister may issue guidelines in relation to the matters relating to the strategic direction statement to be included in the relevant corporate plan and the Executive shall comply with those guidelines.”.

Explanatory Note

This Head provides for a new section in the Health Act 2004 – section 28A - on a Strategic Direction Statement to be prepared by the Minister. The Strategic Direction Statement is to be given to the Board and the purpose of the Statement is to guide the HSE in preparing its Corporate Plan. The Strategic Direction Statement must specify the Minister’s priorities for the 3-year period of the Corporate Plan and may specify the related goals and outcomes.

The Minister may also issue guidelines to the HSE on including matters relating to the Strategic Direction Statement in the Corporate Plan. The intention is that guidelines could for example set out that the Corporate Plan is expected to identify the key programmes of activity for the HSE for the 3-year period concerned, indicate the multi-annual targets for each programme of activity and set out the key associated outputs for each programme of activity.

Under subsection (1), the Minister is required to prepare a written Strategic Direction Statement to guide the development of the HSE’s Corporate Plan.

Subsection (2) sets out what matters must be covered in the Strategic Direction Statement. The Statement must set out the Minister's priorities for the HSE for the period to which the Corporate Plan relates and may set out the related high-level goals and outcomes. Please also see subsection (5) on other matters arising from the Strategic Direction Statement that are to be included in a Corporate Plan.

Subsection (3) requires the Minister to provide the Strategic Direction Statement to the Board. Strategic direction statements may be provided to the Board from time to time as determined by the Minister but in any event must be provided not later than 3 months before the end of the period to which a current approved corporate plan relates. This is designed to ensure that a new Strategic Direction Statement is provided to the Board every 3 years as required for the standard 3-year Corporate Plan cycle but allows the Minister to provide a new Strategic Direction Statement ahead of that time where, for example, medium term priorities change, or a new Minister has taken up office. This would result in a new Corporate Plan for a new 3- year period.

Subsection (4) allows the Minister to amend a Strategic Direction Statement at any time during the period to which the Corporate Plan relates. The intention here is to allow the Minister to make minor changes to a Strategic Direction Statement during the relevant 3-year period. This might result in a need for an amendment to a current Corporate Plan.

Under subsection (5), the Minister may issue guidelines for the HSE in relation to the matters relating to the Strategic Direction Statement that are to be included in its Corporate Plan. As set out earlier, the intention is to enable the Minister to include guidelines for the HSE on specific issues to be included in the Corporate Plan. The HSE must comply with any guidelines issued.

Head 12 Executive to prepare and submit corporate plan for Minister's approval

To provide that

The Principal Act is amended by the substitution of the following section for section 29:

“29.(1) The Executive shall, in accordance with this section, prepare, adopt and, at the times specified in subsection (2), submit to the Minister for approval a corporate plan for the 3-year period following the date of its submission.

(2) The Executive shall submit a corporate plan as soon as possible after the Board receives a strategic direction statement and, in any case, not later than 3 months after the Minister has provided the strategic direction statement to the Board.

(3) The corporate plan must be prepared in a form and manner in accordance with any directions issued by the Minister and must –

(a) be consistent with the strategic direction statement provided to the Board, and any guidelines issued by the Minister under section 28A(5),

(b) specify the goals and key objectives of the Executive for the 3-year period concerned and the strategies for achieving those goals and objectives,

(c) specify the manner in which the Executive proposes to measure its achievement of those objectives, and

(d) specify the uses for which the Executive proposes to apply its resources.

(4) In preparing the corporate plan, the Executive shall have regard to the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) of the Government or any Minister of the Government to the extent to which those policies may affect or relate to the functions of the Executive.

(5) The Executive shall not submit a corporate plan under this section unless the Board is satisfied that the plan is consistent with the strategic direction statement provided by the Minister to the Board and any guidelines issued by the Minister under section 28A.

(6) Within 3 months after receiving a corporate plan, the Minister shall—

(a) approve the plan,

(b) issue directions regarding amendments to the proposed plan, or

(c) refuse to approve the plan where the plan is not amended in accordance with any directions that may be issued by the Minister to the Executive.

(7) Nothing in a corporate plan is to be taken to prevent the Executive from, or to limit the Executive in, performing its functions.”

Explanatory Note

Section 29 of the Health Act 2004 requires the HSE to prepare and submit a Corporate Plan for the Minister's approval. Section 29 is now being amended to take account of the Strategic Direction Statement the Minister gives to the Board.

Under subsection (1), the HSE must prepare, adopt and, at the times specified in subsection (2), submit to the Minister for approval a Corporate Plan for the 3-year period following the date of its submission. This provision reflects the current language of section 29(1).

As set out in Head 11, the Minister must provide the Strategic Direction Statement from time to time as determined by the Minister and, in any case, not later than 3 months before the end of the period to which the current corporate plan relates. The intention under subsection (2) is that the HSE must submit a Corporate Plan not more than 3 months after the Minister has provided a Strategic Direction Statement to the Board. The Corporate Plan should always follow the Strategic Direction Statement and the intention is that the HSE must prepare a new Corporate Plan each time the Board receives a new Strategic Direction Statement.

Subsection (3) is based on the current section 29(3) but provides that the corporate plan must be consistent with the Strategic Direction Statement provided to the Board. Other additions are that the Corporate Plan must specify goals as well as objectives. The Corporate Plan must also be in line with any guidelines issued by the Minister. (As set out in the explanatory note for the new section 28A, the intention is that, in line with any guidelines by the Minister, the Corporate Plan could for example identify the key programmes of activity for the HSE for the 3-year period concerned, indicate the multi-annual targets for each programme of activity and set out the key associated outputs for each programme of activity.)

Subsection (4) reflects the current section 29(4) as amended in the Health Service Executive (Governance) Act 2019. In preparing the Corporate Plan, the HSE must have regard to the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or any Minister of the Government to the extent to which those policies may affect or relate to the functions of the Executive. The subsection is amended to make explicit reference to relevant expenditure Circulars and Budget documentation.

The purpose of subsection (5) is to ensure that the HSE does not submit a Corporate Plan unless the Board is satisfied that the Corporate Plan is consistent with the Strategic Direction Statement and any guidelines issued by the Minister. The policy intent is that the Board is responsible for ensuring that the plan is consistent with the Minister's Strategic Direction Statement. Subsection (5) is intended to provide for this.

