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Explanatory Memorandum](#)

AN BILLE SLÁINTE 2006
HEALTH BILL 2006

Mar a tionscnaíodh
As initiated

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AN BILLE SLÁINTE 2006
HEALTH BILL 2006

BILL

entitled

5 AN ACT TO ESTABLISH A BODY TO BE KNOWN AS AN
tÚDARÁS UM FHAISNÉIS AGUS CÁILÍOCHT SLÁINTE
OR, IN THE ENGLISH LANGUAGE, AS THE HEALTH
INFORMATION AND QUALITY AUTHORITY AND
10 OIFIG AN PHRÍOMH-CHIGIRE SEIRBHÍSÍ SÓISIALA-
CHA OR, IN THE ENGLISH LANGUAGE, THE OFFICE
OF THE CHIEF INSPECTOR OF SOCIAL SERVICES AND
TO PROVIDE FOR THE DISSOLUTION OF CERTAIN
BODIES; TO PROVIDE FOR THE TRANSFER OF THE
15 FUNCTIONS OF THE DISSOLVED BODIES AND THEIR
EMPLOYEES TO THE HEALTH INFORMATION AND
QUALITY AUTHORITY; TO PROVIDE FOR A SCHEME
OF REGISTRATION AND INSPECTION OF RESIDEN-
TIAL SERVICES FOR OLDER PEOPLE, PERSONS WITH
20 DISABILITIES AND CHILDREN IN NEED OF CARE
AND PROTECTION; TO PROVIDE FOR THE REPEAL
AND AMENDMENT OF CERTAIN OTHER ACTS; AND
TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

25 PRELIMINARY MATTERS

1.—(1) This Act may be cited as the Health Act 2006.

Short title,
collective citation
and construction.

(2) The Health Acts 1947 to 2006 and this Act may be cited together as the Health Acts 1947 to 2006 and shall be construed together as one.

30 2.—(1) In this Act:

Interpretation.

“Authority” means the Health Information and Quality Authority established under *section 6*;

“Board” means the Board, referred to in *section 12*, of the Authority;

“dependent person” means dependent person as defined in section 1(1) of the Health (Nursing Homes) Act 1990;

“designated centre” means an institution—

- (a) at which residential services are provided by the Executive or a service provider— 5
 - (i) in accordance with the Child Care Act 1991,
 - (ii) to persons with disabilities, in relation to their disabilities, or
 - (iii) to other dependent persons, in relation to their dependencies, or 10
- (b) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

but does not include any of the following:

- (i) a centre registered by the Mental Health Commission;
- (ii) an institution managed by or on behalf of a Minister of the Government; 15
- (iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;
- (iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities; 20
- (v) a special care unit;
- (vi) a children detention school as defined in section 3 of the Children Act 2001; 25

“disability”, subject to *subsection (3)* means disability as defined in section 2(1) of the Disability Act 2005;

“Executive” means the Health Service Executive established under the Health Act 2004;

“financial year” means a period of 12 months ending on 31 December in any year; 30

“Interim Health Information and Quality Authority” means the body established by the Interim Health Information and Quality Authority (Establishment) Order, 2005 (S.I. No. 132 of 2005);

“Irish Health Services Accreditation Board” means the body established by the Irish Health Services Accreditation Board (Establishment) Order, 2002 (S.I. No. 160 of 2002); 35

“local authority” has the same meaning as in the Local Government Act 2001;

“Mental Health Commission” means the body established by section 32 of the Mental Health Act 2001; 40

“member” in relation to the Board includes the chairperson;

“Minister” means the Minister for Health and Children;

“ordinary member” means a member of the Board other than the chairperson;

“prescribed” means prescribed by regulation made by the Minister;

5 “public authority” means any of the following:

(a) a Minister of the Government;

(b) the Commissioners of Public Works in Ireland;

(c) a local authority;

10 (d) a harbour authority within the meaning of the Harbours Act 1946;

(e) a board or other body (but not a company) established by or under statute;

15 (f) a company in which all the shares are held by or on behalf of, or by directors appointed by, a Minister of the Government;

(g) a company in which all the shares are held by a board, company or other body referred to in *paragraph (e)* or *(f)*;

20 (h) any other body prescribed for the purpose of any provision of this Act;

“register” means a register of designated centres established under *section 40(b)*;

25 “registered provider” in relation to a designated centre means the person whose name is entered in a register as the person carrying on the business of the designated centre;

“service provider” means a person who—

(a) enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Executive, or

30 (b) is in receipt of assistance under—

(i) section 39 of the Health Act 2004 in an amount that exceeds an amount prescribed for the purpose of this subparagraph, or

35 (ii) section 10 of the Child Care Act 1991 in an amount that exceeds an amount prescribed for the purpose of this subparagraph;

“special care unit” means a special care unit provided and maintained in accordance with section 23K of the Child Care Acts 1991 and 2001, by or on behalf of the Executive;

40 “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

(2) For the purposes of the definition of designated centre in *subsection (1)*, “institution” means a home, centre or institution or part of a home, centre or institution.

(3) In the definition of “disability” in *subsection (1)*, “substantial restriction” shall be construed as meaning a restriction as described in paragraphs (a) and (b) of section 7(2) of the Disability Act 2005. 5

Commencement. 3.—(1) This Act comes into operation on such day or days as the Minister may appoint by order.

(2) Different days may be appointed under this section for different purposes or different provisions of this Act. 10

Establishment day. 4.—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

Expenses. 5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of money provided by the Oireachtas. 15

PART 2

HEALTH INFORMATION AND QUALITY AUTHORITY

Establishment of Health Information and Quality Authority. 6.—(1) There is hereby established a body, to be known as An tÚdarás um Fhaisnéis agus Cáilíocht Sláinte or in the English language as the Health Information and Quality Authority to perform the functions assigned to it by this Act. 20

(2) The Authority is a body corporate with perpetual succession.

(3) The Authority may sue and be sued in its corporate name and, with the consent of the Minister and the Minister for Finance, may acquire, hold and dispose of land or an interest in land and any other property. 25

(4) The Authority shall provide itself with a seal as soon as may be after the Authority’s establishment.

(5) The seal of the Authority shall be authenticated by the signature of— 30

(a) the chairperson of the Authority or of another member of the Board of the Authority authorised by it to act in that behalf, and

(b) by the signature of the chief executive officer or of another member of staff of the Authority as may be designated by the chief executive officer. 35

(6) Judicial notice shall be taken of the seal of the Authority, and any document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority shall, unless the contrary is shown, be received in evidence and be deemed to be that instrument without further proof. 40

7.—(1) The functions of the Authority are as follows:

Functions of
Authority.

(a) to set standards on safety and quality in relation to—

(i) services provided by the Executive or a service provider in accordance with—

5 (I) the Health Acts 1947 to 2006, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2004, are provided by the Executive,

(II) the Child Care Acts 1991 and 2001,

10 (III) the Children Act 2001,

and

(ii) services provided by a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

15 in this section called the “services”, and advise the Minister and the Executive accordingly;

(b) to monitor compliance with the standards referred to in *paragraph (a)* and to advise the Minister and the Executive accordingly;

(c) to undertake investigations in accordance with *section 8*;

20 (d) at the request or with the approval of the Minister to review and make recommendations as the Authority thinks fit in respect of the services, to ensure the best outcomes for the resources available to the Executive;

25 (e) to operate accreditation programmes in respect of the services and to grant accreditation to any of them meeting standards set or recognised by the Authority;

(f) to operate such other schemes aimed at ensuring safety and quality in the provision of the services as the Authority considers appropriate;

30 (g) to evaluate the clinical and cost effectiveness of health technologies including drugs and provide advice arising out of the evaluation to the Minister and the Executive;

(h) to evaluate available information respecting the services and the health and welfare of the population;

35 (i) to provide advice and make recommendations to the Minister and the Executive about deficiencies identified by the Authority in respect of the information referred to in *paragraph (j)*;

40 (j) to set standards as the Authority considers appropriate for the Executive and service providers respecting data and information in their possession in relation to services and the health and welfare of the population;

45 (k) to advise the Minister and the Executive as to the level of compliance by the Executive and service providers with the standards referred to in *paragraph (l)*;

(l) to act as a body standing prescribed by regulations made by the Minister for Health and Children, as set out in section 5(5) of the Education for Persons with Special Educational Needs Act 2004.

(2) In carrying out its functions the Authority shall have regard to— 5

(a) the policies and objectives of the Government or any Minister of the Government in so far as they may affect or relate to the functions of the Authority,

(b) the need to co-operate with and co-ordinate its activities with public authorities, the performance of whose functions may affect or relate to the functions of the Authority other than the functions described in *subsection (1)(b), (c) and (k)*, 10

(c) the resources available to the Executive, and 15

(d) in so far as is reasonably practicable, research, statistics and other information in relation to the health and personal social services that are provided in other jurisdictions.

(3) The Authority has all the powers as are necessary or expedient for the performance by it of its functions. 20

(4) Subject to any directions given by the Minister under *section 28*, or to any charges determined under *section 38*, the Authority, in relation to health or personal social services, may—

(a) provide advice on safety, quality and standards, and 25

(b) operate accreditation programmes for and at the request of health providers other than service providers as defined in *section 2(1)* or the Executive.

Investigations by Authority on behalf of Minister.

8.—Where the Minister believes on reasonable grounds that—

(a) there is a serious risk to the health or welfare of a person receiving services described in *section 7(1)(a)*, and 30

(b) the risk may be the result of any act, failure to act or negligence on the part of the Executive or of the service provider,

the Minister may require the Authority to undertake an investigation as to the safety, quality and standards of the services. 35

Standards set by Authority.

9.—(1) In this section, “standards” means standards set by the Authority under *section 7(1)*.

(2) After considering any representations made in relation to any standards proposed by the Authority and after making any changes the Authority thinks fit, it shall submit the proposed standards to the Minister for approval. 40

5 **10.**—(1) In proceedings for an offence under this Act relating to an alleged contravention of any provision of this Act or of the regulations in respect of which standards have been set by the Authority under *section 7(1)(a), subsection (2)* of this section has effect in relation to those standards and those proceedings. Admissibility of standards in court proceedings.

(2) Where the standards referred to in *subsection (1)* appear to the Court to give guidance as to the observance of the provision of the Act or of the regulations that is alleged to have been contravened, the standards are admissible in evidence.

10 (3) If it is proved that any act or omission of the defendant, alleged to constitute a contravention of a provision referred to in *subsection (1)*, is—

(a) in compliance with the standards referred to in *subsection (1)*, or

15 (b) not in compliance with those standards,

the fact of that compliance or non-compliance is admissible in evidence.

20 (4) A document bearing the seal of the Authority and purporting to be a standard or part of a standard set by the Authority under *section 7(1)* is admissible as evidence in any proceedings under this Act.

25 **11.**—The Authority may require the Executive or a service provider to provide it with any information or statistics the Authority needs in order to determine the level of compliance by the Executive or by the service provider with the standards set by the Authority in accordance with *section 7(1)*. Provision of information to Authority.

PART 3

BOARD OF THE AUTHORITY

30 **12.**—(1) The Authority shall have a Board consisting of 12 members (including the chairperson and 11 ordinary members) appointed by the Minister in accordance with this section. Membership of Board.

35 (2) The members of the Board shall be appointed by the Minister from among persons, who in the opinion of the Minister, have experience and expertise in relation to matters connected with the functions of the Authority which would enable such a person to make a substantial contribution to the performance by the Authority of its functions.

(3) A person is not eligible for appointment as a member of the Board or a committee of the Board, if the person is—

40 (a) a member of either House of the Oireachtas or of the European Parliament,

(b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

45 (c) a member of a local authority.

(4) The chairperson of the Board holds office for a period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(5) Subject to *subsection (6)*, an ordinary member of the Board shall hold office for a period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine. 5

(6) Of the ordinary members of the Board first constituted under this section—

(a) 6 members of the Board as shall at a meeting held for the purposes of this subsection be selected— 10

(i) by unanimous agreement of the members of the Board attending the meeting, or

(ii) where no such agreement can for whatever reason be reached, by the drawing of lots by the members of the Board so attending, 15

shall hold office for a period of 3 years, and

(b) the remaining 5 members shall hold office for a period of 5 years.

(7) Subject to *subsection (8)*, a member of the Board whose term of office expires by the passage of time is eligible for reappointment to the Board. 20

(8) A member of the Board who has served 2 terms of office is not eligible for reappointment to the Board, and any period during which a person serves as a member of the Board pursuant to an appointment under *section 15* shall be deemed for the purposes of this subsection to be a term of office. 25

(9) The Minister shall endeavour to ensure that among the members of the Board there is an equitable balance between men and women.

Role of Board.

13.—(1) The Board is the governing body of the Authority with authority, in the name of the Authority, to perform the functions of the Authority. 30

(2) The Board may delegate any of its functions to the chief executive officer.

(3) If a function of the Authority is delegated to the chief executive officer under *subsection (2)*, the delegation remains in force until the Board revokes the delegation. 35

Conditions of office.

14.—(1) The Minister at any time may remove a member of the Board from office if, in the Minister's opinion—

(a) the member has become incapable through ill-health of performing the functions of the office, 40

(b) the member has committed stated misbehaviour,

- (c) the member's removal from office appears to be necessary for the Board to perform its functions in an effective manner,
- 5 (d) the member has contravened *section 78(1)* or *81(2)* of this Act or a provision of the Ethics in Public Office Act 1995 that by a regulation made under section 3 of that Act applies to that member, or
- (e) in performing functions under this Act, the member has not complied with—
- 10 (i) a code of conduct, under section 10(3) of the Standards in Public Office Act 2001, or
- (ii) the code of governance under *section 33* that relates to the Board member.

- (2) A member of the Board ceases to hold office if the member—
- 15 (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence,
- (d) is convicted of an offence involving fraud or dishonesty,
- 20 (e) is the subject of an order under section 160 of the Companies Act 1990,
- (f) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- 25 (g) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession.

(3) A member of the Board who does not, for a consecutive period of 6 months, attend a meeting of the Board ceases at the end of that period to hold office unless the member demonstrates to the Minister's satisfaction that the non-attendance was due to illness.

30 **15.**—(1) A member of the Board may resign by letter to the Minister and the resignation takes effect on the later of— Resignations and casual vacancies.

- (a) the date specified in the letter, and
- (b) the receipt of the letter by the Minister.

35 (2) If a member of the Board dies, resigns, ceases to be qualified for office, ceases to hold office or is removed from office, the Minister may appoint a person to fill the casual vacancy so occasioned.

(3) A person appointed to be a member of the Board under this section—

- 40 (a) holds office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of the appointment, and

(b) subject to *section 12(8)*, is eligible for reappointment as a member of the Board on the expiry of that period.

Removal of members from office.

