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Number 19 of 2004

HEALTH (AMENDMENT) ACT 2004

AN ACT TO PROVIDE THAT THE MEMBERS OF THE HEALTH BOARDS ESTABLISHED UNDER THE HEALTH ACT 1970, THE EASTERN REGIONAL HEALTH AUTHORITY, THE NORTHERN AREA HEALTH BOARD, THE EAST COAST AREA HEALTH BOARD AND THE SOUTH-WESTERN AREA HEALTH BOARD SHALL CEASE TO HOLD OFFICE UPON THE COMMENCEMENT OF THIS ACT; TO PROVIDE THAT THE FUNCTIONS OF THOSE BODIES SHALL BE PERFORMED BY THEIR CHIEF EXECUTIVE OFFICERS AND, IN CERTAIN CIRCUMSTANCES, BY THE MINISTER FOR HEALTH AND CHILDREN; TO REMOVE THE DISTINCTION BETWEEN RESERVED AND EXECUTIVE FUNCTIONS; FOR THOSE PURPOSES TO AMEND THE HEALTH ACT 1970, THE HEALTH (AMENDMENT) (NO. 3) ACT 1996, THE HEALTH (EASTERN REGIONAL HEALTH AUTHORITY) ACT 1999 AND OTHER ENACTMENTS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[8th June, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Health (Amendment) Act 2004.

Short title,
collective citation,
construction and
commencement.

(2) The Health Acts 1947 to 2001 and this Act may be cited as the Health Acts 1947 to 2004 and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and for the repeal of different enactments effected by *section 3* and the *Schedule*.

2.—(1) In this Act, except where the context otherwise requires— Definitions.

“Act of 1996” means the Health (Amendment) (No. 3) Act 1996;

[No. 19.] *Health (Amendment) Act* 2004. [2004.]

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“Act of 1999” means the Health (Eastern Regional Health Authority) Act 1999;

“Area Health Board” has the meaning assigned to it by the Act of 1999;

“Eastern Regional Health Authority” means the Eastern Regional Health Authority established by section 7 of the Act of 1999;

“health board” has the same meaning as it has in the Principal Act;

“Minister” means the Minister for Health and Children;

“Principal Act” means the Health Act 1970; and

“Regional Chief Executive” has the meaning assigned to it by section 12 of the Act of 1999.

(2) In this Act—

(a) a reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, this Act unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection is a reference to the subsection of the section in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment, as amended, adapted or extended, whether before or after the commencement of this subsection, by or under any subsequent enactment.

Repeals.

3.—(1) The enactments mentioned in *column (2)* of the *Schedule* are repealed to the extent mentioned in *column (3)* of that *Schedule*.

(2) Notwithstanding *subsection (1)*, the following provisions of the Health Board Regulations 1970 (S.I. No. 170 of 1970) shall continue in force after the commencement of *subsection (1)* (insofar as that subsection relates to section 4 of the Principal Act), that is to say:

(a) paragraphs (1) and (2) of regulation 5;

(b) paragraphs (1) and (2) of regulation 6;

(c) paragraphs (1) and (2) of regulation 7;

(d) paragraphs (1) and (2) of regulation 8;

(e) paragraphs (1) and (2) of regulation 9;

(f) paragraphs (1) and (2) of regulation 10; and

(g) paragraphs (1) and (2) of regulation 11.

PART 2

HEALTH BOARDS

4.—Section 4 of the Principal Act is amended by the deletion, in subsection (1), of the words “and, subject to subsection (2), shall specify the membership of each health board”, and the said subsection (1) as so amended is set out in the Table to this section.

Amendment of section 4 of Principal Act.

TABLE

(1) For the administration of the health services in the State, the Minister shall after consultation with the Minister for Local Government by regulations establish such number of boards (to be known and in this Act referred to as health boards) as may appear to him to be appropriate, and by such regulations shall specify the title and define the functional area of each health board so established.

5.—Section 5 of the Principal Act is amended by the insertion of the following subsection:

Amendment of section 5 of Principal Act.

“(4) The seal of the board shall be authenticated by the signature of the chief executive officer of the board, or any person for the time being performing the functions of chief executive officer of the board, and the signature of another officer of the board authorised to act in that behalf.”.

6.—(1) Section 13 of the Principal Act is amended by—

Amendment of section 13 of Principal Act.