Subsection (6) sets out what happens when the HSE submits the Corporate Plan to the Minister for approval, including the timeframe for approving the plan or issuing directions to amend the plan. This is based on the current section 29(5). Within 3 months after receiving a corporate plan, the Minister must (a) approve the plan, (b) issue directions regarding amendments to the proposed plan, or (c) refuse to approve the plan where the plan is not amended in accordance with any directions that may be issued by the Minister to the HSE.

Subsection (7) is based on section 29(8) and provides that nothing in a corporate plan is to be taken to prevent the HSE from, or to limit the HSE in, performing its functions.

Head 13 Amendment of approved corporate plan

To provide that

The Principal Act is amended by the insertion of the following section after section 29:

“Amendment of approved corporate plan

29A. (1) An approved corporate plan may be amended by the Minister at any time.

(2) An approved corporate plan may be amended by the Executive, but only after—

(a) the Executive submits the proposed amendment to the Minister for approval, and

(b) the amendment is approved by the Minister.

(3) Subsections (3) to (6) of section 29 apply with the necessary modifications in respect of an amendment by the Executive to an approved corporate plan.”.

Explanatory Note

Section 29 of the Health Act 2004 currently provides for the amendment of an approved Corporate Plan. The Minister may amend an approved Corporate Plan or the HSE may amend a Corporate Plan. However, an approved Corporate Plan can be amended by the HSE only if the HSE has submitted the proposed amendment to the Minister and the Minister has approved the amendment. The same requirements apply to an amendment to the Corporate Plan as apply to the preparation and submission for approval of a Corporate Plan.

This concept is being retained in the Bill, particularly as an approved Corporate Plan may need to be amended in line with an amendment the Minister has made to a Strategic Direction Statement. The purpose of this new section is merely to separate out the process of amending an approved Corporate Plan from the provisions on preparing and submitting a Corporate Plan. It is modelled on the current provisions in section 29(6) and (7) in the Health Act 2004.

Head 14

To provide that

Section 30 of the Principal Act is amended in subsection (1)(b) by the substitution of “under section 29A” for “under section 29(6)”.

Explanatory Note

This section changes a section reference in section 30 of the Health Act 2004 to take account of the new section 29A. Section 30 of the Health Act 2004 provides for the publication and implementation of an approved corporate plan.

An approved corporate plan is laid before both Houses of the Oireachtas within 21 days after the plan is approved by the Minister. If an approved corporate plan is subsequently amended, a copy must also be laid before both Houses within 21 days of the amendment being made by the Minister under the new section 29A(1) or the amendment made by the HSE and approved by the Minister under section 29A(2).

Head 15 Statement of health priorities

To provide that

The Principal Act is amended by the insertion of the following section after section 30A:

“Statement of Health Priorities

30B. (1) Subject to subsections (2) and (5), the Minister shall prepare a statement of health priorities to which the Executive shall have regard in preparing its performance delivery plan under section 32A or amending its performance delivery plan under section 32B.

(2) Subject to subsection (3), the statement may specify performance targets for the Executive in respect of a health priority.

(3) Before specifying a performance target for a health priority, the Minister shall have regard to -

(a) best practice as respects the health or personal social service the subject of the health priority, and

(b) outcomes for patients and recipients of services likely to be affected by the health priority, and

(c) the effect that specifying the performance target would be likely to have on other services provided by or on behalf of the Executive, having regard to the requirements in section 33(1) to manage health and personal social services set out in a performance delivery plan so as to ensure that -

(i) those services are delivered in accordance with the plan, and

(ii) the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be.

(4) The Minister shall provide the statement to the Board not later than the date the Minister gives the Executive a notice in writing of a section 30A(1) determination.

(5) Subject to subsection (6), the Minister may, by notice in writing given to the Board, amend the statement.

(6) The Minister shall, before specifying, in a notice under subsection (5), a new or amended performance target for a health priority, have regard to -

(a) best practice as respects the health or personal social service the subject of the health priority, and

(b) outcomes for patients and recipients of services likely to be affected by the health priority, and

(c) the effect that specifying the performance target would be likely to have on other services provided by or on behalf of the Executive, having regard to the requirements in section 33(1) to manage health and personal social services set out in a performance delivery plan so as to ensure that –

(i) those services are delivered in accordance with the plan, and

(ii) the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be.

(7) The chairperson shall-

(a) inform the Minister of the measures taken to achieve the priorities and performance targets specified in the statement and of the outcome of these measures, and

(b) provide the information at intervals specified by the Minister or, if no such intervals are specified, in the annual report.

(8) In this section –

‘performance target’, in relation to a health priority, means a level of performance by the Executive in meeting the priority such that the Minister can measure the effectiveness of the Executive in that regard;

‘health priority’, in relation to the statement, means the key health objectives or issues that are identified by the Minister which must be delivered by the Executive within the relevant time period;

‘statement’ means the statement of health priorities prepared under subsection (1).”.

Explanatory Note

This Head inserts a new section – section 30B - in the Health Act 2004 to provide for the Minister to prepare a Statement of Health Priorities for the HSE. The new section will replace section 10A of the Health Act 2004, which is to be repealed under the Bill. While the new section is based in part on the wording in section 10A, it takes a different policy approach.

Section 10A of the Health Act 2004 enables, but does not require, the Minister to set priorities for the HSE to which the HSE must have regard in preparing or amending its Service Plan. The intention in this Bill is that the Minister will be required to prepare a Statement of Health Priorities to which the HSE must have regard when preparing or amending its annual Performance Delivery Plan. This Statement of Health Priorities is to be given to the Board and must issue no later than the date the Minister notifies the HSE of its net non-capital expenditure determination for the year.

The Statement of Health Priorities may specify performance targets in regard to those priorities. The new section sets what the Minister must consider before specifying a performance target for a health priority.