16.—(1) The Minister may remove all the members of the Board from office if the Board—

(a) does not achieve a quorum for 3 consecutive meetings, 5

(b) does not comply with a judgment, order or decree of any court,

(c) does not comply with a direction of the Minister or any other requirement imposed on it by or under any enactment including this Act, or 10

(d) in the Minister's opinion, the Board is not performing its functions in an effective manner.

(2) If, in the Minister's opinion, the Board is not performing its functions in an effective manner, the Minister may appoint a person to— 15

(a) conduct an independent review of any matter giving rise to that opinion, and

(b) submit a report to the Minister on the results of the review.

(3) The Board shall co-operate with any such review and give the person conducting it all reasonable assistance, including access to premises, equipment and records as the person may require for the purposes of the review. 20

(4) The removal of all the members of the Board does not revoke or otherwise affect any delegation of the Board's functions to the chief executive officer under *section 13(2)*. 25

Meetings and procedures of Board.

17.—(1) The Minister, in consultation with the chairperson of the Board, shall fix the date of the first meeting of the Board first constituted pursuant to *section 12* and shall specify the time and place at which the meeting shall take place. 30

(2) The Board shall hold such meetings as are necessary for the performance of its functions but in each year shall meet at least once every 2 months.

(3) At a meeting of the Board—

(a) the chairperson of the Board, if present, shall be the chairperson of the meeting, or 35

(b) if and so long as the chairperson of the Board is not present, or if that office is vacant, the members of the Board who are present shall choose one of their number to be chairperson of the meeting. 40

(4) Every question at a meeting shall be determined by a majority of the votes of the members of the Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(5) Subject to *subsection (8)*, the Board may act notwithstanding one or more vacancies among its members.

(6) Subject to this Act, the Board shall regulate, by standing orders, the procedures and business of the Board.

5 (7) Notwithstanding *subsection (6)*, non-compliance with the standing orders of the Board does not invalidate any decision of the Board.

(8) The quorum for a meeting of the Board is 5 unless the Minister otherwise directs.

10 (9) The chairperson may call a meeting of the Board at any reasonable time.

(10) If the chairperson refuses to call a meeting of the Board, after a requisition for that purpose, signed by not less than 3 members of the Board has been presented to the chairperson, any 3 members of
15 the Board may call a meeting of the Board.

(11) If the chairperson, without refusing to do so, does not, within 7 days after the presentation of a requisition for that purpose signed by not less than 3 members of the Board, call a meeting of the Board, any 3 members of the Board may call a meeting of the Board.

20 **18.—(1)** The Board may—

Committees of Board.

(a) establish committees to provide assistance and advice to the Board in relation to the performance of its functions, and

25 (b) determine the membership and terms of reference of each committee.

(2) The Board may appoint persons to a committee who are not members of the Board but have special knowledge and experience related to the purpose of the committee.

30 (3) The appointment of a person to a committee is subject to the terms and conditions as may be determined—

(a) under *section 19*, to the extent that the terms and conditions relate to remuneration and allowances for expenses, and

(b) by the Board in any other case.

35 (4) The Board shall specify in writing the purpose and terms of reference of each committee.

(5) The acts of a committee are subject to confirmation by the Board, unless the Board dispenses with the necessity for confirmation.

40 (6) The Board may regulate the procedure of a committee but, subject to any such regulation, a committee may regulate its own procedure.

(7) The Board may at any time dissolve a committee established under this section.

Remuneration and expenses of members of Board and committees.

19.—(1) The remuneration and allowances for expenses, if any, determined in accordance with *subsection (3)* are payable by the Authority out of funds at its disposal to—

(a) the members of the Board, and

(b) the members of a committee of the Board. 5

(2) The remuneration and allowances for expenses, if any, determined in accordance with *subsection (3)* are payable by the Minister out of money provided by the Oireachtas to a person appointed under *section 16(2)* to conduct an independent review.

(3) With the consent of the Minister for Finance, the Minister 10 may determine the remuneration and allowances for expenses payable under this section.

PART 4

CHIEF EXECUTIVE OFFICER OF THE AUTHORITY

Chief executive officer of Authority.

20.—(1) The Board shall appoint a person recruited in accordance 15 with the Public Service Management (Recruitment and Appointments) Act 2004 to be the chief executive officer of the Authority.

(2) A person is not eligible for appointment as the chief executive officer if the person is— 20

(a) a member of either House of the Oireachtas or of the European Parliament,

(b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or 25

(c) a member of a local authority.

(3) The chief executive officer shall hold office on the terms and conditions (including those relating to remuneration, allowances and superannuation) that shall be determined by the Board with the approval of the Minister given with the consent of the Minister for 30 Finance.

(4) The chief executive officer shall be paid by the Authority, out of funds at its disposal, remuneration and allowances determined under *subsection (3)*.

(5) Notwithstanding *subsection (1)*, the chief executive officer of 35 the interim Health Information and Quality Authority is the first chief executive officer of the Authority and shall hold office subject to the terms and conditions as may be determined in accordance with *subsection (3)*.

Functions of chief executive officer.

21.—(1) The chief executive officer shall— 40

(a) carry on, and manage and control generally, the administration and business of the Authority,

(b) perform such other functions as may be assigned to that officer by or under this Act or another enactment or as may be delegated to him or her by the Board, and

5 (c) supply the Board with information (including financial information) relating to the performance of the chief executive officer's functions as the Board may require.

(2) The chief executive officer is responsible to the Board for the performance of the chief executive officer's functions and the implementation of the Board's policies.

10 (3) If the chief executive officer is absent or the position of chief executive officer is vacant, the functions of the chief executive officer under this section may be performed by an employee of the Authority designated by the Authority.

15 **22.—**(1) Subject to any directions that may be given by the Board, the chief executive officer may— Delegation of functions of chief executive officer.

(a) delegate any of the chief executive officer's functions under *section 21* (including those relating to financial matters) to employees of the Authority specified by name, position or otherwise, and

20 (b) authorise the subdelegation of any or all delegated functions to or by other such employees.

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

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

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

30 (3) The delegation or subdelegation of a function does not preclude the person who for the time being holds the position of chief executive officer from performing the function.

(4) The chief executive officer may—

35 (a) vary any delegation or subdelegation of a function under this section,

(b) revoke such delegation or subdelegation, or

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

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

(6) An employee of the Authority who subdelegates a function delegated or subdelegated to the employee under this section—

45 (a) may vary or revoke the subdelegation, and

(b) is not precluded from performing the function.

(7) On varying or revoking the subdelegation of a function, the employee who subdelegated the function shall inform each employee to whom the function was subdelegated of its variation or revocation.

Accountability of
chief executive
officer to
Committee of
Public Accounts.

23.—(1) The chief executive officer, whenever required in writing to do so by the Committee of Dáil Éireann 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, shall give evidence to that Committee on— 5

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Authority is required by this Act to prepare, 10

(b) the economy and efficiency of the Authority in the use of its resources, 15

(c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General, in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*, that is laid before Dáil Éireann. 20 25

(2) In the performance of the duties of the chief executive officer under this section, the chief executive officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 30

Accountability of
chief executive
officer to other
Oireachtas
Committees.

24.—(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 23* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee. 35

(2) Subject to *subsection (3)*, the chief executive officer, at the request in writing of a Committee, shall attend before the Committee to give an account of the general administration of the Authority. 40

(3) The chief executive officer shall not be required to give an account before a Committee of any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the chief executive officer is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons 45

for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive officer is before it, the information shall be so conveyed in writing.

5 (5) Where the chief executive officer has informed a Committee of the chief executive officer's opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

10 (a) the chief executive officer, not later than 21 days after being informed by the Committee of its decision not to withdraw the request, may apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

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

and the High Court shall determine the matter.

20 (6) Pending the determination of an application under *subsection (5)*, the chief executive officer shall not attend before the Committee to give an account of the matter to which the application relates.

25 (7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive officer shall attend before the Committee to give an account of the matter.

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

PART 5

EMPLOYEES AND ADVISERS

25.—(1) The Authority, subject to *subsection (2)* and *(3)*, may Employees of Authority.
appoint persons to be its employees and may determine their duties.

35 (2) Employees appointed under this section shall be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

(3) The Authority, with the approval of the Minister given with the consent of the Minister for Finance, shall determine—

40 (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of employees appointed under this section, and

(b) the grades of the employees of the Authority and the numbers of employees in each grade.

45 (4) A person is not eligible for appointment as an employee of the Authority if the person is—

(a) a member of either House of the Oireachtas or of the European Parliament, or

(b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy.

5

(5) The remuneration and allowances of the Authority's employees are payable by the Authority to the employees out of funds at the Authority's disposal.

Superannuation.

26.—(1) The Authority shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such employees of the Authority as it may think fit.

10

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different terms may be fixed in respect of different classes of persons.

15

(3) Every such scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(4) A scheme submitted by the Authority under this section, if approved by the Minister with the consent of the Minister for Finance, shall be carried out by the Authority in accordance with the terms of the scheme.

20

(5) No superannuation benefit shall be granted by the Authority nor shall any other arrangements be entered into by the Authority for the provision of such a benefit, to or in respect of an employee otherwise than in accordance with a scheme under this section or with the consent of the Minister and the Minister for Finance.

25

(6) Each scheme made under this section shall make provision for appeals.

(7) The terms and conditions governing superannuation benefits granted under schemes made under this section to persons who transferred to the Authority under *sections 85 to 87* shall be no less favourable than those terms and conditions to which they were entitled immediately before their transfer.

30

(8) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the Authority under *sections 85 to 87*—

35

(a) the benefit shall be calculated by the Authority in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the transfer, and

40

(b) the person's pensionable service with the Authority shall be aggregated with the person's previous pensionable service and the benefit, as so calculated, shall be paid by the Authority.

45

5 (9) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to anything done previously.

27.—(1) The Authority, with the approval of the Minister given with the consent of the Minister for Finance, may engage such advisers as it considers necessary for the performance of its functions. Advisers.

10 (2) Any fees due to an adviser engaged under this section are payable by the Authority out of funds at the Authority's disposal.

PART 6

ACCOUNTABILITY AND FUNDING OF AUTHORITY

15 28.—(1) The Minister may give general directions in writing to the Authority for any purpose in relation to the provisions of this Act, or any other enactment, and for any matter or thing referred to in this Act, as specified or to be specified, or as determined or to be determined, and the Authority shall comply with any such direction. Directions to Authority.

20 (2) The Minister may direct the Authority or the chief inspector to supply the Minister with information, reports or statistics, in the manner and within the period, both as the Minister may determine, in relation to the performance of the functions assigned by or under this Act to the Authority or to the chief inspector.

25 (3) The Authority or the chief inspector, as specified in the Minister's direction, shall comply with the Minister's direction.

29.—(1) The Authority shall 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. Corporate plan of Authority.

(2) A corporate plan must be submitted at the following times:

- 30 (a) within 6 months after the establishment day;
- (b) within 6 months after the appointment of a new Minister if that Minister requests that a new corporate plan be submitted;
- 35 (c) at the end of the 3 year period since the last corporate plan was submitted.

(3) The corporate plan must be prepared in a form and manner in accordance with any direction given by the Minister and must specify—

- 40 (a) the key objectives of the Authority for the 3 year period concerned and the strategies for achieving those objectives, and
- (b) the uses to which the Authority proposes to apply its resources.

(4) In preparing the corporate plan, the Authority shall have regard to the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the Authority.

(5) Within 3 months after receiving a corporate plan, the Minister shall— 5

(a) approve the plan, or

(b) refuse to approve the plan if the plan is not amended in accordance with any directions that may be given by the Minister to the Authority. 10

(6) An approved corporate plan may be amended by the Minister at any time or may be amended by the Authority, but in the latter case only after—

(a) the Authority submits the proposed amendment to the Minister for approval, and 15

(b) the amendment is approved by the Minister.

(7) *Subsections (3) to (5)* apply with the necessary modifications in respect of an amendment by the Authority to an approved corporate plan.

(8) Nothing in a corporate plan is to be taken to prevent the Authority from, or to limit the Authority in, performing its functions. 20

(9) The Minister shall ensure that a copy of an approved corporate plan is laid before both Houses of the Oireachtas—

(a) within 21 days after the plan is approved by the Minister, and 25

(b) if the plan is amended under *subsection (6)* after being approved by the Minister, within 21 days after—

(i) in the case of an amendment made by the Minister, the making of the amendment, or

(ii) in the case of an amendment made by the Authority, the approval of the amendment by the Minister. 30

(10) The Authority shall ensure that, as soon as practicable after copies of an approved plan are laid before the Houses of the Oireachtas, the plan is published on the Internet and in accordance with such other arrangements as the Minister may specify. 35

(11) The Authority shall provide the Minister with a progress report on the implementation of an approved corporate plan for the Authority in the Authority's annual report and, at the request of the Minister, at other times that the Minister may specify.

Determination by Minister of net expenditure limits for Authority.

30.—(1) Subject to *subsection (2)*, the Minister, for a financial year of the Authority, shall— 40

(a) determine the maximum amount of net expenditure that may be incurred by the Authority for that financial year, and

(b) notify the Authority in writing of the amount so determined not more than 21 days after the publication by the Government of the Estimates for Supply Services for that financial year.

5 (2) If the Minister considers it appropriate in any particular case, a determination under this section may relate to the period (other than the financial year of the Authority) as the Minister may specify in the relevant notification under this section.

10 (3) The Minister may amend a determination under *subsection (1)* by varying the maximum amount of net expenditure that the Authority may incur for a particular financial year and, if the Minister varies that amount, the Minister shall notify the Authority in writing of the amendment as soon as may be and the determination applies and has effect as so amended.

15 **31.**—The Minister may, with the consent of the Minister for Finance, advance to the Authority out of money provided by the Oireachtas such sum as the Minister may determine. Grants to Authority.

20 **32.**—(1) Within 30 days after having been notified of its determination under *section 30* for a financial year, the Authority shall submit to the Minister a business plan for the year. Submission of business plan.

(2) A business plan must be prepared in the form and manner and in accordance with any directions given by the Minister and must—

(a) indicate the Authority's activities for the period to which the business plan relates,

25 (b) contain estimates of the number of employees of the Authority for the period to which the plan relates,

(c) contain the business plan for the Office of the Chief Inspector of Social Services,

(d) contain any other information specified by the Minister,

30 (e) accord with policies and objectives of the Minister and the Government, and

(f) be consistent with the financial limits determined by the Minister under *section 30*.

35 (3) In preparing the business plan, the Authority shall have regard to—

(a) the approved corporate plan in operation at that time, and

(b) any direction given by the Minister under *section 28*.

40 (4) The Authority shall give effect to the business plan unless the Minister, within 30 days after the submission of the plan, directs the Authority in writing to either amend the plan or not to give effect to it.