- (a) the deletion, in paragraph (a) of subsection (2), of “, after consultation with the chairman of the health board (or, in his absence, the vice-chairman),”,
- (b) the substitution, in paragraph (b) of that subsection, of “the Minister” for “the chairman of the health board (or, in his absence, the vice-chairman)”,
- (c) the substitution, in paragraph (d) of that subsection, of “the Minister” for “the chairman of the health board with the consent of the Minister”, and
- (d) the deletion, in subsection (9), of the words “after consultation with the chairman of the board or, in his absence, the vice-chairman of the board”,

and the said subsections (2) and (9) as so amended are set out in the Table to this subsection.

TABLE

- (2) (a) Where a chief executive officer will for any reason, other than suspension from performance of his duties, be temporarily unable to act as such, he may appoint one of the other officers of that board to act as deputy chief executive officer for the duration of such inability.
- (b) Where a chief executive officer has for any reason become temporarily unable to act as such and either he has not made an appointment under this subsection or an appointment made under this subsection, whether by such chief executive officer or otherwise, has become terminated under paragraph (d), or on account of the death or resignation of the appointee, the Minister may appoint one of the other officers of that board to act as deputy chief executive officer for the remainder of the duration of such inability.

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(c) The Minister may specify classes of officers who may be appointed as deputy chief executive officer and any appointment under this subsection shall comply with any such specification.

(d) An appointment as deputy chief executive officer may at any time be terminated by the Minister.

(e) An appointment as deputy chief executive officer shall terminate on the chief executive officer ceasing to be such officer.

(9) A temporary appointment of a chief executive officer may be made by the Minister.

(2) Section 13 of the Principal Act is amended by the substitution of the following subsection for subsection (8):

“(8) The appointment of a chief executive officer pursuant to a recommendation of the Local Appointments Commissioners shall be a function of the Minister.”.

Amendment of section 22 of Principal Act.

7.—Section 22 of the Principal Act is amended, in subsection (1), by the deletion of the words “, after consultation with the chairman of the board or, in his absence, the vice-chairman of the board,” and the said subsection (1) as so amended is set out in the Table to this section.

TABLE

(1) Whenever, in respect of an officer of a health board other than the chief executive officer, there is, in the opinion of the chief executive officer, reason to believe that the officer has misconducted himself in relation to his office or is otherwise unfit to hold office, the chief executive officer may suspend the officer from the performance of the duties of his office while the alleged misconduct or unfitness is being inquired into and any disciplinary action to be taken in regard thereto is being determined.

Amendment of section 23 of Principal Act.

8.—Section 23 of the Principal Act is amended, in subsection (1), by the substitution of “and (3)” for “to (4)”, and the said subsection (1) as so amended is set out in the Table to this section.

TABLE

(1) Subject to subsections (2) and (3), an officer or servant of a health board appointed under section 14 may be removed from being such officer or servant by the chief executive officer to the board.

Amendment of section 3 of Act of 1996.

9.—The Act of 1996 is amended by the substitution of the following section for section 3:

“3.—The functions of a health board shall be performed by its chief executive officer.”.

Amendment of section 4 of Act of 1996.

10.—Section 4 of the Act of 1996 is amended, in subsection (3), by the substitution of “functions” for “executive functions”, and the said subsection (3) as so amended is set out in the Table to this section.

TABLE

(3) A chief executive officer shall furnish the Minister with such information (including financial information) in relation to the performance of his or her functions as the Minister may from time to time require.

11.—Section 6 of the Act of 1996 is amended by—

Pt.2

Amendment of
section 6 of Act of
1996.

- (a) the substitution of the following subsection for subsection (3):

“(3) If a service plan is not submitted to the Minister in accordance with subsection (1), the Minister may, by direction in writing, require the chief executive officer of the health board concerned to submit a service plan to him or her—

(a) not later than 10 days from the receipt of the direction by the chief executive officer, or

(b) not later than such earlier date as may be specified in the direction,

and the chief executive officer of that health board shall comply with any such direction.”,

- (b) the substitution, in subsection (1), of “make” for “adopt”, and

- (c) the substitution, in subsection (6), of the words “direct the chief executive officer to make modifications to the service plan and the chief executive officer shall comply with any such direction” for “direct the health board or, in the case of a service plan submitted in accordance with subsection (4), the chief executive officer, to make modifications to the service plan and the board or the chief executive officer, as the case may be, shall comply with any such direction”,

and the said subsections (1) and (6) as so amended are set out in the Table to this section.