The Minister may amend a Statement of Health Priorities at any time during the year. This may happen for example if the net non-capital expenditure for the year is adjusted. Under the Head on the Performance Delivery Plan, the HSE may not adopt a Performance Delivery Plan unless the Board is satisfied that the Performance Delivery Plan is consistent with the Statement of Health Priorities provided by the Minister. If the Minister amends the Statement of Health Priorities, it is envisaged that the accompanying letter would make it clear that the HSE should review the existing Performance Delivery Plan and that the Board should satisfy itself that the Performance Delivery Plan continues to be consistent with the Statement of Health Priorities and budget allocation. The HSE should amend the Performance Delivery Plan, if necessary.

The details are set out below.

Subsection (1) requires the Minister to prepare a Statement of Health Priorities and that the HSE must have regard to this Statement of Health Priorities when preparing or amending a performance delivery plan for the year.

Subsection (2) provides that a Statement of Health Priorities may specify performance targets for the HSE in respect of such priorities. This is subject to subsection (3) which requires the Minister to have regard to (a) best practice, (b) outcomes for patients, and (c) the effect that specifying the performance target concerned would be likely to have on other services provided by or on behalf of the HSE, having regard to the requirements in section 33(1) for the HSE to manage health and personal social services set out in a performance delivery plan so as to ensure that those services are delivered in accordance with the plan and the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be.

The Statement of Health Priorities is given to the Board and must be given no later than the date the Minister notifies the HSE of its net non-capital determination for the year (subsection (4)).

Subsection (5) enables the Minister to amend the Statement of Health Priorities by notice in writing to the Board. This is subject to subsection (6). Subsection (6) is similar to subsection (3). If the Minister is specifying a new or amended performance target when amending the Statement of Health Priorities, the Minister must consider (a) best practice, (b) outcomes for patients, and (c) the effect that specifying the performance target concerned would be likely to have on other services provided by or on behalf of the HSE, having regard to the requirements in section 33(1) for the HSE to manage health and personal social services set out in a performance delivery plan so as to ensure that those services are delivered in accordance with the plan and the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be.

Subsection (7) requires the Chairperson of the Board to inform the Minister of the measures taken to achieve the priorities and performance targets specified in the Statement and of the outcome of these measures. This information is to be provided at intervals specified by the Minister or, if no such intervals are specified, in the annual report.

Subsection (8) defines terms used in the new section, including 'health priority' and 'performance target.' Health priority in relation to the Statement of Health Priorities means the key health objectives or issues that are identified by the Minister which must be delivered by the HSE within the relevant period. The intention is that a matter connected with the provision of a health service, e.g. matters falling under finance, HR, claims etc are encompassed in the definition.

Performance target in relation to a health priority is defined as meaning a level of performance by the HSE in meeting the priority such that the Minister can measure the effectiveness of the HSE in that regard.

Head 16 Amendment of Principal Act – insertions of sections 32A and 32B

To provide that

The Principal Act is amended by the insertion of the following sections immediately before section 33.

“Executive to prepare and submit performance delivery plan to Minister

32A.(1) Before the expiry of the specified period the Executive shall –

- (a) prepare, in accordance with this section, a performance delivery plan for the financial year or such other period as may be determined by the Minister, and
- (b) adopt the plan so prepared and submit it to the Minister.

(2) For the purpose of this section, the specified period is—

- (a) the period ending 28 days after the Executive receives the section 30A(1) determination concerned, or
- (b) such other period as the Minister may allow.

(3) The Minister may issue a direction to the Executive as respects the form and manner in which the performance delivery plan is to be prepared.

(4) A performance delivery plan shall be prepared in a form and manner which is consistent with any direction issued by the Minister under subsection (3) and shall—

- (a) indicate the type and volume of health and personal social services to be provided by the Executive during the period to which the plan relates,
- (b) indicate any capital plans proposed by the Executive,
- (c) contain estimates of the income and expenditure of the Executive for the period to which the plan relates,
- (d) be consistent with the section 30A(1) determination for the period to which the plan relates,
- (e) contain estimates of the number of employees of the Executive for the period and the services to which the plan relates,
- (f) contain estimates of the number of employees of service providers under section 38 engaged in the provision of such services and which relate to the period of the service plan and the services to which it relates,
- (g) contain outputs and outcomes for the period,
- (h) contain any other information specified by the Minister,
- (i) be consistent with any directions issued by the Minister under section 10, and

(j) accord with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Minister and the Government.

(5) In preparing the performance delivery plan, the Executive shall have regard to—

- (i) the approved corporate plan in operation at that time,
- (ii) any direction issued by the Minister under section 10, and
- (iii) the statement of health priorities provided to the Board under section 30B.

(6) The Executive shall not adopt a performance delivery plan pursuant to subsection (1)(b) unless the Board is satisfied that the performance delivery plan is consistent with the statement of health priorities provided by the Minister under section 30B and has been prepared with sufficient regard to the matters referred to in subsections (4) and (5).

(7) If the Executive fails to submit a performance delivery plan to the Minister before the expiry of the period referred to in subsection (2), the Minister may, in writing, issue a direction, directing the Executive to submit a performance delivery plan to him or her not later than—

- (a) 10 days after the date on which the Minister issues the direction to the Executive, or
- (b) such earlier date as may be specified in the direction.

(8) The Executive shall implement a performance delivery plan from the day it adopts the plan.

(9) The Executive shall submit its performance delivery plan to the Minister as soon as it has adopted the plan.

(10) The Executive shall ensure that, as soon as practicable after a performance delivery plan is submitted to the Minister under this section, the plan is published –

- (a) on the Internet in accordance with such arrangements as the Minister may specify, and
- (b) in accordance with such other arrangements as the Minister may specify.

Amendment of performance delivery plan in operation

32B. (1) Subject to subsection (2), the Minister may direct the Executive to submit an amended performance delivery plan at any time following the coming into operation of the plan under section 32A(8) and may specify in the direction the manner in which the plan is to be amended.

(2) The Minister may direct the Executive to submit an amended plan under subsection (1) if, in the Minister's opinion, the plan –

(a) does not contain any information required to be included in the annual performance delivery plan pursuant to section 32A(4),

- (b) does not in some other respect comply with section 32A(4),

(c) has been prepared by the Executive without sufficient regard to the statement of priorities of health priorities provided to the Board under section 30B,

(d) has been prepared by the Executive without sufficient regard to the other matters referred to in section 32A(4) or (5),

(e) does not accord with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Minister or the Government to the extent to which those policies and objectives relate to the functions of the Executive, or

(f) requires amendment to take account of corrective action being implemented by the Executive under section 34A.