(5) The Minister shall, when giving a direction to the Authority under *subsection (4)*, at the same time give to the Authority the Minister's written reasons for the direction.

(6) The Authority shall comply with a direction under *subsection (4)*.

Code of
governance.

33.—(1) As soon as practicable after the Authority is established, it shall submit to the Minister for approval a code of governance that includes an outline of the— 5

- (a) guiding principles applicable to the Authority as a public body having the functions described in *section 7*,
- (b) structure of the Authority, including the role and responsibilities of the Board, the chief executive officer and the chief inspector, 10
- (c) processes and guidelines to be followed to ensure compliance with the reporting requirements imposed on the Authority by or under this Act, and
- (d) the Authority's internal controls, including its procedures relating to internal audit, risk management, public procurement and financial reporting. 15

(2) The Authority shall review the code of governance periodically at the times that may be specified by the Minister and shall revise the code as the Authority considers appropriate.

(3) In preparing or making revisions to the code of governance, the Authority shall have regard to any direction given by the Minister under *section 28*. 20

(4) Following the Minister's approval of the code of governance or of any revisions to it, the Authority shall arrange for the publication of the code or the revised code. 25

(5) The Authority shall indicate in its annual report its arrangements for implementing and maintaining adherence to the code of governance.

Accounts of
Authority.

34.—(1) The Authority shall cause to be kept all proper and usual books or other records of account of— 30

- (a) all income and expenditure of the Authority,
- (b) the source of the income and the subject matter of the expenditure, and
- (c) the property, assets and liabilities of the Authority.

(2) Without limiting *subsection (1)*, the Authority shall also keep any special accounts as the Minister may direct. 35

(3) The books, records and special accounts kept under this section shall be—

- (a) kept in the form, and
- (b) for the accounting periods, 40

as the Minister may specify, with the consent of the Minister for Finance.

(4) The accounts of the Authority approved by the Board shall be submitted to the Comptroller and Auditor General for audit as soon as practicable and not later than 3 months after the end of the financial year to which the accounts relate.

5 (5) Within one month after the Comptroller and Auditor General issues an audit certificate for the accounts of the Authority a copy of the accounts and of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who, within 2 months after their receipt, shall cause copies to be laid
10 before each House of the Oireachtas.

(6) If required by the Minister, the Authority shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the Authority.

15 (7) The Authority, chief executive officer and other employees of the Authority—

(a) whenever so requested by the Minister, shall permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period, and

20 (b) shall facilitate the examination,

and the Authority shall pay such fee as may be fixed by the Minister for the examination.

25 **35.—**(1) The Authority may accept gifts of money, land or other property upon the trusts or conditions (if any) as may be specified by the donor. Gifts.

(2) The Authority shall not accept a gift if the trusts or conditions attaching to it would be inconsistent with the Authority's—

(a) functions, or

(b) obligations,

30 under this Act or any other enactment.

36.—(1) Not later than 30 April in each year, the Authority shall prepare and adopt an annual report in relation to the performance of the Authority's functions during the immediately preceding calendar year. Annual report.

35 (2) An annual report shall include—

(a) a statement of the activities undertaken by the Authority,

(b) the report of the Office of the Chief Inspector of Social Services on its activities,

40 (c) a report on the implementation of the Authority's corporate plan,

(d) a report on the implementation of the Authority's business plan,

- (e) a report on the Authority's arrangements for implementing and maintaining adherence to its code of governance, and
- (f) other particulars that the Authority considers appropriate or as the Minister may specify, including but not limited to financial statements. 5

(3) As soon as may be but in any event not later than 21 days after adopting the annual report, the Authority shall submit a copy of the annual report to the Minister.

(4) The Minister shall ensure that copies of the annual report are laid before each House of the Oireachtas within 21 days after the Minister receives the report. 10

(5) The Authority shall ensure that the annual report is published on the Internet and in accordance with any other arrangements that the Minister may specify, as soon as practicable after copies of the report are laid before the Houses of the Oireachtas. 15

Assistance to other bodies.

37.—Subject to any directions given by the Minister under *section 28*, and on terms and conditions the Authority sees fit to impose, the Authority may give assistance to a body which performs or proposes to perform a function similar or ancillary to a function that the Authority may perform. 20

Charges for Services.

38.—(1) Subject to *subsection (2)*, the Authority may make charges as the Authority considers appropriate for the—

- (a) provision by the Authority of services other than those provided by the Authority for or at the request of the Minister, another Minister of the Government, the Executive or a service provider, or in respect of a service being provided to a person in accordance with *section 37*, and 25

- (b) carrying on by the Authority of its activities, 30

and shall record the receipts from those charges as income.

(2) The determination of the amounts of charges referred to in *subsection (1)* is subject to the approval of the Minister following consultations with the Minister for Finance.

(3) The Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to the Authority under *subsection (1)*. 35

PART 7

OFFICE OF THE CHIEF INSPECTOR OF SOCIAL SERVICES 40

Office of Chief Inspector of Social Services.

39.—(1) Oifig an Phríomh-Chigire Seirbhísí Sóisialacha or in the English language the Office of the Chief Inspector of Social Services is established and the holder of the office—

(a) shall be known as the Chief Inspector of Social Services,
and

(b) is referred to in this Act as the “chief inspector”.

5 (2) Subject to *subsection (3)* and in accordance with *section 25*,
the Authority shall appoint a person to be the chief inspector.

(3) Notwithstanding *section 25* and with the approval of the Mini-
ster, the Authority may appoint the first chief inspector.

10 (4) The chief inspector shall be paid the remuneration and any
allowances for expenses that the Authority may determine with the
approval of the Minister given with the consent of the Minister for
Finance.

15 (5) The chief inspector holds office for the period and upon the
terms and conditions that the Authority may determine with the
approval of the Minister given with the consent of the Minister for
Finance.

(6) The Authority may dismiss the chief inspector from his or her
office if satisfied that the chief inspector—

(a) has become incapable through ill health of effectively per-
forming the functions of the office,

20 (b) is adjudicated bankrupt,

(c) is convicted of a criminal offence,

25 (d) has without reasonable excuse failed to discharge his or
her functions for a continuous period of 3 months begin-
ning not earlier than 6 months before the day of dis-
missal, or

(e) should be dismissed for any other stated reason.

40.—The functions of the chief inspector are to—

Functions of chief
inspector.

(a) inspect the performance by the Executive of the Execu-
tive’s functions under—

30 (i) sections 39, 41 and 53 of the Child Care Act 1991, and

(ii) section 10 of the Health (Nursing Homes) Act 1990,

(b) establish and maintain one or more registers of desig-
nated centres,

35 (c) register and inspect designated centres to assess whether
the registered provider is in compliance with the—

(i) regulations made under this Act or under any other
Act which provides for the regulation of those
centres, and

40 (ii) standards, if any, set by the Authority under *section*
7(1),

(d) inspect special care units to assess whether the operator is
in compliance with the—

- (i) regulations respecting special care units under the Child Care Acts 1991 and 2001, and
- (ii) standards, if any, set by the Authority under *section 7(1)*,

and 5

- (e) subject to written agreement between the Minister and the Minister for Justice, Equality and Law Reform, act as an authorised person for the purposes of section 185 of the Children Act 2001, as amended by the Criminal Justice Act 2006. 10

Accountability of
chief inspector to
Oireachtas
Committees.

41.—(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 23* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee. 15

(2) Subject to *subsection (3)*, the chief inspector, at the request in writing of a Committee, shall attend before the Committee to give a general account of the activities of the Office of the Chief Inspector.

(3) The chief inspector shall not be required to give an account before a Committee of any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State. 20

(4) Where the chief inspector 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 (3)* 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 inspector is before it, the information shall be so conveyed in writing. 25 30

(5) Where the chief inspector has informed a Committee of the chief inspector’s opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

- (a) the chief inspector, not later than 21 days after being informed by the Committee of its decision not to withdraw the request, may apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or 35
- (b) the chairperson of the Committee, on behalf of the Committee, may make such an application, 40

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief inspector shall not attend before the Committee to give an account of the matter to which the application relates. 45

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the

request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief inspector shall attend before the Committee to give an account of the matter.

5 (8) In the performance of the chief inspector's duties under this section, the chief inspector shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

10 **42.—**(1) The Authority, in accordance with *section 25*, may appoint the number of persons as it may determine to assist the chief inspector in the performance of the chief inspector's functions and—

Inspectors of Social Services.

(a) the persons appointed shall be known as Inspectors of Social Services, and

(b) are referred to in this Act as "inspectors".

15 (2) An inspector shall perform the functions of the chief inspector, to the extent the chief inspector may determine, and, in performing those functions to that extent, the inspector has the same powers and duties as the chief inspector has in performing his or her functions under this Act.

20 **43.—**(1) Subject to any directions that may be given by the Authority, the chief inspector shall prepare—

Plans and reports of Office of Chief Inspector.

(a) the corporate plan for the Office of the Chief Inspector of Social Services to be approved by the Authority and included in its corporate plan prepared in accordance with *section 29*, and

25 (b) the business plan for the Office of the Chief Inspector of Social Services to be approved by the Authority and included in its business plan prepared in accordance with *section 32*.

30 (2) The chief inspector shall prepare a report on the performance of his or her functions under *section 40* for the preceding year to be included in the relevant annual report prepared by the Authority under *section 36*.

35 (3) Whenever requested by the Authority, the chief inspector shall furnish information in relation to such matters as the Authority may specify.

44.—(1) The Minister, by written direction, may require the Executive to carry out inspections of—

Arrangements with Executive.

(a) children's residential centres regulated in accordance with section 63 of the Child Care Act 1991, or

40 (b) nursing homes as defined in section 2 of the Health (Nursing Homes) Act 1990.

45 (2) The Executive in acting under this section acts on behalf of the chief inspector and in acting on that behalf has the same powers and duties as the chief inspector has in carrying out inspections under this Act.

(3) An inspection under this section must be carried out by the Executive in the manner specified by the chief inspector and in accordance with the regulations and any standards which may be set by the Authority.

(4) The chief inspector may require the Executive to provide the chief inspector with any information the chief inspector needs in relation to an inspection or proposed inspection under this section. 5

(5) Expenses incurred by the Executive in carrying out functions in accordance with this section shall be paid from money provided by the Oireachtas to the Executive. 10

PART 8

REGULATION OF DESIGNATED CENTRES

Prohibition against carrying on unregistered designated centre.

45.—(1) A person shall not carry on the business of a designated centre unless the centre is registered under this Act and the person is its registered provider. 15

(2) The person in charge of a designated centre, whether that person is the registered provider or another person, shall not manage or participate in the management of the centre unless the centre is registered under this Act.

Prohibition against false or misleading applications for registration.

46.—In, or in respect of, an application for registration under this Part, a person shall not knowingly make a statement which is false or misleading in a material respect. 20

Applications for registration.

47.—(1) A person seeking to register or renew the registration of a designated centre under this Part shall make an application for its registration or renewal of registration to the chief inspector. 25

(2) The applicant shall include with the application—

(a) the prescribed information about prescribed matters,

(b) any other information which the chief inspector reasonably requires the applicant to include, and

(c) the prescribed application fee. 30

(3) An application under *subsection (1)* for the renewal of the registration of a designated centre must be made at least 6 months, or a lesser period that the chief inspector may specify, before the expiry date of the current registration.

(4) If an application under *subsection (1)* for the renewal of the registration of a designated centre— 35

(a) is made within the time limited under *subsection (3)*, and

(b) the decision under *section 49* to grant or refuse the registration is not made before the expiry date of the current registration, 40

the registration remains in effect until that decision is made.

(5) A person who wishes to carry on or manage more than one designated centre shall make a separate application for the registration, or the renewal of the registration, of each of the centres.

5 **48.—**(1) For each registered designated centre there shall be entered in the appropriate register established and maintained under *section 40* by the chief inspector— Register of designated centres.

(a) the name of the centre,

(b) the name—

(i) of the registered provider of the centre, and

10 (ii) of the person who is in charge of the centre whether that person is its registered provider or another person,

(c) the address of the premises in which the business of the centre is carried on,

15 (d) a statement of the number of residents who can be accommodated in the centre,

(e) the date on which the registration of the centre is to take effect (referred to in this Act as “the date of registration”),

20 (f) any conditions attached to the registration of the centre, and

(g) such other particulars as the Minister may prescribe.

(2) Subject to *sections 47* and *50*, the registration of a designated centre is for 3 years.

25 (3) The registers shall be—

(a) kept at the office of the chief inspector,

(b) open to inspection by members of the public free of charge, during normal business hours, and

30 (c) made available on the Internet and by any other means that the Minister specifies.

(4) On request, a copy of an entry in any register maintained by the chief inspector shall be issued by the chief inspector on payment of the fee, if any, not exceeding the reasonable cost of making the copy, as may be determined by the chief inspector.

35 **49.—**(1) Where an application is made under *section 47* for the registration or renewal of the registration of a designated centre, the chief inspector, if satisfied that the person who is the registered provider, or intended registered provider, and each other person who will participate in the management of the designated centre— Grant or refusal of registration.

40 (a) is a fit person to be the registered provider of the designated centre and to participate in its management, and

- (b) if the application is for registration, will comply with, or, if for renewal, is in compliance with—
 - (i) standards set by the Authority under *section 7(1)*,
 - (ii) regulations under *section 98*, if the centre is one established other than in accordance with the Child Care Act 1991, 5
 - (iii) regulations under section 38 and 63 of the Child Care Act 1991, if the centre is one established in accordance with the Child Care Act 1991, and
 - (iv) any other enactment which appears to the chief inspector to be relevant, and is cited to the applicant in writing by the chief inspector, 10

shall grant the application and if not so satisfied shall refuse it.

(2) The chief inspector in granting an application under this section may— 15

- (a) attach to the registration conditions that the chief inspector thinks fit in relation to the designated centre concerned, and
- (b) attach different conditions in relation to the registration of different designated centres or of different categories of designated centres. 20

(3) On granting the application, the chief inspector shall issue a certificate of registration to the applicant, having first noted on the certificate the enactments, if any, cited to the applicant under *subsection (1)(b)(iv)*. 25

Cancelling registration, varying conditions of registration or imposing new conditions, for cause.

50.—(1) At any time, the chief inspector, on one or more of the grounds specified in *subsection (2)* may—

- (a) cancel the registration of a designated centre,
- (b) vary or remove any condition of the registration of a designated centre, or 30
- (c) attach an additional condition to the registration of a designated centre.