TABLE

(1) Subject to section 7(1)(a), a health board shall, within—

(a) 42 days, or

(b) such shorter period not being less than 21 days as the Minister may direct in any particular case,

of the receipt by the board of a determination, make and submit to the Minister a service plan.

(6) Where in the opinion of the Minister the service plan of a health board—

(a) does not contain such information as was specified under subsection (2),

(b) proposes net expenditure which exceeds the net expenditure as determined by the Minister, or

(c) is not in accordance with the policies and objectives of the Minister or of the Government in so far as they relate to the functions of the board,

the Minister may, not later than 21 days after the receipt by him or her of the service plan, direct the chief executive officer to make modifications to the service plan and the chief executive officer shall comply with any such direction.

[No. 19.] *Health (Amendment) Act 2004.* [2004.]

Pt.2
Amendment of
section 11 of Act of
1996.

12.—Section 11 of the Act of 1996 is amended by the substitution of the following subsection for subsection (3):

“(3) The annual financial statements of a health board shall be submitted to the Comptroller and Auditor General on or before the 1st day of April in the year immediately following the financial year to which they relate.”.

Amendment of
section 14 of Act of
1996.

13.—Section 14 of the Act of 1996 is amended by—

(a) the substitution, in subsection (2), of “Minister” for “health board”,

(b) the substitution, in subsection (3), of “Minister” for “health board with the consent of the Minister”, and

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

“(5) The appointment pursuant to a recommendation by the Local Appointments Commissioners and the removal of a chief executive officer in accordance with this section shall be a function of the Minister.”.

and the said subsections (2) and (3) as so amended are set out in the Table to this section.

TABLE

(2) A person appointed as chief executive officer after the commencement of this section shall hold office under a contract of service in writing with the Minister upon such terms and conditions (including terms and conditions relating to remuneration and expenses) as may be determined by the Minister with the consent of the Minister for Finance and specified in the contract.

(3) A chief executive officer to whom this section applies may be removed from office by the Minister in accordance with the terms and conditions of his or her contract of service.

Amendment of
section 15 of Act of
1996.

14.—Section 15 of the Act of 1996 is amended by—

(a) the substitution, in subsection (1), of “make” for “adopt”, and

(b) the substitution, in subsection (4), of “making” for “adopting”,

and the said subsections (1) and (4) as so amended are set out in the Table to this section.

TABLE

(1) A health board shall, not later than the 30th day of June in each year, prepare and make a report (which shall be known as and in this section is referred to as an “annual report”) in relation to the performance of its functions during the preceding year.

(4) As soon as may be after making an annual report, a health board shall submit a copy thereof to the Minister.

Amendment of
Health Act 1947.

15.—(1) Section 78 of the Act of 1947 is amended, in subsection (1), by the substitution of the words “with the consent of the Minister” for “subject to any general directions given by the Minister

[2004.] *Health (Amendment) Act 2004.* [No. 19.]

with the consent of the Minister for Finance”, and the said subsection Pt.2 S.15
(1) as so amended is set out in the Table to this subsection.

TABLE

(1) A health board may, for the purpose of its powers and duties under this Act, acquire land either by agreement, with the consent of the Minister, or compulsorily under this Part of the Act and the Acts incorporated therewith.

(2) Section 89 of the Act of 1947 is amended, in subsection (1), by the substitution of the words “with the consent of the Minister” for “subject to any general directions given by the Minister with the consent of the Minister for Finance”, and the said subsection (1) as so amended is set out in the Table to this subsection.

TABLE

(1) A health board may, with the consent of the Minister, sell, exchange, let or otherwise dispose of any land vested in it.

(3) In this section “Act of 1947” means the Health Act 1947.

PART 3

EASTERN REGIONAL HEALTH AUTHORITY AND AREA HEALTH BOARDS

16.—Section 4 of the Act of 1999 is amended by the substitution of “section 21(14)” for “sections 11(2), 16(1) and 21(14)”, and the said section 4 as so amended is set out in the Table to this section. Amendment of section 4 of Act of 1999.

TABLE

4.—Every order made under section 5 and every regulation made under section 21(14) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

17.—Section 5 of the Act of 1999 is amended, in subsection (1), by the deletion of the words “and the local authority concerned”, and the said subsection (1) as so amended is set out in the Table to this section. Amendment of section 5 of Act of 1999.