(3) After amending a section 30A(1) determination, the Minister may –

(a) direct the Executive to amend, in such manner as the Minister may specify in the direction, the performance delivery plan to which the determination relates, and to submit the amended plan to the Minister, or

(b) direct the Executive to submit an amended performance delivery plan that complies with the amended determination.

(4) Subject to subsection (5), the Executive may amend a performance delivery plan and the provisions of section 32A apply to a plan amended by the Executive under this subsection.

(5) The Executive shall submit a performance delivery plan amended under subsection (4) to the Minister as soon as practicable and in any event not later than 5 days after the day on which it adopts the amended performance delivery plan.

(6) Subsections (4) to (6), (8) and (10) of section 32A shall apply with all necessary modifications to an amended performance delivery plan submitted under this section.

(7) The Executive shall comply with a direction under this section within the period, if any, specified in the direction.

Explanatory Note

This Head inserts two new sections in the Health Act 2004 and is intended to provide for the move from the Service Plan to the Performance Delivery Plan.

Section 32A provides for the HSE to prepare and submit a Performance Delivery plan to the Minister and section 32B provides for the amendment of a Performance Delivery Plan that is in operation.

The Performance Delivery Plan is the HSE's plan for delivering services in accordance with the legislation. Under the proposed arrangements in section 32A, the HSE must prepare, adopt and submit its plan to the Minister within the specified time period i.e. the period ending 28 days after the HSE receives its net determination for the year or such other period as the Minister may allow.

The HSE may not adopt a Performance Delivery Plan unless the Board is satisfied that the plan is consistent with the Statement of Health Priorities the Minister has provided to the Board and that the plan has sufficient regard to the other requirements set out in section 32A. The HSE must implement the performance delivery plan from the day it adopts the plan. The HSE must submit the plan to the Minister as soon as the plan is adopted and must publish the plan.

Under section 32B, where a Performance Delivery Plan is in operation, the Minister may direct the HSE to amend the plan at any time and to submit the amended plan to the Minister. The HSE may, of its own volition, submit an amended plan to the Minister. However, the plan must be amended in line with the provisions of section 32A.

Further details of sections 32A and 32B are given below.

Section 32A

Subsection (1) of the new section 32A provides that before the end of a specified period, the HSE must prepare a Performance Delivery Plan for the financial year or such other period as may be determined by the Minister, adopt the plan and submit it to the Minister.

Subsection (2) provides that the specified period referred to in subsection (1) for the HSE to prepare, adopt and submit the plan is the period ending 28 days after the HSE receives its net non-capital expenditure determination under section 30A, or such other period as may be determined by the Minister. This is to allow time for the preparation of the plan, its review by the Board, including for the Board to satisfy itself the plan is in line with the requirements of the legislation, and for the HSE to then adopt the plan and submit the plan to the Minister.

Subsection (3) provides that the Minister may issue a direction to the HSE as respects the form and manner in which the Performance Delivery Plan is to be prepared.

Subsection (4) sets out the areas to be covered in the Performance Delivery Plan, including outputs and outcomes.

Subsection (5) provides that the HSE must have regard to the approved Corporate Plan in operation at that time, any direction issued by the Minister under section 10, and the Statement of Health Priorities provided to the Board under section 30B.

Subsection (6) provides that the HSE shall not adopt a Performance Delivery Plan unless the Board is satisfied that the Performance Delivery Plan is consistent with the Statement of Health Priorities provided by the Minister and that the plan meets the requirements in subsection (4) and subsection (5).

Subsection (7) provides for the Minister to direct the HSE to submit a Performance Delivery Plan where a plan has not been submitted in the time allowed.

Subsection (8) provides for when the HSE is to start implementing its plan. The HSE is to implement its Performance Delivery Plan from the day it adopts the plan. This is of course subject to subsection (6) which provides that a plan cannot be adopted unless the Board is satisfied that the plan meets legislative requirements.

Subsection (9) requires the HSE to submit its performance delivery plan to the Minister as soon as it has adopted the plan.

Subsection (10) requires the HSE to publish the performance delivery plan as soon as practicable after it submits the plan to the Minister. Under paragraph (a), the HSE must publish the performance delivery plan submitted to the Minister on the Internet, in accordance with such arrangements as the Minister may specify. Paragraph (b) provides that the HSE must also publish the plan in accordance with such other arrangements as the Minister may specify.

Section 32B

Section 32B is based in part on section 32 of the Health Act 2004 which provides for amendments to an approved service plan. As set out earlier, section 32B is intended to enable the Minister at any time during the year to direct the HSE to amend a Performance Delivery Plan and to submit that amended plan to him or her. Also, as is currently the case with section 32, the new section is also intended to allow the HSE of its own volition to amend the plan in line with the provisions of section 32(A) and submit that amended plan to the Minister.

Subsection (1) of section 32B provides that the Minister may direct the HSE to submit an amended Performance Delivery Plan at any time and may specify in the direction the manner in which the plan is to be amended. Subsection (7) provides that the HSE must comply with a direction under this section within the period, if any, specified in the direction.

Subsection (2) sets out the reasons why the Minister may direct the HSE Executive to submit an amended plan under subsection (1). The Minister may direct the HSE to amend the plan if the Plan (i) does not contain information required to be included in the Plan, (ii) is not consistent with any directions under section 10 of the Health Act 2004, (iii) does not accord with policies and objectives of the Minister or the Government, (iv) has not had sufficient regard to the approved Corporate Plan, any direction issued by the Minister under section 10, or the Statement of Health Priorities or (v) needs to be amended to take account of corrective action being taken by the HSE under section 34A.

Subsection (3) is concerned with directions to the HSE where the Minister has amended the net non-capital expenditure determination for the HSE. The Minister may direct the HSE to amend the performance delivery plan to which the determination relates or may direct the HSE to submit an amended performance delivery plan that complies with the amended determination. This is based on section 32(1A).

Under subsection (4), the HSE can amend a performance delivery plan in operation. This is based on section 32(2). Any amendments must be in line with the provisions of section 32A.