(2) The following are the grounds referred to in *subsection (1)*:

- (a) that the registered provider, or any other person who participates in the management of the designated centre has been convicted of one or more of the following: 35
 - (i) an offence under this Act;
 - (ii) an offence under an enactment cited by the chief inspector in accordance with *section 49(1)(b)(iv)* and noted in accordance with *section 49(3)* on the registered provider's certificate of registration; 40
 - (iii) an offence under the Child Care Act 1991;
 - (iv) an offence against the person;

- 5 (b) that, in the opinion of the chief inspector, the registered provider or any other person who participates in the management of the centre is not a fit person to be the registered provider of the centre or to participate in its management;
- (c) that the designated centre is being, or has at any time been, carried on otherwise than in accordance with—
- 10 (i) any requirements or conditions imposed by or under this Act, or
- (ii) any other statutory provision which the chief inspector considers to be relevant.

51.—(1) A registered provider carrying on the business of a designated centre may apply to the chief inspector for the variation or removal of any condition of the registration of the designated centre. Applications by registered providers.

- 15 (2) The chief inspector may grant an application under *subsection (1)* if satisfied that the variation or removal of the condition is—
- (a) appropriate in the circumstances, and
- (b) will not adversely affect the persons who are resident in the designated centre,

20 and if not so satisfied shall refuse the application.

(3) An application under *subsection (1)* shall be made in the prescribed manner, state the prescribed particulars and be accompanied by the prescribed application fee.

- (4) For the purposes of *subsection (3)*,
- 25 (a) different amounts may be prescribed for different circumstances or different categories of designated centres, and
- (b) the regulations may provide for the chief inspector to determine which of the different amounts is payable in a particular case.

30 **52.—**If the chief inspector proposes—

Notice of certain proposed decisions of chief inspector.

- (a) under *section 49* or *51*, to refuse an application,
- (b) under *section 49* or *51*, to grant an application subject to any conditions, or
- (c) under *section 50*, to—
- 35 (i) cancel the registration of a designated centre,
- (ii) vary or remove any condition of the registration of a designated centre, or
- (iii) attach an additional condition to the registration of a designated centre,

the chief inspector shall give the applicant or the registered provider of the designated centre, as the case may be, written notice of the proposal, stating the particulars.

Right to respond to notice of proposed decision.

53.—(1) A written notice of a proposal under *section 52* shall state that, within a time limit of 28 days after the notice is given, the applicant or the registered provider, as the case may be, may make written representations to the chief inspector concerning the matter which is the subject matter of the proposal. 5

(2) Where written notice of a proposal has been given under *section 52*, the chief inspector shall not decide the matter that is the subject of the proposal until— 10

(a) the person to whom the notice was given has—

(i) made written representations to the chief inspector concerning the proposal, or

(ii) notified the chief inspector in writing that the person does not intend to make representations, 15

or

(b) the time limit of 28 days referred to in *subsection (1)* has elapsed.

Notice of decisions of chief inspector.

54.—(1) The chief inspector shall give written notice to the applicant or the registered provider, as the case may be, of a decision— 20

(a) under *section 49* or *51*, to refuse an application,

(b) under *section 49* or *51*, to grant an application subject to any conditions, or

(c) under *section 50*, to— 25

(i) cancel the registration of a designated centre,

(ii) vary or remove any condition of the registration of a designated centre, or

(iii) attach an additional condition to the registration of a designated centre. 30

(2) A written notice under this section shall inform the applicant of the right of appeal conferred by *section 56*.

(3) A decision referred to in *subsection (1)* does not take effect—

(a) if no appeal from the decision is brought, until the expiration of 28 days, or a longer period determined by the chief inspector, after the receipt by the applicant or registered provider of written notice under this section, or 35

(b) if an appeal to the District Court from the decision is brought, until the determination or withdrawal of that appeal. 40

55.—(1) The registered provider carrying on the business of a designated centre shall ensure that the certificate of registration issued for the designated centre is affixed in a conspicuous place at the centre.

Required or prohibited conduct in relation to designated centre.

5 (2) The registered provider carrying on the business of a designated centre shall not, in an application under *section 51* for the variation or removal of any condition of the registration of the designated centre, knowingly make a statement which is false or misleading in a material respect.

10 (3) Unless registration as a designated centre of a particular description has been effected under this Part in respect of a premises, undertaking or organisation, a person shall not, with intent to deceive another person,

15 (a) apply a name to the premises, undertaking or organisation that in any way describes it as a designated centre of that description, or

(b) hold out the premises, undertaking or organisation as a designated centre of that description.

20 (4) The registered provider carrying on the business of a designated centre shall not describe or hold out the designated centre as able to—

(a) provide a service, the provision of which would be in contravention of a condition of the registration of the designated centre, or

25 (b) do anything else, the doing of which would be in contravention of a condition of the registration of the designated centre.

30 56.—(1) The registered provider carrying on the business of a designated centre, or a person applying to be registered in respect of a designated centre, may appeal to the District Court from a decision of the chief inspector under *section 49, 50* or *51*.

Appeal to District Court from decision of chief inspector respecting registration.

(2) The registered provider or other person who appeals to the District Court under *subsection (1)*—

35 (a) shall bring the appeal within 28 days after the receipt by the person of written notice under *section 54* of the decision, and

(b) at the same time as the appeal is brought, shall give to the chief inspector written notice of the appeal.

40 (3) A registered provider carrying on the business of a designated centre who appeals to the District Court under this section may continue to carry on that business until the determination or withdrawal of that appeal or of a further appeal under *section 60*.

45 (4) On an appeal under *subsection (1)*, the District Court, as it considers appropriate, may confirm the decision of the chief inspector or direct the chief inspector to—

(a) register or renew the registration of the designated centre,

(b) restore the registration of the designated centre,

(c) vary or remove a condition of the registration, or

(d) attach an additional condition to the registration.

(5) An appeal under *subsection (1)* shall be made to a District Court judge assigned to the district in which the designated centre is located.

5

Chief inspector may seek District Court order for cancellation or variation of registration.

57.—(1) If the chief inspector believes on reasonable grounds that there is a risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre, because of any act, failure to act or negligence on the part of—

(a) the registered provider carrying on the business of the designated centre, or 10

(b) a person acting on behalf of the registered provider,

the chief inspector may apply to the District Court for an order—

(i) cancelling the registration of the designated centre,

(ii) varying or removing any condition attached to the registration of the designated centre, or 15

(iii) attaching an additional condition to the registration of the designated centre.

(2) Notice of an application for a final determination of the matters that are the subject of the application must be given by the chief inspector to the registered provider. 20

(3) The District Court, on hearing an application under this section, may make an order—

(a) in the terms sought by the chief inspector in the application, or 25

(b) in other terms as the Court considers appropriate.

(4) An application under *subsection (1)* shall be made to a District Court judge assigned to the district in which the designated centre is located.

Ex parte interim order in proceedings under section 57.

58.—(1) An application under *section 57* by the chief inspector may be made *ex parte* and without notice for an interim order (in this section and in *section 59* called an “*ex parte* interim order”) and, on that application, an *ex parte* interim order may be made— 30

(a) in the terms sought by the chief inspector in the application, or 35

(b) in other terms as the District Court considers appropriate,

if, having regard to the circumstances of the particular case, the court considers it necessary or expedient to make the order immediately in the best interests of the persons resident in the designated centre.

(2) The application for an *ex parte* interim order shall be grounded on an affidavit sworn by the chief inspector or by an individual acting on behalf of the chief inspector. 40

(3) The *ex parte* interim order has effect for a period, to be specified in the order, not exceeding 28 days and ceases to have effect at the end of that period unless—

(a) by consent of the parties, or

5 (b) on application by the chief inspector on notice to the person who was the designated centre's registered provider at the time of the application made *ex parte* under section 57,

the District Court within that period confirms the *ex parte* interim order with effect for a specified further period.

(4) Subsection (3) does not affect any right of a party to proceedings commenced under section 57 to apply to the District Court in the proceedings.

15 (5) The chief inspector, as soon as practicable, shall serve on the person who was the registered provider at the time of the *ex parte* application a copy of—

(a) the *ex parte* interim order, and

(b) the affidavit referred to in subsection (2).

20 (6) In respect of the *ex parte* application, the chief inspector must provide the Executive with a copy of the application and of the affidavit referred to in subsection (2) and, where an *ex parte* interim order is made, must provide the Executive with a copy of the order.

25 (7) If an *ex parte* interim order ceases to have effect because of the operation of subsection (3) then, effective on the next day after that order ceases to have effect—

(a) the registration of the designated centre and the status as registered provider of the person who was the centre's registered provider at the time of the *ex parte* application under section 57(1) are reinstated, and

30 (b) the designated centre and the registered provider are restored to the same status under this Act as they had immediately before the date of the *ex parte* application under section 57.

35 **59.—(1)** Within 42 days after the date of an *ex parte* interim order, the chief inspector may apply to the District Court for a final determination of the matters dealt with in the order.

Final determination of matters dealt with in an *ex parte* interim order under section 57.

40 (2) Notice of an application under this section must be given by the chief inspector to the person who was the designated centre's registered provider at the time of the *ex parte* application made under section 57.

(3) On the hearing of the application for a final determination of the matters dealt with in the *ex parte* interim order, the District Court may make an order—

45 (a) confirming, varying or setting aside the *ex parte* interim order,

(b) reinstating the registration of the designated centre and the status as registered provider of the person who was the centre's registered provider at the time of the *ex parte* application made under *section 57*, if the registration was cancelled under the *ex parte* interim order, or 5

(c) make any other order the Court considers appropriate.

(4) If the chief inspector does not apply, within the 42 days set out in *subsection (1)*, for a final determination of the matters dealt with in the *ex parte* interim order, then, effective on the next day after expiry of the 42 days— 10

(a) the *ex parte* interim order ceases to have effect,

(b) the registration of the designated centre and the status as registered provider of the person who was the centre's registered provider at the time of the *ex parte* application under *section 57* are reinstated, and 15

(c) the designated centre and the registered provider are restored to the same status under this Act as they had immediately before the date of the *ex parte* application under *section 57*.

Appeals to Circuit Court from decisions of District Court.

60.—An appeal lies to the Circuit Court from a decision of the District Court under *section 56(4)*, *57(3)* or *section 59(3)*. 20

Status of chief inspector in court proceedings.

61.—The chief inspector is a party to any court proceedings under this Part and is entitled in any such proceedings to appear, be heard, adduce evidence and give evidence.

Care of residents on cancellation of registration.

62.—(1) If the chief inspector— 25

(a) cancels a registration under *section 50* and the cancellation takes effect, or

(b) obtains an order to cancel a registration in accordance with *section 57* and the cancellation takes effect,

the chief inspector shall notify the Executive forthwith of the cancellation and of the date on which the cancellation has effect. 30

(2) The Executive, as soon as practicable after notification under *subsection (1)*, shall make alternative arrangements for the residents of the designated centre.

(3) Where the Executive, immediately before the cancellation, was the registered provider of the designated centre, the Executive, pending the alternative arrangements referred to in *subsection (2)*, notwithstanding the cancellation, may continue to carry on the business of the designated centre as if it were registered under this Act with the Executive as its registered provider. 35 40

(4) Where the Executive, immediately before the cancellation, was not the registered provider of the designated centre, then, pending the alternative arrangements referred to in *subsection (2)*, the Executive, either—

(a) with the consent of the person who, immediately before the effective date of the cancellation, was the registered provider, or

(b) by order of the District Court,

5 shall take charge of the designated centre, and may carry on its business as if the designated centre were registered under this Act with the Executive as its registered provider.

10 **63.**—A registered provider of a designated centre shall submit to the chief inspector such information at such time as the chief inspector considers necessary to enable the chief inspector to carry out the chief inspector’s functions. Submission of information.

15 **64.**—(1) Subject to law, the registered provider carrying on the business of a designated centre shall not cease to carry on its business and close the designated centre unless the registered provider first gives the chief inspector at least 6 months written notice of the intention to do so as of a date specified in the notice. Prohibition against closure of designated centre without notice.

(2) The chief inspector may accept a shorter period of written notice.

20 **65.**—If a registered provider ceases to carry on the business of a designated centre and closes the centre, the chief inspector shall— Cancellation of registration on closure of designated centre.

(a) make a note to that effect in the appropriate register, and

(b) cancel the registration of the designated centre.

25 **66.**—(1) A person acting in a prescribed capacity who is appointed by or under the law to take charge of a designated centre in place of its registered provider, shall give notice of the appointment to the chief inspector, as soon as practicable, but not later than 48 hours after the appointment. Notice of appointment under law to take charge of designated centre.

30 (2) Where the chief inspector receives information in accordance with *subsection (1)* and has reason to believe that it is in the interests of the health and welfare of the residents—

(a) he or she may notify the Executive, and

(b) the Executive may make alternative arrangements for the residents of the centre.

35 (3) The Executive may recover, as a simple contract debt in any court of competent jurisdiction, the cost of making the alternative arrangements.

67.—(1) In this section “institution” means any—

(a) institution or part of one,

(b) residential centre or part of one, or

40 (c) home or part of one,

Transitional provision for registration of existing designated centres.

that, immediately before the coming into operation of this Part, is a designated centre as defined in *section 2(1)*.

(2) A person who immediately before the date this Part comes into operation was carrying on the business of an institution and providing residential services at the institution may continue to do so, notwithstanding *section 45*, for a period not exceeding 3 years or such shorter period as the chief inspector may determine. 5

(3) A person carrying on the business of an institution in accordance with *subsection (2)* shall notify the chief inspector that the person is carrying on that business, as soon as practicable, but not later than 6 months after the coming into operation of this section. 10

(4) During the period described in *subsection (2)* in which a person, in accordance with that subsection, may carry on the business of an institution, this Act applies to the person and to the institution as if the institution were a registered designated centre under this Act with the person as its registered provider. 15

PART 9

INSPECTIONS AND INVESTIGATIONS

Appointment by the Authority of authorised persons.

68.—(1) The Authority shall appoint, with the approval of the Minister given with the consent of the Minister for Finance, one or more persons with appropriate qualifications and experience for the purposes of— 20

(a) monitoring compliance with standards in accordance with *section 7(1)(b)*, or

(b) an investigation referred to in *section 7(1)(c)* undertaken by the Authority, 25

and a person so appointed shall be known as an authorised person.

(2) At the request of an authorised person, the Authority may appoint such other number of persons that the Authority may determine, to assist that authorised person in the performance of the authorised person's functions and the persons appointed shall be authorised persons for the purposes of— 30

(a) monitoring compliance with standards in accordance with *section 7(1)(b)*, or

(b) an investigation referred to in *section 7(1)(c)*. 35

(3) An authorised person shall be paid the remuneration and allowances for expenses that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

(4) Each authorised person shall be given a certificate of his or her appointment and, when exercising any power conferred on the Authority, shall produce, on request by any person affected, the certificate or a copy of the certificate, together with a form of personal identification. 40

69.—(1) For the purpose of assessing compliance with the terms and conditions, regulations and standards and other statutory obligations referred to in *subsection (2)*, the Executive may appoint persons to examine any premises of a service provider in which the business of a designated centre is being carried on.