TABLE

(1) The Minister may, after consultation with the Minister for the Environment and Local Government, by order amend the First Schedule.

18.—Section 7 of the Act of 1999 is amended by the insertion of the following subsection: Amendment of section 7 of Act of 1999.

“(3A) The seal of the Authority shall be authenticated by the signature of the Regional Chief Executive, or any person for the time being performing the functions of the Regional Chief Executive, and the signature of another officer of the Authority authorised to act in that behalf.”.

19.—Section 10 of the Act of 1999 is amended, in subsection (2)(a), by the deletion of the words “section 9(2) and”, and the said subsection (2)(a) as so amended is set out in the Table to this section. Amendment of section 10 of Act of 1999.

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TABLE

(2) (a) Subject to subsection (3), the Authority shall, having regard to the resources available to it, make and carry out an arrangement with each Area Health Board for the provision within the Area Health Board's functional area of services which, immediately before the establishment day, were provided by the Eastern Health Board.

Amendment of section 12 of Act of 1999.

20.—Section 12 of the Act of 1999 is amended, in subsection (1), by the substitution of “the Minister shall” for “the Authority shall”, and the said subsection (1) as so amended is set out in the Table to this section.

TABLE

(1) Subject to subsection (3) and notwithstanding any other enactment, the Minister shall, pursuant to a recommendation from the Local Appointments Commissioners, appoint a person who shall act as the chief executive officer of the Authority and such person shall be known and in this Act referred to as the Regional Chief Executive.

Amendment of section 14 of Act of 1999.

21.—Section 14 of the Act of 1999 is amended by the insertion of the following subsection:

“(3A) The seal of an Area Health Board shall be authenticated by the signature of its area chief executive, or any other person for the time being performing the functions of area chief executive in relation to that Area Health Board, and another officer of that Area Health Board authorised to act in that behalf.”.

Amendment of section 15 of Act of 1999.

22.—Section 15 of the Act of 1999 is amended, in subsection (1), by the deletion of the words “in accordance with section 9(1)”, and the said subsection (1) as so amended is set out in the Table to this section.

TABLE

(1) An Area Health Board shall perform, with respect to its functional area and on behalf of the Authority, such functions as are specified by the Authority and shall carry out such other functions as provided by this Act or as may from time to time be conferred on it by the Authority.

Amendment of section 17 of Act of 1999.

23.—(1) Section 17 of the Act of 1999 is amended by the substitution, in subsections (1) and (3), of “Minister” for “Authority”.

(2) Section 17 of the Act of 1999 is amended by the substitution, in subsection (10), of “Minister” for “Authority, with the consent of the Minister,”, and the said subsection (10) as so amended is set out in the Table to this subsection.

TABLE

(10) An area chief executive may be removed from office by the Minister in accordance with the terms and conditions of his or her contract of service.

Amendment of section 21 of Act of 1999.

24.—Section 21 of the Act of 1999 is amended by—

- (a) the substitution, in subsection (4), of “functions” for “executive functions” in each place that it occurs, and
- (b) the substitution of the following subsection for subsection (16):

[2004.] *Health (Amendment) Act 2004.* [No. 19.]

“(16) The chief executive officer of a health board may require the Executive to perform a function on his or her behalf.”. Pt.3 S.24

25.—The Act of 1999 is amended by—

Performance of functions of Eastern Regional Health Authority and Area Health Boards.

(a) the insertion of the following section:

“8A.—The functions of the Authority shall be performed by the Regional Chief Executive.”,

and

(b) the insertion of the following section:

“15A.—The functions of an Area Health Board shall be performed by its area chief executive.”.

PART 4

OTHER PROVISIONS RELATING TO HEALTH BOARDS, EASTERN REGIONAL HEALTH AUTHORITY AND AREA HEALTH BOARDS

26.—Section 220 of the Local Government Act 2001 is amended, in the definition in subsection (1) of “linked body”, by the deletion of the words “a health board established under the Health Act, 1970, the Eastern Regional Health Authority, and Area Health Board established under the Health (Eastern Regional Health Authority) Act, 1999,”, and the said definition as so amended is set out in the Table to this section.

Amendment of section 220 of the Local Government Act 2001.