Subsection (5) provides that the HSE must submit a performance delivery plan amended under subsection (4) as soon as practicable and in any event not later than 5 days after the day on which it adopts the amended performance delivery plan. This is based on section 32(4).

The intention of subsection (6) is that the same arrangements apply regarding an amended performance Delivery plan as apply to a Performance Delivery Plan submitted under section 32A. This includes the contents of the Plan (section 32A(4)) and what the HSE must have regard to in preparing the Plan (section 32A(5)). It also means that the HSE must not adopt an amended plan unless the

Board is satisfied that the plan is consistent with the Minister's Statement of Health Priorities and has been prepared in line with the legislation (section 32A(6)). The HSE must implement a performance delivery plan from the day it adopts the plan (section 32A(8)). The amended plan must be submitted to the Minister as soon as the HSE has adopted the plan (section 32A(9)). An amended plan must be published (section 32A(10)).

Head 17 Amendment of 33 of the Principal Act

To provide that

Section 33 of the Principal Act is amended –

(a) in subsection (1), by the substitution of “The Executive shall manage health and personal social services set out in a performance delivery plan in operation so as to ensure that—” for “Subject to subsection (1A), the Executive shall manage health and personal social services set out in an approved service plan so as to ensure that—”,

(b) by the deletion of subsection (1A),

(c) in subsection (2), by the substitution of “a performance delivery plan” for “an approved service plan”.

Explanatory Note

The amendment to section 33 under this Head is consequential to the move to a Performance Delivery Plan. Section 33 of the Health Act 2004 requires the HSE to manage health and personal social services set out in an approved service plan so as to ensure that those services are delivered in accordance with the plan, and the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be. The Minister may direct the Executive to take such specified measures as he or she may require in relation to the implementation of an approved service plan. This Head amends section 33 to refer to the Performance Delivery Plan.

Head 18 Determination by Minister for capital funding and submission by Executive of capital plans

To provide that

Section 33B of the Principal Act is amended –

(a) in subsection (2), by the deletion of “for approval”.

(b) by the substitution of the following subsection for subsection (4):

“(4) Subsections (6), (8) and (9) of section 32A shall apply with all necessary modifications to -

(a) an annual capital plan submitted by the Executive under subsection (2),

(b) a capital plan submitted by the Executive in compliance with a direction under subsection (5),

(c) a capital plan submitted by the Executive in compliance with a direction under subsection (7)

(d) an amended capital plan submitted by the Executive under subsection (8).

(c) by the substitution of the following subsection for subsection (5):

“(5) Notwithstanding any other provisions of this section, the Minister may at any time direct in writing the Executive to submit a capital plan prepared in such form, containing such information and covering such part of a financial year as may be specified by the Minister in such direction.”,

(d) by the substitution of the following section for subsection (7):

“(7) The Minister may at any time direct the Executive to amend a capital plan submitted and being implemented under this section.”,

(e) by the substitution of the following subsection for subsection (8):

“(8) The Executive may amend a capital plan being implemented under this section.”.

Explanatory Note

Section 33B of the Health Act 2004 provides for the determination by the Minister of capital funding and for the HSE to submit capital plans. Capital plans currently require the Minister’s approval. In line with changes to the annual service plan, the capital plan will not require the Minister’s approval. This Head amends section 33B accordingly.

In summary, under the proposed arrangements, the HSE will implement its capital plan when it adopts the plan and it must submit the plan to the Minister. As is currently the case, the Minister may direct the HSE to amend a capital plan at any time. The HSE must amend the capital plan in line with the direction and implement the amended plan from the day it adopts that amended plan.

In addition, section 33B currently provides that the HSE may amend an approved capital plan, with the prior approval of the Minister. This is being amended to provide that, where the HSE amends the plan of its own volition, it will adopt the plan and submit the amended plan to the Minister. It will implement the amended plan from the time the plan is adopted.

For completeness, all subsections in section 33B are described below.

Section 33B(1) provides that the Minister, with the consent of the Minister for Public Expenditure and Reform, in respect of each financial year of the HSE, shall determine the maximum amount of capital funding the Minister will make available to the HSE in that year and will notify the HSE of that amount. No change is being made to subsection (1).

At present, under section 33B(2) the HSE must then submit an annual capital plan to the Minister, for approval. Subsection (2) is amended by the deletion of the words “for approval”. Other provisions of subsection (2) remain i.e. the annual capital plan relates to the financial year to which the capital funding notification relates and the plan must be prepared in such form and contain such information as may be specified by the Minister.

Section 33B(3) requires the HSE to submit the annual capital plan within 21 days of receiving the capital funding notification or such longer period (not exceeding 42 days after receipt of that notification) as the Minister may allow. This is unchanged.

Section 33B(4) currently provides that subsections (6) to (11) of section 31 apply with all necessary modifications to the annual capital plan. Section 31 is the service plan section in the Health Act 2004 and is being repealed under this Bill. The proposed provisions for the Performance Delivery Plan are in the new section 32A. Subsection 33B(4) is therefore amended. The intention with this amendment is that subsections (6), (8) and (9) of section 32A shall apply with all necessary modifications to capital plans submitted by the HSE:

- the HSE shall not adopt a capital plan/amended capital plan unless the Board is satisfied that the plan is consistent with the Statement of Health Priorities provided by the Minister and that the plan meets other requirements,
- the HSE is to implement the capital plan/amended capital plan from the day the plan is adopted
- the capital plan/amended capital plan is submitted to the Minister as soon as the plan has been adopted.

Subsection (5) of section 33B provides that the Minister may direct the HSE to submit a capital plan for approval covering part of a financial year. Subsection (5) is amended to provide that the Minister may direct the HSE to submit a capital plan covering part of a financial year, but without reference to approval being required.

Section 33B(6) requires the HSE to have regard to any priorities determined by the Minister for the financial year or part of the financial year to which the capital plan relates. This is unchanged.

Section 33B(7) currently provides that the Minister may at any time direct the HSE to amend a capital plan submitted and approved under this section. Subsection (7) is amended to provide that the Minister may at any time direct the HSE to amend a capital plan submitted and being implemented under this section.