Appointment by Executive of persons to examine designated centres.

(2) The following are the terms and conditions, regulations and standards and other statutory obligations for the purposes of *subsection (1)*:

(a) the terms and conditions applicable in respect of any—

- (i) arrangement under section 38 of the Health Act 2004,
- (ii) assistance given in accordance with section 39 of the Health Act 2004, and
- (iii) assistance given in accordance with section 10 of the Child Care Act 1991;

(b) any regulations and any standards made in respect of the category of designated centres to which the designated centre referred to in *subsection (1)* belongs; and

(c) any other statutory obligations in relation to that designated centre.

(3) A person appointed under *subsection (1)* may—

(a) enter any designated centre maintained by a service provider and examine, as he or she thinks fit, the state and management of the premises and the care or treatment of residents of the centre, and

(b) examine any records in relation to the centre and interview—

- (i) any employee of the centre, or
- (ii) any resident of the centre with the resident's consent.

(4) The person in charge of a designated centre, whether that person is the registered provider or another person, shall—

(a) allow a person appointed under *subsection (1)* to enter the designated centre for the purpose of any examination under *subsection (2)*, and

(b) co-operate with that person throughout the course of the examination.

70.—(1) At the request of the chief inspector, the Authority may appoint, with the approval of the Minister, one or more persons, with expertise relevant to an inspection referred to in *section 40*, to—

Appointment of qualified persons to assist chief inspector and inspectors in an inspection.

(a) accompany the chief inspector or inspector during the inspection, and

(b) assist and advise the chief inspector or an inspector on matters related to the purpose of the inspection that are within the expertise of the person or persons so appointed.

(2) A person appointed under this section shall be paid the remuneration and allowances for expenses that the Authority may determine with the approval of the Minister given with the consent of the Minister for Finance.

Right of entry and inspection by authorised person or chief inspector.

71.—(1) If an authorised person considers it necessary or expedient for the purposes of— 5

(a) monitoring compliance with standards in accordance with *section 7(1)(b)*, or

(b) an investigation referred to in *section 7(1)(c)*,

the authorised person may enter and inspect at any reasonable time any premises— 10

(i) owned or controlled by the Executive or a service provider, or

(ii) used, or proposed to be used, for any purpose connected with— 15

(I) the provision of health or personal social services by the Executive or a service provider, or

(II) the discharge of any of the functions of the Executive.

(2) If the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 40*, the chief inspector may enter and inspect at any reasonable time any premises— 20

(a) owned or controlled by the Executive,

(b) used, or proposed to be used, for any purpose connected with the provision of a service under *section 39, 41 or 53 of the Child Care Act 1991 or section 10 of the Health (Nursing Homes) Act 1990* by the Executive or a service provider, or 25

(c) used or proposed to be used as a designated centre or special care unit. 30

(3) If an authorised person considers it necessary or expedient for the purposes of monitoring compliance with standards in accordance with *section 7(1)(b)*, or of an investigation referred to in *section 7(1)(c)*, or the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 40*, 35

(a) the authorised person, at any reasonable time, may carry out the functions conferred on the authorised person under this section and *sections 73 and 74* to the extent that the functions relate to any premises referred to in *subsection (1)*, and 40

(b) the chief inspector, at any reasonable time, may carry out the functions conferred on the chief inspector under this section and *sections 73 and 74* to the extent that the functions relate to any premises referred to in *subsection (2)*.

(4) An authorised person, in respect of premises referred to in *subsection (1)*, or the chief inspector, in respect of premises referred to in *subsection (2)*, may—

- 5 (a) inspect, take copies of or extracts from and remove from the premises any documents or records (including personal records) relating to the discharge of its functions by the Executive, or to the services provided by a service provider or at a designated centre or a special care unit,
- 10 (b) inspect the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records in question,
- (c) inspect any other item and remove it from the premises—
- 15 (i) if an authorised person considers it necessary or expedient for the purposes of monitoring compliance with standards in accordance with *section 7(1)(b)*, or of an investigation referred to in *section 7(1)(c)*, or
- (ii) the chief inspector considers it necessary or expedient for the purposes of an inspection referred to in *section 40*,
- 20 (d) interview in private any person—
- (i) working at the premises concerned, or
- (ii) who at any time was or is in receipt of a health or personal social service at the premises and who consents to be interviewed, and
- 25 (e) make any other examination into the state and management of the premises or the standard of any services provided at the premises.

(5) At any reasonable time, an authorised person, in respect of premises referred to in *subsection (1)* or the chief inspector, in respect of premises referred to in *subsection (2)*, may require any person who—

- 30 (a) is in charge of the premises or of services provided at the premises, or
- 35 (b) possesses or is in charge of any records held at the premises or in respect of any services provided at the premises, even if the records are held elsewhere,

to furnish the authorised person or the chief inspector, as the case may be, with the information—

- 40 (i) the authorised person reasonably requires for the purposes of monitoring compliance with standards in accordance with *section 7(1)(b)*, or of an investigation referred to in *section 7(1)(c)*, or
- (ii) the chief inspector reasonably requires for the purposes of an inspection referred to in *section 40*,

45 and to make available to the authorised person or chief inspector any document or record in the power or control of the person described in *paragraph (a)* or *(b)* of this subsection that, in the

opinion of the authorised person, is relevant to the monitoring of compliance with the standards or to the investigation or, in the opinion of the chief inspector, is relevant to the inspection.

(6) If a person is required under this section to produce a document or record and that document or record is kept by means of a computer, the authorised person, for premises referred to in *subsection (1)*, or the chief inspector, for premises referred to in *subsection (2)*, may require the person who is required to produce that document or record to produce it in a form which is legible and can be taken away. 5
10

(7) If an authorised person, in respect of premises referred to in *subsection (1)*, considers an explanation necessary and expedient for the purposes of—

(a) monitoring compliance with standards in accordance with *section 7(1)(b)*, or 15

(b) an investigation referred to in *section 7(1)(c)*,

the authorised person may require a person who is in charge of the premises or possesses or is in charge of any relevant documents or records to provide an explanation of any—

(i) document or record inspected, copied or provided in accordance with this section, 20

(ii) other information provided in the course of the investigation, or

(iii) other matters which are the subject of the functions being exercised by the authorised person under this section. 25

(8) If the chief inspector, in respect of premises referred to in *subsection (2)*, considers an explanation necessary and expedient for the purposes of conducting an inspection under this section, the chief inspector may require a person who is in charge of the premises or a person who possesses or is in charge of any documents or records which are the subject of the inspection to provide an explanation of any— 30

(a) documents or records inspected, copied or provided in accordance with this section,

(b) other information provided in the course of the inspection, or 35

(c) other matters which are the subject of the functions being exercised by the chief inspector under this section.

Requirement for occupier's consent or District Court warrant to enter dwelling.

72.—(1) In this section “dwelling” includes any part of a designated centre occupied as a private residence by the registered provider of the designated centre or by a member of the staff of the registered provider. 40

(2) Notwithstanding *section 71*, an authorised person or the chief inspector, in the performance of functions under that section, may not enter a dwelling other than— 45

(a) with the consent of the occupier, or

(b) in accordance with a warrant from the District Court issued under *section 73(2)* authorising the entry.

73.—(1) Where—

Further
circumstances in
which District
Court may issue
warrant.

5 (a) in relation to any premises referred to in *section 71(1)*, an authorised person monitoring compliance with the standards in accordance with *section 7(1)(b)* or conducting an investigation referred to in *section 7(1)(c)*, or

10 (b) in relation to any premises referred to in *section 71(2)*, the chief inspector conducting an inspection referred to in *section 40*,

is prevented or has reasonable cause to believe there is a likelihood that he or she will be prevented from entering the premises, an application may be made to the District Court for a warrant under *subsection (2)* authorising the entry.

15 (2) If a judge of the District Court is satisfied on the sworn information of an authorised person or the chief inspector that there are reasonable grounds for believing—

20 (a) that there are any records (including records stored in a non-legible form) relating to a service or to a registered provider, designated centre or special care unit, or that there is anything being used at the premises referred to in *section 71(1)* or (2), which—

25 (i) the authorised person considers it necessary to inspect for the purposes of monitoring compliance with the standards referred to in *section 7(1)(a)* or an investigation referred to in *section 7(1)(c)*, or

(ii) the chief inspector considers it necessary to inspect for the purposes of an inspection referred to in *section 40*,

30 or

(b) that there is, or such an inspection is likely to disclose, evidence of a contravention of this Act or the regulations or, in the case of an inspection referred to in *paragraph (a)(ii)*, a contravention of—

35 (i) this Act or the regulations,

(ii) the provisions, specified in *section 40(a)*, of this Act, of the other Acts referred to in *section 40(a)*, or

(iii) the regulations or standards referred to in *section 40(c)* or (d),

40 the judge may issue a warrant permitting the authorised person or the chief inspector or an assistant inspector, accompanied by other persons with appropriate qualifications, or by members of the Garda Síochána as may be necessary, at any time or times, within one month after the date of issue of the warrant, on production of the
45 warrant if requested, to enter the premises, if need be by reasonable force, and to perform the functions conferred by or under *section 71*.

Authorised person or chief inspector may be accompanied by Garda.

74.—If an authorised person or the chief inspector—

- (a) has reasonable cause to expect any serious obstruction in the performance of functions under this Act, and
- (b) is in possession of a warrant under *section 73(2)*,

the authorised person or chief inspector, when performing those functions, may be accompanied by a member of the Garda Síochána. 5

Prohibition against certain conduct in relation to inspections under *section 71*.

75.—A person shall not—

- (a) refuse to allow a person who under *section 71* is conducting an investigation or inspection—
 - (i) to enter any premises other than a dwelling in accordance with that section or in accordance with a warrant issued by the District Court, or 10
 - (ii) to enter any dwelling in accordance with that section under and in accordance with a warrant issued by the District Court, or 15
- (b) obstruct or impede a person conducting an investigation or inspection under *section 71* in the exercise of functions under that section, or
- (c) give to a person conducting an investigation or inspection under *section 71* information that the person giving the information knows, or should reasonably know, to be false or misleading. 20

PART 10

OFFENCES

Offences.

76.—(1) A person is guilty of an offence if the person contravenes *section 45, 46* or *75*. 25

(2) A registered provider carrying on the business of a designated centre is guilty of an offence if the registered provider—

- (a) fails to discharge a duty to which the registered provider is subject under *section 55(1)* or *63*, 30
- (b) contravenes *section 55(2), (3)* or *(4)*, or *64(1)*,
- (c) fails to discharge a duty to which the registered provider is subject under a provision of the regulations,
- (d) contravenes a provision of the regulations, or
- (e) fails to comply with a condition of the registration of the designated centre. 35

(3) A person guilty of an offence under *subsection (1)* is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or 40

(b) on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both.

5 (4) A registered provider guilty of an offence under *subsection (2)* is liable—

(a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

10 (b) on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both.

77.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the chief inspector. Proceedings for offences.

15 (2) Summary proceedings for an offence under this Act may be instituted within 12 months after the date of the offence.

(3) Where an offence under this Act—

(a) is committed by a body corporate, by a person purporting to act on behalf of a body corporate or by an individual or an unincorporated body of persons, and

20 (b) is proved to have been committed with the consent or approval of, or to have been attributable to any neglect on the part of, any person who, when the offence was committed, was—

25 (i) a director, member of the committee of management or other controlling authority of the body concerned, or

(ii) the manager, secretary or other officer of the body concerned,

30 that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

PART 11

STANDARDS, DISQUALIFICATIONS, ETC.

78.—(1) In performing functions under this or any other enactment as— Standards of integrity.

35 (a) a member of the Board or a committee of the Board,

(b) the chief executive officer, the chief inspector or any other employee of the Authority,

(c) a person engaged by the Authority as an adviser under *section 27*, or

40 (d) an employee of a person referred to in *paragraph (c)*,

a person shall maintain proper standards of integrity, conduct and concern for the public interest.

(2) *Subsection (1)* applies to an employee of a person referred to in *subsection (1)(c)* in respect only of duties of employment relating to the purposes for which the Authority has engaged that person. 5

Codes of conduct.

79.—(1) For the purposes of *section 78(1)*, the Authority shall issue codes of conduct for the guidance of persons who are—

- (a) members of a committee of the Board but are not members of the Board,
- (b) employees of the Authority other than employees to whom a code of conduct under section 10(3) of the Standards in Public Office Act 2001 applies, 10
- (c) engaged under *section 27* by the Authority as advisers, or
- (d) employees of persons referred to in *paragraph (c)*.

(2) A code of conduct issued under this section for the guidance of persons referred to in *subsection (1)* must indicate the standards of integrity and conduct to be maintained by them in performing their functions under this or any other enactment. 15

(3) A person to whom the code of conduct relates shall have regard to and be guided by the code in performing functions under this or any other enactment. 20

(4) The terms and conditions on which a person is employed by the Authority or by a person referred to in *subsection (1)(c)* or on which a person is engaged by the Authority as an adviser are deemed to include any requirements that apply to that person under *subsection (3)*. 25

Availability of codes of conduct.

80.—(1) Subject to *subsection (2)*, the Authority, as soon as practicable after issuing a code of conduct, shall make the code available to the persons for whose guidance it was issued.

(2) A code of conduct for the guidance of employees of a person engaged by the Authority as an adviser shall be issued by the Authority to the employer and be made available by the employer to those employees. 30

(3) In the absence of evidence to the contrary, a document purporting to be a code of conduct issued under this section— 35

- (a) is such code, and
- (b) is admissible in any proceedings before a court or other tribunal,

and any provision of the code of conduct that appears to the court or other tribunal to be relevant to a question in the proceedings may be taken into account by the court or tribunal in determining the question. 40

81.—(1) In this section “confidential information” means—

Prohibition against unauthorised disclosure of confidential information.

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

5 (b) proposals of a commercial nature or tenders submitted to the Authority by any person.

(2) Except in the circumstances set out in *subsection (3)*, a person shall not disclose confidential information obtained while performing functions as—

10 (a) a member of the Board or a committee,

(b) the chief executive officer or any other employee of the Authority,

(c) a person engaged by the Authority as an adviser,

(d) an employee of a person referred to in *paragraph (c)*,

15 (e) a person appointed as an authorised person under *section 68*, or

(f) a person appointed under *section 70*.

(3) A person does not contravene *subsection (2)* by disclosing confidential information if the disclosure—

20 (a) is authorised by the Authority,

(b) is made to the Board,

(c) is made to the Minister by or on behalf of the Authority or in compliance with this Act, or

(d) is required by law.