TABLE

“linked body” means a vocational education committee, a school attendance committee, a harbour board, a joint body and any other body—

- (a) which is required by law to be composed wholly or partly of persons nominated, elected or appointed by a local authority or by 2 or more local authorities, or
- (b) which is required by law to include one or more persons, who hold membership of such linked body by virtue of being Cathaoirleach or by holding any other office or position relating to membership of a local authority.

27.—(1) Every person who, immediately before the commencement of this section, was a member of a health board shall cease to hold office as such member upon and from the date of the said commencement.

Termination of office.

(2) Every person who, immediately before the commencement of this section, was a member of the Eastern Regional Health Authority shall cease to hold office as such member upon and from the date of the said commencement.

(3) Every person who, immediately before the commencement of this section, was a member of an Area Health Board shall cease to hold office as such member upon and from the date of the said commencement.

28.—(1) Anything commenced and not completed before the commencement of *Part 2* and *section 27* by a health board may, on

Provisions consequent upon *section 27*.

Pr.4 S.28

or after such commencement, be carried on or completed by the chief executive officer of that health board.

(2) Anything commenced and not completed before the commencement of *Part 3* and *section 27* by the Eastern Regional Health Authority may, on or after such commencement, be carried on or completed by the Regional Chief Executive.

(3) Anything commenced and not completed before the commencement of *Part 3* and *section 27* by an Area Health Board may, on or after such commencement, be carried on or completed by the chief executive officer of that Area Health Board.

Accountability to certain Committees of Houses of Oireachtas.

29.—(1) Subject to *subsection (2)*, a chief executive officer shall, at the request in writing of a Committee, attend before it to give account for the general administration of the health body concerned.

(2) A chief executive officer shall not be required to give account before a Committee for any matter which is or has been or is likely to be the subject of proceedings before a court or tribunal in the State.

(3) Where a chief executive officer is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (2)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive officer concerned is before it, the information shall be so conveyed in writing.

(4) Where a chief executive officer has informed a Committee of his or her opinion in accordance with *subsection (3)* and the Committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to a matter the subject of that opinion—

(a) the chief executive officer concerned may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (2)* applies, or

(b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine that matter.

(5) Pending the determination of an application under *subsection (4)*, the chief executive officer concerned shall not attend before the Committee to give account for the matter the subject of the application.

(6) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the Committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (2)* does not apply, the chief executive officer concerned shall attend before the Committee to give account for the matter.

(7) In the performance of his or her duties under this section, a chief executive officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

(8) In this section—

PT.4 S.29

“chief executive officer” means—

- (a) the chief executive officer of a health board,
- (b) the Regional Chief Executive, or
- (c) the area chief executive of an Area Health Board;

“Committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas or a subcommittee of such a committee, other than—

- (a) the Committee established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, or
- (b) the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann;

“health body” means—

- (a) a health board,
- (b) the Eastern Regional Health Authority, or
- (c) an Area Health Board.

[No. 19.] *Health (Amendment) Act 2004.* [2004.]

Section 3.

SCHEDULE

REPEAL OF ENACTMENTS

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 28 of 1947	Health Act 1947	Section 89(4) (inserted by section 18(e) of the Act of 1996).
No. 1 of 1970	Health Act 1970	Section 4(2), (3) and (4), section 5(1)(d) and (e), section 5(2) and (3), section 8, section 9, section 10, section 12, section 21(2) and (3), section 23(4), Second Schedule (insofar as it applies to a health board, an Area Health Board or the Eastern Regional Health Authority).
No. 32 of 1996	Health (Amendment) (No. 3) Act 1996	The definitions in section 1(1) of “executive function” and the definition in that section of “reserved function” (inserted by section 24(a) of the Act of 1999), Section 2(2), Section 4(1) (inserted by section 24(c) of the Act of 1999) and (2), section 6(4), (5) and (7), section 7(6), section 8(3), section 9(2), section 11(5), section 12, section 15(3), First Schedule.
No. 13 of 1999	Health (Eastern Regional Health Authority) Act 1999	The definitions, in section 2(1), of “executive function”, “registered dentist”, “registered dispensing chemist and druggist”, “registered medical practitioner”, “registered nurse”, “registered pharmaceutical chemist”, “registered psychiatric nurse” and “reserved function”, Section 9, section 11, section 12(6), section 15(6), section 16, section 17(5) and (11).
No. 37 of 2001	Local Government Act 2001	Paragraph 18(7) of Schedule 10.