Section 33B(8) allows the HSE, with the prior approval of the Minister, to amend a capital submitted and approved under section 33B. Subsection (8) is therefore amended to provide that the HSE may amend a capital plan being implemented under this section.

Head 19 Amendment of section 34A of Principal Act

To provide that

The Principal Act is amended by the substitution of the following for section 34A -

“Functions of chief Executive officer and Board under this Part

34A. (1) The chief executive officer shall take steps to ensure that –

(a) the Executive’s net non-capital expenditure for a financial year does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be, and

(b) the Executive’s capital expenditure for a financial year does not exceed the amount specified in the notification under section 33B(1)(b) received by the Executive which relates to that year.

(2) The chief executive officer shall, as soon as practicable, inform the Board in writing if he or she forms the opinion that, notwithstanding steps taken by him or her pursuant to subsection (1), and in the absence of further corrective action by the Executive –

(a) the Executive’s net non-capital expenditure for a financial year or part of a financial year would be likely to exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be, or

(b) the Executive’s capital expenditure for a financial year would be likely to exceed the amount specified in the notification under section 33B(1)(b) received by the Executive which relates to that year.

(3) When informing the Board of an opinion referred to in subsection (2), the chief executive officer shall

(a) state the reasons for the opinion,

(b) submit proposals (in this section and section 34AA referred to as “corrective action proposals”) intended to avoid the circumstances referred to in paragraph (a) of subsection (2) or paragraph (b) of subsection (2), as the case may be, and

(c) indicate whether, in his or her opinion an amendment is required to the performance delivery plan if the corrective action proposals are adopted.

(4) When formulating corrective action proposals under this section, the chief executive officer shall have regard to –

(a) the statement of health priorities provided to the Board under section 30B,

(b) the approved corporate plan in operation at the time,

and

(c) the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Minister and the Government.

(5) No later than 10 days of being informed of an opinion referred to in subsection (2) and receiving the corrective action proposals submitted under subsection (3), the Board shall consider the opinion, the proposals and whether an amendment is required to the performance delivery plan if the corrective action proposals are adopted and shall either –

(a) approve the proposals submitted, or

(b) following consultation with the chief executive officer, direct the chief executive officer in writing to –

(i) amend the proposals specifying the amendments to be made and

(ii) submit the amended proposals to the Board within the period specified by the Board.

(6) The Executive shall not adopt corrective action proposals prepared under this section unless the Board is satisfied that the actions proposed –

(a) are consistent with the statement of health priorities provided to the Board under section 30B and

(b) have regard to the approved corporate plan in operation at the time and

(c) accord with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Minister and the Government.

(7) The Executive shall implement the corrective action proposals approved by the Board under subsection (5)(a) or amended under subsection (5)(b), as the case may be, from the day it adopts the proposals.

(8) Where the Executive has adopted corrective action proposals under this section, the Executive shall, as soon as the proposals have been adopted, submit a copy of the proposals and a copy of the opinion referred to in subsection (2), to the Minister and to the Accounting Officer and shall indicate if the Executive proposes to amend the performance delivery plan as a result of the corrective actions.

(9) Where the Board is of the view that the performance delivery plan requires amendment following adoption of the corrective actions, the provisions of section 32B shall apply.

Section 34AA

34AA(1) Amendment of corrective action proposals

(1) Subject to subsections (2) and (3), where the Minister has received a copy of corrective action proposals adopted under section 34A, he or she may direct the Executive in writing to submit amended corrective action proposals and may specify in the direction the manner in which the proposals are to be amended.

(2) A direction under subsection (1) shall specify the period within which the Executive shall comply with the direction.

(3) The Minister may direct the Executive to submit amended corrective action proposals where the Minister is of the opinion that the proposals

(a) are not consistent with the statement of health priorities provided to the Board under section 30B,

(b) do not have sufficient regard to the approved corporate plan in operation at the time, or

(c) do not accord with the policies (whether set out in codes, guidelines or other documents, including relevant expenditure Circulars and Budget documentation, or any combination thereof) and objectives of the Minister and the Government,

(4) The Executive shall comply with a direction under this section within the period specified in the direction.

(5) Subsections 34A(3) to (9) and section apply with necessary modifications to corrective action proposals prepared and submitted in compliance with a direction under this section.

(6) In issuing any directions under this section, the Minister shall have regard to -

(a) requirements placed on the Executive in section 33(1)(b) to manage health and personal social services set out in a performance delivery plan so as to ensure that the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be,

(b) the capital expenditure determined by the Minister for that financial year of the Executive under section 33B(1)(a) and notified to the Executive under section 33B(1)(b),

(c) grades and numbers of employees determined by the Executive with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform under section 22(4), and

(d) requirements placed on the chief executive officer under section 34A(1).

Explanatory Note

This Head amends section 34A of the Health Act 2004 and inserts a new section, section 34AA. Section 34A of the Health Act 2004 currently requires the CEO to take steps to ensure that the net non-capital expenditure and capital expenditure determined for the HSE is not exceeded. The CEO is also required to inform the Minister if the CEO forms the opinion that an action undertaken by the HSE or a proposed action to be undertaken by the HSE would result in the HSE's net non-capital expenditure or capital expenditure exceeding the approved amount.

Changes are now proposed to section 34A to reflect the establishment of a non-executive Board as the governing body for the HSE, the CEO's accountability to that Board and the move to a Performance Delivery Plan. As the CEO is accountable to the Board, and the Board is the governing body of the HSE, the CEO is now required to inform the Board where he or she forms the opinion, that despite the steps taken by the CEO, approved expenditure limits will be exceeded in the absence of corrective action by the HSE. The CEO will also be required to put proposals for corrective actions to the Board. Importantly, proposals must be in line with the Minister's and the Government's policies and priorities for the health service and must be in line with Government policy overall. Within 10 days of receiving the proposals, the Board must either approve the proposals as submitted by the CEO or direct the CEO to amend the proposals. The HSE may not adopt corrective action proposals unless the Board is satisfied that the proposals are consistent with policies and priorities.

Where the HSE adopts corrective action proposals, it should begin implementing the proposals but must also straight way inform the Minister and the Accounting Officer. When doing this, the HSE must also indicate if it will be amending the Performance Delivery Plan as a result of the corrective actions.