25 82.—(1) A member of the Board of the Authority or a member of a committee of the Board of the Authority immediately ceases to hold office on—

Disqualification resulting from membership of either House of Oireachtas or of European Parliament or local authority.

(a) being nominated as a member of Seanad Éireann,

30 (b) being elected as a member of either House of the Oireachtas or of the European Parliament,

(c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(d) becoming a member of a local authority.

35 (2) An employee of the Authority, including the chief executive officer, is immediately seconded from employment with the Authority on—

(a) being nominated as a member of Seanad Éireann,

(b) being elected as a member of either House of the Oireachtas or of the European Parliament, or

(c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy. 5

(3) No remuneration or allowances are payable by the Authority for the secondment period to a person seconded under *subsection (2)* from employment and the secondment period is not to be counted as service with the Authority for the purposes of any superannuation benefit. 10

(4) In relation to a person seconded under *subsection (2)* from employment, the secondment period begins on the occurrence of the relevant event referred to in that subsection and ends when the person ceases to be a member of either House of the Oireachtas or of the European Parliament. 15

PART 12

DISSOLUTION OF SPECIFIED BODIES, TRANSFER OF EMPLOYEES, PROPERTY AND LIABILITIES TO THE AUTHORITY

Specified bodies.

83.—In this Part “specified bodies” means—

(a) the Irish Health Services Accreditation Board, and 20

(b) the Interim Health Information and Quality Authority.

Dissolution of specified bodies.

84.—The specified bodies are dissolved by this Act on the establishment day.

Transfer of employees of specified bodies to Authority.

85.—(1) In this section and *section 87*—

“previous service” means service with a specified body before the applicable transfer day; 25

“recognised trade union or association of employees” means—

(a) a trade union, or

(b) an association of employees,

recognised by the Authority for the purposes of negotiations that are concerned with the terms and conditions of employment; 30

“terms and conditions of employment” includes terms and conditions in respect of tenure of office, remuneration and related matters.

(2) On the establishment day each person who, immediately before that day, was an employee of a specified body— 35

(a) is transferred to the Authority, and

(b) becomes an employee of the Authority.

(3) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person

transferred under this section is entitled while in the employment of the Authority to terms and conditions of employment no less favourable than those to which the person was entitled immediately before the establishment day.

5 (4) Until the terms and conditions of employment to which a person transferred under this section was entitled immediately before the establishment day are varied by the Authority after consulting and reaching a collective agreement with the recognised trade union or association of employees concerned, the terms and conditions continue to apply to the person in the employment of the Authority.

(5) The previous service of a person transferred to the Authority under this section is to be counted as service for the purposes of, but subject to, any exceptions or exclusions in the following Acts:

(a) the Redundancy Payments Acts 1967 to 2003;

15 (b) the Protection of Employees (Part-Time Work) Act 2001;

(c) the Protection of Employees (Fixed-Term Work) Act 2003;

(d) the Organisation of Working Time Act 1997;

20 (e) the Minimum Notice and Terms of Employment Acts 1973 to 2005;

(f) the Unfair Dismissals Acts 1977 to 2005;

(g) the Maternity Protection Act 1994;

(h) the Parental Leave Acts 1998 and 2006;

(i) the Adoptive Leave Acts 1995 and 2005;

25 (j) the Carer's Leave Act 2001.

86.—(1) In this section “recognised trade union or staff association” means one recognised by the Minister for the purposes of negotiations about either or both of the following: Transfer of staff of Minister to Authority.

(a) the transfer of staff to the Authority;

30 (b) the remuneration, conditions of employment or working conditions of staff.

(2) On the establishment day, every person who immediately before that day was an officer of the Minister and who is designated by the Minister for the purpose of this section—

35 (a) is transferred to the Authority, and

(b) becomes an employee of the Authority.

(3) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred in accordance with *subsection (2)* to the staff of the Authority shall not, while in the service of the Authority—

- (a) receive a lesser scale of pay than the scale of pay to which he or she was entitled, or
- (b) be made subject to less beneficial terms and conditions of service, including but not limited to those relating to terms of office, than the terms and conditions of service to which he or she was subject immediately before the transfer.

Transfer of employees of Executive to Authority.

87.—(1) The chief executive officer of the Executive, in consultation with the Authority, may designate employees of the Executive for transfer to the Authority. 10

(2) Any employee of the Executive transferred to the Authority under this section becomes an employee of the Authority.

(3) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person transferred under this section is entitled, while in the employment of the Authority, to terms and conditions of employment no less favourable than those to which the person was entitled immediately before the date of his or her transfer to the Authority. 15

(4) Until the terms and conditions of employment to which a person transferred under this section was entitled immediately before his or her transfer to the Authority are varied by the Authority after consulting and reaching a collective agreement with the recognised trade union or association of employees concerned, they continue to apply to the person transferred in the employment of the Authority. 20

(5) The previous service of a person transferred under this section is to be counted as service for the purposes of, but subject to any exceptions or exclusions in, the following Acts: 25

- (a) the Redundancy Payments Acts 1967 to 2003;
- (b) the Protection of Employees (Part-Time Work) Act 2001;
- (c) the Protection of Employees (Fixed-Term Work) Act 2003; 30
- (d) the Organisation of Working Time Act 1997;
- (e) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (f) the Unfair Dismissals Acts 1977 to 2005; 35
- (g) the Maternity Protection Act 1994;
- (h) the Parental Leave Acts 1998 and 2006;
- (i) the Adoptive Leave Acts 1995 and 2005;
- (j) the Carer’s Leave Act 2001.

Transfer of pension liabilities relating to former employees of specified bodies.

88.—The pension payments and other superannuation liabilities of each specified body in respect of its former employees become on the establishment day the liabilities of the Authority. 40

89.—(1) On the establishment day, all land that, immediately before that day, was vested in a specified body and all rights, powers and privileges relating to or connected with that land are transferred to and vested in the Authority without conveyance or assignment.

Transfer of property and liabilities to Authority.

5 (2) On the establishment day, all property other than land that, immediately before that day, was the property of a specified body is transferred to and vested in the Authority without any assignment.

10 (3) All rights and liabilities of a specified body arising by virtue of any contract or commitment (express or implied) entered into by that body before the establishment day, and in effect immediately before that day, are on the establishment day transferred to the Authority.

15 (4) Each right and liability transferred under this section and *section 88* may, on or after its transfer, be sued on, recovered or enforced by or against the Authority in the Authority's own name.

(5) The Authority need not give notice of the transfer to the person whose right or liability is transferred.

20 **90.**—Every contract, agreement or arrangement made between a specified body and any other person and in force immediately before the establishment day—

Preservation of contracts, etc., and adaptation of references.

(a) continues in force on or after that day,

(b) has effect as if the name of the Authority were substituted in the contract, agreement or arrangement for that of the specified body, and

25 (c) is enforceable by or against the Authority.

91.—(1) Each record held by a specified body immediately before the establishment day is on that day transferred to the Authority and is, on and from that day, deemed to be held by the Authority.

Records of specified bodies.

30 (2) Any right of access, under the Freedom of Information Acts 1997 and 2003, to records that before the establishment day of the Authority were held by a body specified under *section 83* and that are transferred to the Authority under *subsection (1)* is not affected by the transfer of those records.

35 (3) For the purpose of section 18 of the Freedom of Information Act 1997, any act done by the Irish Health Services Accreditation Board before the establishment day of the Authority is deemed to have been done by the Authority.

40 **92.**—(1) If, immediately before the establishment day, any legal proceedings to which a specified body is a party are pending in any court or other tribunal—

Pending legal proceedings.

(a) the Authority's name shall be substituted in the proceedings for the name of the specified body, and

(b) the proceedings shall not abate because of the substitution.

(2) Any reference to a specified body in an order made by a court or other tribunal before the establishment day shall, on the establishment day, be construed as a reference to the Authority.

Final accounts of specified bodies.

93.—(1) The Authority shall prepare in accordance with the accounting standards specified by the Minister for the purposes of *section 34* and in respect of the period specified in *subsection (3)* of this section, final accounts for each body dissolved under *section 84*. 5

(2) The Authority shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the establishment day. 10

(3) For the purpose of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the body concerned.

Final reports of specified bodies.

94.—(1) The Authority shall prepare a final annual report for each of the specified bodies dissolved under *section 84* and submit the report to the Minister not later than 6 months after the establishment day. 15

(2) *Section 36(4)* and *(5)* applies in relation to a final annual report prepared under this section.

PART 13 20

REGULATIONS

Regulations and orders.

95.—(1) The Minister may make regulations that the Minister considers necessary or expedient for purposes under this Act.

(2) Without limiting the generality of *subsection (1)*, the Minister may make regulations— 25

- (a) for any purpose in relation to which regulations are provided for in this Act,
- (b) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,
- (c) generally for the purpose of giving effect to this Act, and 30
- (d) specifying a body established under the Health (Corporate Bodies) Act 1961 and making applicable to the specified body one or more of the functions of the Authority under *section 7*.

(3) A regulation under this section may contain consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient. 35

(4) The Minister may—

- (a) make orders for any matter in relation to which orders are provided for in this Act, and 40
- (b) amend or revoke any such order other than an order under *section 3* or *4*.

(5) A fee prescribed under this Part may be recovered summarily as a civil debt, without prejudice to any other method of recovery.

5 **96.**—Without limiting the generality of *section 95*, the Minister may make regulations governing the registration of persons under this Act in respect of designated centres, including but not limited to regulations—

Regulations governing registration under this Act.

(a) respecting the making of applications for registration,

(b) prescribing the contents of certificates of registration,

10 (c) respecting the giving of notice by a registered provider, in respect of a designated centre, of any intended change in the identity of the person carrying on or managing the designated centre,

15 (d) respecting the giving of notice by a registered provider, in respect of a designated centre which is carried on or managed by a body corporate, of changes in the ownership of the body corporate or the identity of its officers, and

(e) prescribing an annual fee payable by a registered provider at such a time as may be prescribed.

20 **97.**—Without limiting the generality of *section 95*, the Minister may make regulations respecting procedures to be followed by the Authority in setting standards under *section 7(1)* including but not limited to regulations respecting—

Regulations respecting procedures for setting standards.

(a) publication of any proposed standards,

25 (b) consultations in relation to the standards,

(c) the consultation period, and

(d) the publication of the standards after their approval by the Minister.

30 **98.**—(1) In this section “designated centre” does not include a children’s residential centre established under section 38 of the Child Care Act 1991.

Regulations respecting designated centres.

(2) Without limiting the generality of *section 95* for the purpose of ensuring proper standards in relation to designated centres, the Minister—

35 (a) shall make regulations as the Minister thinks appropriate, and

(b) may make different regulations for different purposes and for different categories of designated centres.

40 (3) Without limiting the generality of *subsection (2)*, regulations under this section may provide respecting one or more of the following:

(a) the maintenance, care, welfare and well-being of persons resident in a designated centre;

- (b) the numbers, qualifications and availability of persons employed in a designated centre;
 - (c) the design, maintenance, repair, cleaning and cleanliness, ventilation, heating and lighting of a designated centre;
 - (d) the accommodation (including the amount of space in bedrooms and wards, the washing facilities and the sanitary conveniences) provided in a designated centre; 5
 - (e) the food provided for persons while resident in a designated centre;
 - (f) the records to be kept in a designated centre; 10
 - (g) the effecting by registered providers of designated centres of contracts of insurance against injury to persons resident in them;
 - (h) the management and control of the operations of a designated centre; 15
 - (i) the notification of incidents occurring in designated centres;
 - (j) the giving of notice by the registered provider of periods during which—
 - (i) the registered provider, or 20
 - (ii) the manager, if the registered provider is not the manager of the designated centre,
 - proposes to be absent from the designated centre, and specifying the information to be supplied in the notice;
 - (k) adequate arrangements for the running of a designated centre during a period when the manager is absent from it. 25
- (4) Without limiting the generality of *subsection (2)*, regulations under this section—
- (a) may, subject to any regulations made under Part 9 of the Health Act 2004, require registered providers— 30
 - (i) to make adequate arrangements for dealing with complaints made by or on behalf of persons seeking or receiving any of the services provided through the designated centres, and 35
 - (ii) to publicise the arrangements,
 - (b) may prescribe for specified provisions of this Act to apply with prescribed modifications, if any, in cases where a person is appointed by or under the law to take charge of a designated centre in place of its registered provider, and 40
 - (c) require the personal representative of a deceased individual referred to in *paragraph (b)* to notify the chief inspector of the death of the deceased individual.

99.—(1) The Minister shall ensure that every regulation and every order made by the Minister under this Act other than an order under *section 3* or *4* is laid before each House of the Oireachtas.

Laying of regulations and orders before Houses of Oireachtas.

5 (2) Either House of the Oireachtas, by a resolution passed within 21 sitting days after the day on which a regulation or order is laid before it under this section, may annul the regulation or order.

10 (3) The annulment of a regulation or order under *subsection (2)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation or order before the passing of the resolution.

PART 14

CONSEQUENTIAL AND MINOR AMENDMENTS TO OTHER ACTS

15 **100.**—(1) Each Act specified in the second column of *Part 1* of *Schedule 1* is repealed to the extent specified in the third column, but the repeal does not affect any notice or certificate given under the repealed Act and such notice or certificate has effect as if given under this Act.

Repeals and revocations.

(2) Each order specified in the second column of *Part 2* of *Schedule 1* is revoked to the extent specified in the third column.

20 (3) Each order, regulation and rule that was made under a provision of an enactment repealed or revoked by this Act and that was in force immediately before such repeal or revocation continues in force under the corresponding provision, if any, of this Act, subject to such adaptations and modifications as the Minister, by regulation, 25 may make for the purpose of bringing any such order, regulation or rule into conformity with this Act.

101.—The Acts specified in *Schedule 2* are amended as indicated in that Schedule.

Amendment to other Acts.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)	
No. 21 of 1961	Hospitals Federation and Amalgamation Act 1961	The whole Act.	5
No. 23 of 1990	Health (Nursing Homes) Act 1990	Sections 3, 4, 5, 6 and 9.	10
No. 17 of 1991	Child Care Act 1991	Sections 60, 61, 62, 63(4), 63(5) and 65.	