This Head also inserts a new section in the Health Act 2004 to empower the Minister to direct the HSE to amend corrective action proposals provided to him or her under section 34A. These powers are in a new section 34AA. Under this new section, the Minister may issue a direction to the HSE to amend the proposals if the Minister believes they are not in line with priorities and policies. Details are given below.

Section 34A

Under subsection (1), the CEO must take steps to ensure that the HSE's approved net non-capital expenditure and capital expenditure limits are not exceeded. This is in addition to the CEO's obligation to ensure that appropriate systems, procedures and practices are in place for internal performance management and accountability in the HSE in respect of the HSE's exercising the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and employee resources.

Subsection (2) is intended to take account of circumstances where the CEO forms the opinion that expenditure limits are likely to be exceeded, despite steps taken to avoid this. Subsection (2) therefore requires the CEO to inform the Board where, notwithstanding steps taken by the CEO, approved expenditure limits will be exceeded in the absence of corrective action by the HSE.

Under subsection (3), the CEO must state the reasons for his or her view and must submit corrective action proposals that are intended to avoid expenditure limits being exceeded. The CEO must also indicate his or her view on whether an amendment is needed to the Performance Delivery Plan if the corrective action proposals are adopted.

Subsection (4) provides that the CEO must have regard to the Minister's Statement of Health priorities, the approved corporate plan in operation at the time, and the policies and objectives of the Minister and the Government.

Subsection (5) sets a timeline of 10 days for the Board to consider the issues. The Board must either

(a) approve the proposals, or

(b) following consultation with the chief executive officer, direct the chief executive officer to amend the proposals specifying the amendments to be made. The amended proposals must be submitted to the Board within the period specified by the Board.

Subsection (6) gives oversight responsibility to the Board. The subsection provides that the HSE cannot adopt corrective action proposals unless the Board is satisfied that the proposals are consistent with the Statement of Health Priorities, have regard to the approved corporate plan and accord with the Minister's and the Government's policies and objectives.

To ensure that corrective action is taken as soon as possible, subsection (7) requires the HSE to implement corrective action proposals from the day it adopts the proposals.

However, under the Health Act 2004, the Board is accountable to the Minister in the performance of its functions. Subsection (8) therefore requires the HSE to submit the proposals and the CEO's opinion to the Minister and to the Accounting Officer. When doing this the HSE must also indicate if the HSE proposes to amend the performance delivery plan as a result of the corrective actions.

Subsection (9) provides that the provisions of section 32B - the section on amending a performance delivery plan - apply where the Board is of the view that the performance delivery plan requires amendment following adoption of the corrective actions.

New section 34AA

As set out earlier, the Minister and the Accounting officer must be given a copy of corrective actions proposals adopted by the HSE, and a copy of the related opinion of the CEO as to why the proposals were necessary (section 34A(8)). Section 34AA provides for the Minister's powers in regard to corrective action proposals.

Subsection (1) of section 34AA provides that the Minister may direct the HSE to submit amended corrective action proposals and may specify in the direction the manner in which the proposals are to be amended.

Subsection (2) provides that a direction under subsection (1) specify the period within which the HSE must comply with the direction i.e. must submit amended corrective action proposals.

Subsection (3) sets out the reasons why the Minister may direct the HSE to amend the proposals. This may be because the Minister is of the opinion that the proposals are not consistent with the Statement of Health Priorities, do not have sufficient regard to the approved corporate plan or do not accord with the policies and objectives of the Minister and the Government.

Subsection (4) requires the HSE to comply with a direction, within the period specified in the direction.

Subsection (5) provides that subsections 34A(3) to (9) and section 34AA apply with necessary modifications to corrective action proposals prepared and submitted in compliance with a direction under this new section. The intention is that the CEO must submit amended proposals to the Board, that these must be consistent with policies etc, that the Board has a timeline in which to consider the proposals, that the HSE cannot adopt the amended proposals unless the Board is satisfied on certain points, that the amended proposals are implemented once adopted and that the amended proposals are then submitted to the Minister and the Accounting Officer. If necessary, the Minister may issue directions in regard to the amended proposals.

Subsection (6) sets out the issues the Minister must have regard to in issuing any directions under this new section. These are:

(a) requirements placed on the HSE to manage health and personal social services set out in a performance delivery plan so as to ensure that the net non-capital expenditure for the financial year or part of the financial year to which the plan relates does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year,

(b) the capital expenditure determined by the Minister for that HSE financial year and

(c) approved grades and numbers of HSE employees, and

(d) requirements placed on the CEO under section 34A(1). (Section 34A(1) says the CEO shall take steps to ensure that (a) the HSE's net non-capital expenditure for a financial year does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be, and (b) the HSE's capital expenditure for a financial year does not exceed the amount specified in the notification under section 33B(1)(b) received by the Executive which relates to that year.)

Note: Provisions in section 34A should be viewed in the context of other accountability provisions in the Health Act 2004. Under section 33(1) of the Health Act 2004, the HSE is required to manage health and personal social services set out its annual plan so as to ensure that those services are delivered in accordance with the plan and that the maximum net non-capital expenditure determined by the Minister is not exceeded.

The Health Act 2004 as amended by the Health Service Executive (Governance) Act 2019 gives specific functions to the Board including that the Board must satisfy itself that appropriate systems, procedures and practices are in place for the internal performance management and accountability

of the HSE in respect of the HSE's delivery of health and personal social services in accordance with the 2004 Act. This includes HSE functions under section 33(1). The CEO must ensure that those systems, procedures and practices are in place. As set out earlier, these provisions are being added to by requiring the HSE to have systems, procedures and practices to exercise the highest standards of prudent and effective financial and budgetary management, including the achievement of value-for-money and recognition of the importance of managing within authorised financial and staffing resources.

Head 20 Amendment of section 37 of Principal Act – Annual report

To provide that

Section 37 of the Principal Act is amended in subsection (2)(c) by the substitution of “a report on the implementation of the performance delivery plan in the year” for “a report on the implementation of the service plan in the year”.

Explanatory Note

Section 37 of the Health Act 2004 provides for the HSE to prepare and adopt an annual report. Among other matters, the annual report must include a report on the implementation of the service plan in the year. This Head amends section 37(2)(c) to take account of the change to a Performance Delivery Plan.

Head 21 Amendment of section 40H of Principal Act – Audit Committee

To provide that

Section 40H of the Principal Act as inserted by section 23 of the Health Service Executive (Governance) Act 2019 (No 17 of 2019) is amended by the substitution of the following subsection for subsection (4):

“(4) The Board shall designate one of the persons appointed to the audit committee to be the chairperson of the audit committee.”

Explanatory Note

Section 40H of the Health Act 2004 provides for membership of the HSE’s audit committee. Section 40H as amended by the Health Service Executive (Governance) Act 2019 provides that the Committee must have not fewer than 3 members who are members of the HSE Board and not fewer than 4 external members who, in the opinion of the Board, have the relevant skills and experience to perform the functions of the committee, at least one of whom shall hold a professional qualification in accountancy or auditing. The chairperson must be one of the external members.

This Head amends section 40H(4) by replacing the requirement of the Board to appoint a Chairperson of the audit committee from among the Committee’s external members, with the provision allowing the Board to appoint a chairperson from among any of the members of the Committee.

Head 22 Amendment of section 43 of Principal Act

To provide that

Section 43 of the Principal Act is amended in subsection (5)(b) by the substitution of “(b) the performance delivery plan in operation at the time, and” for “(b) the approved service plan in operation at the time, and”.

Explanatory Note

Section 43 of the Health Act 2004 provides for mechanisms (including advisory panels) to enable the HSE to consult with local communities and others. In providing advice to the HSE, an advisory panel shall have regard to an approved service plan in operation at the time. This Head amends the reference to the service plan to take account of the name change to the plan and to the change in approval requirements.

Head 23 Amendment of section 51 of Principal Act

To provide that

Section 51 of the Principal Act is amended in subsection (1)(a), by the substitution of “its performance delivery plan in operation at the time, or” for “its approved service plan, or”.

Explanatory Note

Section 51 of the Health Act 2004 is concerned with restriction on type of recommendations complaints officers may make and power to suspend implementation of recommendations.

Section 51(1)(a) provides that a complaints officer may not make a recommendation the implementation of which would require or cause the HSE “to make a material amendment to its approved service plan.” This will now refer instead to “a performance delivery plan in operation at the time”.

Head 24 Amendment of Schedule 2 of Principal Act

To provide that

Schedule 2 of the Principal Act is amended in paragraph 2B by the deletion of "ordinary" in subparagraph (1).

Explanatory Note

Paragraph 2B of Schedule 2 of the Principal Act provides for a quorum and procedures of meetings of the HSE Board. It was inserted by section 32(b) of the Health Service Executive (Governance) Act 2019. Paragraph 2B(1) currently provides that a quorum for a meeting of the Board is 8 members - 7 ordinary members and the member chairing the meeting i.e. this is the chairperson or the deputy chairperson of the Board (who are not ordinary members of the Board under the Act) or, in certain circumstances, another Board member. As the deputy chairperson is not an ordinary member of the Board, an issue may arise in the context of counting the deputy chairperson in the overall quorum numbers where the deputy chairperson is attending the meeting but not chairing the meeting in place of the chairperson. This Head therefore amends paragraph 2B(1) by deleting the word "ordinary". Other arrangements remain unchanged and the quorum for the Board remains at 8: 7 members and the member chairing the meeting i.e. the chairperson of the Board or the deputy chairperson of the Board or, in certain circumstances, another Board member.

Part 3

Amendment of National Cancer Registry Board (Establishment) Order 1991

Head 25 Amendment of National Cancer Registry Board (Establishment) Order 1991

To provide that

The National Cancer Registry Board (Establishment) Order 1991 (S.I. No. 19 of 1991) (as amended by the National Cancer Registry Board (Establishment) Order 1991 (Amendment) Order 1996 (S.I. No. 293 of 1996) and by section 65 of the Health (Miscellaneous Provisions) Act 2009) is amended:-

(a) in Article 5, by the substitution of the following for paragraph (1):

“(1) The Board shall consist of up to 10 members.” And

(b) by the substitution of the following for Article 9:

“9. A meeting of the Board shall not be quorate unless at least half of the persons who for the time being are members of the Board are in attendance at the meeting.”.

Explanatory Note

Recommendation 40 of the Scoping Inquiry into the CervicalCheck Screening Programme (Scally Report) states that: ‘The Department of Health must review the composition of the Board of the NCRI in order to ensure more robust governance, in particular in QA, data sharing and patient safety’. This has been reflected in the recent recruitment of two members to the Board with experience in corporate governance (including data management) and patient safety respectively. Currently Board members therefore have expertise in the areas of public health, human resources, cancer registration, cancer control, medical oncology, radiation oncology, corporate governance and research and patient safety.

Article 5(1) of the Establishment Order for the National Cancer Registry Board provides for a 7-person Board. Increasing the membership of the Board to a maximum of 10 members will facilitate the appointment of further Board members with relevant expertise while enabling the retention of current members’ valuable skillsets and allow for a more comprehensive mix of skills and expertise.

This Head therefore provides for an increase in Board members from 7 to up to 10 and provides for the consequential change in regard to the quorum for the Board (currently 4).

PART 4

Amendment of section 26 of the Children and Family Relationships Act 2015

Head 26 Amendment of section 26 of the Children and Family Relationships Act 2015

To provide that

Section 26 of the Children and Family Relationships Act of 2015 is amended—

- (a) in subsection (5) (a) by the substitution of “a DAHR facility” for “the DAHR facility concerned”, and
- (b) in subsection 6(b) by the substitution of “a DAHR facility” for “the DAHR facility”.

Explanatory Note:

In order to allow a DAHR procedure to be carried out in a DAHR facility other than the one at which the embryo or gamete was stored at the time of coming into operation of Part 2 & 3 of the Act of 2015, the definite article “*the*” in s.26 (5)(a) and s.26(6)(b) is deleted and substituted with the indefinite article “*a*”. This will enable the use of an embryo or gamete acquired by a DAHR facility before the relevant subsection comes into operation to be used at any DAHR facility in the State (subject to compliance with the other provisions of subsection (5) and (6) of section 26).