PART 2

ORDERS REVOKED

Number and Year (1)	Short Title (2)	Extent of Revocation (3)	
No. 160 of 2002	Irish Health Services Accreditation Board (Establishment) Order 2002	The whole order.	15
No. 132 of 2005	Interim Health Information and Quality Authority (Establishment) Order 2005	The whole order.	20

SCHEDULE 2

AMENDMENTS TO OTHER ACTS

25

PART 1

AMENDMENTS TO CHILD CARE ACT 1991

Item	Provision affected	Amendment	
1.	Section 2	<p>(a) In subsection (1), by adding the following definition after the definition of "child":</p> <p>“ ‘children’s residential centre’ means an institution for the residential care of children in the care of the Health Service Executive or of other children in need of adequate care and protection but does not include—</p> <p>(a) an institution managed by or on behalf of a Minister of the Government,</p>	30 35

Item	Provision affected	Amendment
5		<p>(b) an institution in which a majority of the children being maintained are being treated for acute illnesses or are being provided with palliative care,</p> <p>(c) an institution for the care and maintenance of children with a disability,</p> <p>(d) an institution approved in accordance with the Mental Health Acts 1945 to 2001,</p> <p>(e) a children's detention school as defined in section 2 of the Children Act 2001;"</p> <p>(b) By adding the following subsection after subsection (2):</p> <p>"(2) For the purposes of the definition of 'children's residential centre' in subsection (1), 'institution' means a home, centre or institution or part of a home, centre or institution."</p>
10		
15		
20	2.	Section 23K
25	3.	Section 38
30	4.	Section 63
35	5.	Section 71

PART 2

AMENDMENT TO COMPTROLLER AND AUDITOR-GENERAL (AMENDMENT) ACT 1993

Item	Provision affected	Amendment
40	1.	First Schedule
		After "Fire Services Council", by substituting "Health Information and Quality Authority" for "General Medical Services (Payments) Board".

PART 3

AMENDMENTS TO FREEDOM OF INFORMATION ACT 1997

Item	Provision affected	Amendment	
1.	First Schedule	<p>(a) By inserting in paragraph 1(2), “the Health Information and Quality Authority” before “the Heritage Council”, and</p> <p>(b) in paragraph 1(2), by deleting “An Comhairle na nOspidéal,” and “the Irish Health Services Accreditation Board”.</p>	5
2	Third Schedule	<p>By inserting in Part I of the Third Schedule—</p> <p>(a) in column (2) “<i>Health Act 2006</i>”, and</p> <p>(b) in column (3), opposite the mention of the “<i>Health Act 2006</i>” “<i>section 81</i>”.</p>	10

PART 4

AMENDMENTS TO HEALTH ACT 2004

15

Item	Provision affected	Amendment	
1.	Section 2	<p>In subsection (1), by deleting the definition of “service provider” and substituting the following definition:</p> <p>“ ‘service provider’ means a person who—</p> <p>(a) enters into an arrangement under section 38 to provide a health or personal social service on behalf of the Executive, or</p> <p>(b) is in receipt of assistance under—</p> <p>(i) section 39 in an amount that exceeds an amount prescribed for the purposes of paragraph (b)(i) of the definition of ‘service provider’ in <i>section 2</i> of the <i>Health Act 2006</i>, or</p> <p>(ii) section 10 of the Child Care Act 1991 in an amount that exceeds an amount prescribed for the purposes of paragraph (b)(ii) of the definition of ‘service provider’ in <i>section 2</i> of the <i>Health Act 2006</i>.”.</p>	20 25 30
2.	Section 5A	<p>By adding the following section after section 5:</p> <p>“Expenses of the Executive.</p> <p>5A.—The expenses incurred by the Executive are, to such extent as may be sanctioned by the Minister for Finance, payable out of money provided by the Oireachtas.”.</p>	35
3.	Section 7	<p>In subsection (5), by deleting “and” at the end of paragraph (d), by substituting “, and” for the full stop at the end of paragraph (e) and by adding the following paragraph:</p> <p>“(f) any standards set by the Health Information and Quality Authority, in so far as practicable and subject to the resources available to the Executive.”.</p>	40
4.	Section 38	<p>In subsection (3), by deleting paragraph (b) and substituting the following paragraph:</p> <p>“(b) submit such accounts annually for examination, and”</p>	45

Item	Provision affected	Amendment
3.	Section 11	<p>By deleting subsection (12) and substituting the following:</p> <p>“(12) The Executive, in respect of moneys standing to the credit of the Fund (other than such moneys for the time being required for the purposes of making payments out of the Fund pursuant to subsection (1))—</p> <p style="padding-left: 40px;">(a) may invest such moneys—</p> <p style="padding-left: 80px;">(i) with such financial institutions as are authorised by the Authority,</p> <p style="padding-left: 80px;">(ii) in securities of the Government (including savings certificates), or</p> <p style="padding-left: 80px;">(iii) in securities guaranteed as to capital and interest by the Minister for Finance,</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">(b) may deposit such moneys in central treasury services.</p> <p>(13) The Executive—</p> <p style="padding-left: 40px;">(a) may request the Agency to manage some or all of the moneys standing to the credit of the Fund (other than such moneys for the time being required for the purposes of making payments out of the Fund pursuant to subsection (1)) subject to such conditions as the Executive and the Agency may agree to from time to time,</p> <p style="padding-left: 40px;">(b) may amend or revoke a request referred to in paragraph (a) (but without prejudice to the validity of any act done pursuant to the request before the amendment or revocation, as the case may be).</p> <p>(14) The Agency shall, by virtue of this subsection, have all such powers as are necessary for or incidental to the carrying out of a request referred to in subsection (13)(a).”</p>



**AN BILLE SLÁINTE 2006
HEALTH BILL 2006**

EXPLANATORY MEMORANDUM

Background

The Bill provides for the establishment of the Health Information and Quality Authority (the Authority) and the Office of the Chief Inspector of Social Services and establishes a registration and inspection system for residential services for children in need of care and protection, people with disabilities and older people.

The 2001 Health Strategy, *Quality and Fairness*, provided for an independent audit of structures and functions in the health system to be carried out. Following the publication of the *Audit of the Structures and Functions of the Irish Health Care System* and the *Commission on Financial and Control Systems in the Health Service*, the Government initiated the Health Service Reform Programme. One of the central objectives of the reform programme was to reinforce safety and quality throughout the health and personal social services system. A key feature of this objective was the establishment of the Health Information and Quality Authority.

The Social Services Inspectorate has been operating on an administrative basis since 1999 conducting inspections into residential child care services managed by the Health Service Executive (HSE). The Health Strategy also had as one of its goals the establishment of the Inspectorate on a statutory basis and to expand its role to inspecting residential services for older people and people with disabilities. The Government re-affirmed that commitment in the Partnership Agreement, *Towards 2016*.

In brief, the functions of the Office of the Chief Inspector of Social Services will be to register and inspect residential services for children in need of care and protection, persons with disabilities and older persons, in accordance with the provisions set out in Part 8 of the Bill. The Chief Inspector will also be responsible for inspecting the performance of the Health Service Executive in the delivery of foster care services, boarding out of older people and its inspection of pre-school services.

Object of the Bill

The main object of the Bill is to provide for the establishment of the Health Information and Quality Authority; the Office of the Chief Inspector of Social Services within the Authority, with specific

statutory functions; and the establishment of a registration system for residential services for children in need of care and protection, people with disabilities and older people.

The Health Information and Quality Authority will have responsibility for setting standards on safety and quality in relation to services provided by the Health Service Executive and persons (defined in the Bill as service providers) providing services on behalf of the Executive. The Authority will set standards for private nursing homes. The Authority will also be responsible for monitoring compliance with the standards it sets and may appoint authorised persons to enter premises and access records for this purpose. The standards will be approved by the Minister for Health and Children and the Bill also provides for regulations to be introduced to set out the procedures for setting standards.

The Health Information and Quality Authority will review and make recommendations in respect of services provided by the Health Service Executive or service providers to ensure best outcomes for the resources available.

The Authority will operate accreditation programmes and other schemes aimed at ensuring safety and quality in the provision of services. It will also be open to private health care providers to apply to the Authority for accreditation.

In addition, the Authority will evaluate and provide advice to the Minister and the Health Service Executive on health technologies.

The Bill also provides for the Authority to evaluate information available in respect of services provided by the Health Service Executive and service providers and on the health and welfare of the population. Standards will be set by the Authority for the Health Service Executive and service providers in relation to the information and data in their possession on health and social services. The Authority will monitor compliance with these standards. The Authority must have regard to resources at the disposal of the Health Service Executive in setting standards.

The Bill provides for the undertaking by the Authority of investigations as to the safety, quality and standards of services where the Minister believes there is a serious risk to the health or welfare of a person receiving services and the risk may be the result of any act, failure to act or negligence on the part of the Health Service Executive or service provider or operator of a residential service.

The Bill also establishes the Office of the Chief Inspector of Social Services. The Chief Inspector will have statutory responsibility for inspecting and registering children's residential services, residential centres for persons with disabilities, residential centres for older people and private nursing homes. The Chief Inspector will also inspect special care units and, subject to agreement between the Minister and the Minister for Justice, Equality and Law Reform, may act as an authorised person for the purposes of section 185 of the Children Act 2001 as amended by the Criminal Justice Act 2006 (i.e. children detention schools). The Chief Inspector will also be responsible for overseeing the Health Service Executive's performance in the delivery of foster care services, boarding out of older people and its inspection of pre-school services.

In line with the commitments given in the Health Strategy, the Bill also provides for registration and inspection, by the Chief Inspector, of residential centres for people with disabilities, older people and children in need of care and protection.

PART 1

PRELIMINARY MATTERS

Section 1 provides the short title, collective citation and construction.

Section 2 defines certain words and terms used in the Bill.

Section 3 provides that the Bill, when enacted, will come into operation by Ministerial order and that different provisions of the Bill may be brought into operation at different times.

Section 4 provides for the making by the Minister of an order to set a day for the establishment of the Authority.

Section 5 is a standard provision on the payment of expenses incurred in the administration of the Bill out of moneys provided by the Oireachtas.

PART 2

HEALTH INFORMATION AND QUALITY AUTHORITY

Section 6 provides for the establishment of the Authority to perform the functions assigned to it under the Bill as a body corporate which may sue and be sued in its corporate name and acquire, hold and dispose of land or an interest in land and any other property. It also provides for the Authority to have a corporate seal.

Section 7 sets out the functions of the Authority. It provides that the Authority will set standards on safety and quality in relation to services provided by the Health Service Executive and service providers in accordance with the Health Acts (except for services under the Mental Health Acts 1945 to 2001 which are the responsibility of the Mental Health Commission), the Child Care Acts 1991 and 2001 and the Children Act 2001.

Specifically, its functions are:

- setting and monitoring standards on safety and quality in health and personal social services provided by the HSE or service providers and advising the Minister and the HSE on the level of compliance with those standards;
- carrying out reviews to ensure the best outcomes for resources available to the HSE;
- carrying out assessments of health technologies;
- evaluating information on health and personal social services and the health and welfare of the population and advising the Minister and the HSE on deficiencies identified; and
- setting standards and monitoring compliance with standards respecting data and information in the possession of the HSE and service providers in relation to health and personal social services and the health and welfare of the population.

Section 8 provides that the Minister may require the Authority to undertake an investigation as to the safety, quality and standards of the services where the Minister believes there is a serious risk to the health or welfare of a person receiving services and the risk may be the result of any act, failure to act or negligence on the part of the Executive or of the service provider.

Section 9 provides that the Authority shall submit proposed standards to the Minister for approval.

Section 10 provides that standards set by the Authority may be admissible in evidence in proceedings for an offence under the Bill in respect of which the standards have been set, where the standards appear to the Court to give guidance as to the observance of the provisions of the Bill or of the regulations.

Section 11 provides that the Authority may require the Health Service Executive or a service provider to provide it with any information or statistics the Authority needs in order to determine the level of compliance by the Executive or the service provider with the standards set by the Authority.

PART 3

BOARD OF THE AUTHORITY

Section 12 provides that the Authority shall have a Board consisting of 12 members (including the chairperson) appointed by the Minister and sets out the general requirements for appointment and standard prohibitions on members of the Board holding political office at local, national or European level. It also sets out standard provisions for the length of office of Board members.

Section 13 states that the Board is the governing body of the Authority and may delegate any of its functions to the chief executive officer.

Section 14 sets out the conditions of office of the Board members. It specifies the circumstances under which Board members can be removed from office or cease to be qualified for office.

Section 15 is a standard provision which allows the Minister to make an appointment to the Authority if a vacancy arises otherwise than through the passage of time. The Minister can appoint a person to the vacancy for the remaining period of the original appointment. This appointment will be considered as a term of office. Any person appointed to fill such a vacancy will be eligible for reappointment, subject to *section 12(8)* which limits membership of the Board to two terms.

Section 16 deals with the removal of the Authority's Board members. It allows the Minister to remove all the Board of the Authority if it fails to achieve a quorum for three consecutive meetings; fails to comply with court orders or judgments or other legal obligations imposed upon it; or fails to perform its functions in an effective manner.

Section 17 is a standard provision in legislation establishing agencies and sets out the procedures to be followed by the Board of the Authority in relation to its meetings. It provides that the Minister, in consultation with the Chairperson, will convene the first meeting of the Board, and that after that the Chairperson can call a meeting at any reasonable time. However, it is also provided that the Board must meet at least once every two months in each year

The purpose of *section 18* is to allow the Board to establish committees to assist and advise it in relation to issues arising in its performance of its functions. It also sets out requirements for the establishment and operation of committees.

Section 19 allows for the payment of remuneration and expenses to members of the Board and committees of the Board as determined by the Minister with the consent of the Minister for Finance.

PART 4

CHIEF EXECUTIVE OFFICER OF THE AUTHORITY

Section 20 specifies the terms under which the chief executive officer of the Authority will be appointed and holds office.

Section 21 sets out the functions of the chief executive officer. *Subsection (1)* provides that the chief executive officer is responsible for carrying on and managing the administration and business of the Authority. He or she is required to perform any other functions assigned to him or her under this Act or any other enactment and to supply the Board with all the information (including financial information) relating to the performance of his or her functions. *Subsection (2)* provides that the chief executive officer is responsible to the Board for his or her performance of his or her functions and for implementing the Board's policies. *Subsection (3)* provides that if the chief executive officer is absent or the position is vacant, his or her functions may be performed by another employee of the Authority so designated.

Section 22 allows the chief executive officer to delegate functions and to authorise their further sub-delegation to other employees of the Authority. The section also specifies the procedures governing this area.

Section 23 contains standard provisions relating to the attendance of the chief executive officer at the Committee of Public Accounts.

Section 24 contains standard provisions regarding the attendance of the chief executive officer before Oireachtas Committees. Its purpose is to provide a mechanism whereby an Oireachtas Committee can be apprised of the operations of the Authority. It provides for the chief executive officer to attend before an Oireachtas Committee (other than the Public Accounts Committee or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), when so required, and to give an account of the general administration of the Authority.

PART 5

EMPLOYEES AND ADVISERS

Section 25 provides the procedure whereby the Authority appoints its employees and determines their duties subject to compliance with certain conditions.

Section 26 requires the Authority to prepare a superannuation scheme or schemes for approval by the Minister and the Minister for Finance in respect of its employees.

Section 27 allows the Authority to appoint advisers.

PART 6

ACCOUNTABILITY AND FUNDING OF AUTHORITY

Section 28 provides that the Minister may issue directions to the Authority. The Minister may issue general written directions to the

Authority. The Minister may also order the Authority to make submissions to him or her regarding the performance and functions of the Authority.

Section 29 sets out the requirements regarding the preparation by the Authority of a three-year corporate plan, its submission to the Minister and approval and amendment arrangements. The plan must have regard to Government policy and must specify the key objectives of the Authority for the period concerned. The corporate plan is published on the internet and laid before the Houses of the Oireachtas. Progress reports on the implementation of the plan must be provided in the Authority's annual report.

Section 30 provides that the Minister must determine the net expenditure that may be incurred by the Authority for the financial year or other specified time period. The Minister may amend a determination.

Section 31 allows the Minister with the consent of the Minister for Finance to advance the Authority funds determined by the Minister out of money provided by the Oireachtas.

Section 32 requires the Authority to prepare and submit a business plan on its activities within the financial limits determined by the Minister for the financial year or other specified time period. The plan must contain the business plan for the Office of the Chief Inspector of Social Services. The Minister may direct the Authority to give effect to the plan or amend the plan, giving reasons in writing. The plan is deemed passed if the Minister does not direct otherwise within 30 days.

Section 33 requires the Authority to submit a code of governance to the Minister for approval. It is also required to review the code periodically, to publish it and to report on implementing compliance.

Section 34 requires the Authority to keep accounts of its income, property, liabilities and expenditure and to prepare annual financial statements. The accounts of the Authority are to be submitted to the Comptroller and Auditor General no later than three months after the end of the financial year.

Section 35 contains standard provisions relating to the issue of gifts to the Authority. The Authority may not receive gifts if any conditions or attachments are inconsistent with its functions or obligations under this Bill.

Section 36 provides that the Authority shall prepare and publish an annual report. The report will relate to the preceding year. The report will be presented to the Minister, who will then lay the report before the Houses of the Oireachtas. The report will also be published on the internet.

Section 37 allows the Authority to give assistance to bodies that are undertaking or proposing to undertake activities which are similar or ancillary to the activities of the Authority.

Section 38 provides that the Authority may make such appropriate charges, as are approved by the Minister following consultations with the Minister for Finance, for the provision of services other than those provided by the Authority for or at the request of the Minister, another Minister of the Government, the Executive or a service provider, or in respect of a service being provided to a person in accordance with *section 37*. The Authority may recover, as a simple contract

debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to the Authority under *subsection (1)*.

PART 7

OFFICE OF THE CHIEF INSPECTOR

Section 39 establishes the Office of the Chief Inspector of Social Services and provides for the holder of the Office to be known as the Chief Inspector of Social Services. The section also outlines the remuneration and appointment and the grounds for dismissal of the Chief Inspector.

Section 40 sets out the functions of the Chief Inspector. He or she will have statutory responsibility for inspecting and registering children's residential services, residential centres for people with disabilities and residential centres for older people including private nursing homes. The Chief Inspector will also inspect special care units and, subject to agreement between the Minister and the Minister for Justice, Equality and Law Reform, may act as an authorised person for the purposes of section 185 of the Children Act 2001 as amended by the Criminal Justice Act 2006 (i.e children detention schools). The Chief Inspector will also be responsible for overseeing the Health Service Executive's performance in the delivery of foster care services, boarding out of older people and its inspection of pre-school services.

Section 41 is a standard provision providing for the accountability of the Chief Inspector to Oireachtas Committees. It is similar in purpose to *section 24*. It puts a general obligation on the Chief Inspector to attend before an Oireachtas Committee (other than the Public Accounts Committee or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), when so required by a Committee, and to give a general account of the activities of his or her Office.

Section 42 provides for the appointment of Inspectors of Social Services to assist the Chief Inspector. The Inspectors' duties will be determined by the Chief Inspector. The Inspectors will have the same powers and duties as the Chief Inspector has in performing his or her functions under this Bill.

Section 43 provides that the Chief Inspector shall submit the corporate plan and the business plan for the Office of the Chief Inspector of Social Services to be approved by the Authority. The Chief Inspector will, whenever requested, furnish such information as is specified by the Authority.

Section 44 provides for arrangements between the Authority and the Health Service Executive. Under *subsection (1)*, the Minister, by written direction, may require the Executive to carry out inspections of (a) children's residential centres as regulated in accordance with section 63 of the Child Care Act 1991, or (b) nursing homes as defined in section 2 of the Health (Nursing Homes) Act 1990. *Subsection (2)* makes clear that the Executive in acting, under this section, does so on behalf of the Chief Inspector and, accordingly, has the same powers and duties as the Chief Inspector in carrying out inspections under this Act. *Subsection (3)* is designed to ensure that an inspection under this section must be carried out by the Executive in the manner specified by the Chief Inspector and in accordance with the regulations and any standards which may be set by the Authority. Under *subsection (4)* the Chief Inspector may

require the Executive to provide him or her with any information he or she needs in relation to an inspection or proposed inspection under this section. *Subsection (5)* is an administrative provision setting out that expenses incurred by the Executive in carrying out functions in accordance with this section shall be paid from money provided by the Oireachtas to it.

PART 8

REGULATION OF DESIGNATED CENTRES

Section 45 provides for the prohibition of the carrying on of unregistered designated centres. It states that a person shall not carry on the business of a designated centre unless the centre is registered under this Act and the person is its registered provider. It also provides that a person is prohibited from managing a designated centre if it is not registered.

Section 46 states that a person, in applying to register a designated centre, shall not knowingly make a statement which is false or misleading in a material respect.

Section 47 provides for the application for registration of a designated centre. A person seeking to apply or re-register must do so with the Chief Inspector. A person who wishes to carry on or manage more than one designated centre shall make a separate application for the registration, or the renewal of the registration, of each of the centres.

Section 48 sets out the details to be included in the register or registers established and maintained by the Chief Inspector under *section 40*. Details will include: the name of the centre, name of registered provider, address of premises, number of residences and the date on which the registration took effect. The register(s) will be kept in the Chief Inspector's office and be available to members of the public during opening hours. A copy will also be available on the internet.

Section 49 provides the grounds for granting or refusing an application.

Section 50 provides for the cancelling of a registration, varying conditions of registration or imposing new conditions. The conditions for cancellation are outlined in this section.

Section 51 provides for any applications made by registered providers to vary conditions or remove existing ones. The applications will be determined by the Chief Inspector and a prescribed fee can apply.

Section 52 provides for the Chief Inspector's notice of proposed decisions regarding cancelling or varying or attaching conditions to registration.

Section 53 establishes a right to respond to proposed decisions. An applicant or registered provider has a limit of 28 days in which to submit their response. The response is to be in written format.

Section 54 provides for the notice of decisions of the Chief Inspector. A decision does not take effect until the expiry of the 28 day limit. This section also provides for appealing the decisions of the Chief Inspector.

Section 55 sets out certain requirements as well as prohibitions against certain conduct in relation to designated centres.

Section 56 establishes the right of appeal to the District Court from a decision by the Chief Inspector relating to registration.

Section 57 establishes that the Chief Inspector may seek a District Court order for cancellation or variation of registration, if he or she believes, on reasonable grounds, that there is a risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre, because of any act, failure to act or negligence on the part of the registered provider or someone acting on their behalf. The Chief Inspector may apply to the District Court for variation of conditions, cancellation of registration or attachment of additional conditions.

Section 58 empowers the Chief Inspector to make an *ex parte* application without notice, grounded on an affidavit, for an interim order to the District Court. If the Court considers it necessary or expedient to make the order immediately in the best interests of the persons resident in the designated centre, it may make an interim order in the terms sought by the Chief Inspector in the application or in such other terms as the District Court considers appropriate.

The section also provides that the *ex parte* interim order has effect for a specified period, not exceeding 28 days and ceases to have effect at the end of that period unless the parties consent or the District Court confirms the *ex parte* interim order with effect for a specified further period following an application by the Chief Inspector under *section 57*. This application by the Chief Inspector must be made on notice to the person who was the designated centre's registered provider at the time of the *ex parte* application.

This section also requires the Chief Inspector to provide the HSE with a copy of the application and the affidavit and, where an *ex parte* interim order is made, to provide the Executive with a copy of the order.

It is also being provided that if an *ex parte* interim order ceases to have effect, then from the next day the status of the designated centre and the registered provider are restored to the same status as was the case immediately before the date of the *ex parte* order.

Section 59 provides that within 42 days of the grant of the *ex parte* interim order the Chief Inspector may apply to the District Court for a final determination of the matters dealt with in the interim order. If he or she does not do so within the specified timeframe, the interim order ceases to have effect.

Section 60 provides for appeals to the Circuit Court from District Court decisions.

Section 61 provides for the status of the Chief Inspector in court proceedings. It provides that the Chief Inspector is entitled to appear, be heard, adduce evidence and give evidence in any court proceedings.

Section 62 provides for the care of residents on cancellation of a centre's registration. The Chief Inspector shall contact the Executive as soon as is practicable and the Executive may make alternative arrangements for the residents of the designated centre. In doing so, the Executive can take charge of the running of the centre with the registered provider's consent or in accordance with a Court Order.

Section 63 establishes that the registered provider of the designated centre must submit whatever information is needed by the Chief Inspector and at any time in order to allow the Chief Inspector to carry out his or her functions.

Section 64 provides, subject to law, for the prohibition of closure of a designated centre without the appropriate notice. A registered provider must give 6 months notice to the Chief Inspector if he wishes to close the centre. Alternatively the Chief Inspector may accept a shorter notice.

Section 65 provides that when a designated centre ceases to operate the Chief Inspector shall cancel the registration of the centre.

Section 66 provides for a person appointed under law to take charge of a designated centre to give notice of the appointment to the Chief Inspector.

Section 67 establishes a transitional provision for existing designated centres to allow them to operate pending inspection and registration by the Chief Inspector for a period of up to 3 years or a shorter period as the Chief Inspector may determine. It also provides that the operators of such designated centres must notify the Chief Inspector within 6 months of this section being commenced.

PART 9

INSPECTIONS AND INVESTIGATIONS

Section 68 provides for the appointment of authorised persons. The Authority shall appoint the authorised persons to monitor compliance with standards or to carry out an investigation. They will be appointed on their qualifications and experience, will be referred to as an authorised person and will be given a certificate of authorisation.

Section 69 provides that the Health Service Executive may appoint persons to examine designated centres operated by service providers in certain circumstances.

Section 70 provides for the appointment of qualified persons to assist the Chief Inspector. The appointed person shall accompany, assist and advise the Chief Inspector and remuneration shall be determined by the Authority.

Section 71 provides for the right of entry of an authorised person to either the premises of the Executive or a service provider for the purposes of monitoring compliance with the Authority's standards or conducting an investigation in accordance with *section 8*. It also provides for the right of entry of the Chief Inspector in carrying out his or her functions under *section 40*. The section also provides for the powers of investigation and inspection by authorised persons and the Chief Inspector.

Section 72 provides that, notwithstanding *section 71*, an authorised person or the Chief Inspector must obtain the occupier's consent or a District Court warrant to enter a dwelling. A dwelling also includes any part of a designated centre occupied by the registered provider or employee as a private residence.

Section 73 provides for other circumstances where the District Court may issue a warrant for entry. It provides that where an authorised person or the Chief Inspector has reasons for believing that

they will be prevented or they have been prevented from entering a premises, then an application can be made to the District Court for a warrant. The District Court may also issue a warrant to the authorised person or the Chief Inspector where they believe that the centre has records that are relevant to their investigation or inspection.

Section 74 provides for an authorised person or the Chief Inspector to be accompanied by a member of the Garda Síochána where the authorised person or the Chief Inspector has a warrant and has reasonable cause to expect a serious obstruction in carrying out of their functions.

Section 75 provides for the prohibition of certain conduct in relation to investigations and inspections.

PART 10

OFFENCES

Section 76 sets out the offences and resulting penalties under the Bill. *Subsection (1)* provides that a person will be guilty of an offence if he or she contravenes *sections 45, 46 or 75* of the Bill. Under *subsection (2)*, a registered provider carrying on the business of a designated centre, is guilty of an offence where he or she fails to discharge a duty to which the registered provider is subject under *sections 55(1) or 63*, contravenes *sections 55(2), (3) or (4)*, or *64(1)*, fails to discharge a duty to which the registered provider is subject under a provision of the regulations, contravenes a provision of the regulations, or fails to comply with a condition of the registration of the designated centre.

A person guilty of an offence under *subsection (1)* or a registered provider guilty of an offence under *subsection (2)* is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both.

Section 77 provides for the proceedings for the summary prosecution of offences.

PART 11

STANDARDS, DISQUALIFICATIONS, ETC

Section 78 provides for setting standards of integrity. It provides that members of the Board, any sub-committees of the Board, employees or advisers to the Authority must maintain proper standards of integrity.

Section 79 obliges the Authority to establish codes of conduct for employees, except senior management, members of committees established under *section 18* who are not members of the Board of the Authority, advisers and the employees of advisers. Board members and senior management will be subject to the Standards in Public Office Act 2001 by order of the Minister for Finance. The section also provides for any person to whom the code applies to be guided by it.

Section 80 provides that the Authority will make available the code of conduct to all persons to whom it will apply as soon as practicable after it has been drawn up and that it will also provide a copy of the code to advisers who shall then make it available to their employees. A code of conduct is admissible in any court or tribunal and any of its provisions which appear to be relevant to the proceedings may be taken into account when determining a relevant issue.

Section 81 is designed to protect confidential information against unauthorised and improper disclosure.

Section 82 is a standard provision in legislation establishing statutory non-commercial semi-state bodies. It provides that members of the Board of the Authority cease to hold office if they become members of the European Parliament, the Oireachtas or a local authority and that the chief executive officer and employees of the Authority are obliged to go on secondment if they become members of the European Parliament or either House of the Oireachtas.

PART 12

DISSOLUTION OF SPECIFIED BODIES, TRANSFER OF EMPLOYEES, PROPERTY AND LIABILITIES TO THE AUTHORITY

The term “specified bodies” is used in this Part of the Bill and *section 83* identifies the specified bodies as (a) the Irish Health Services Accreditation Board and (b) the Interim Health Information and Quality Authority.

Section 84 provides for the dissolution of the specified bodies on the establishment day of the Authority.

Section 85 provides for the transfer of persons, who immediately prior to the establishment day were employees of the specified bodies, to the Authority. It facilitates their transfer on standard terms and conditions of employment no less favourable than those they enjoyed immediately prior to the transfer. The section also provides that changes in terms and conditions of employment of such employees can only take place following consultation with recognised trade unions or associations of employees.

Section 86 allows for the transfer to the Authority of certain staff of the Department of Health and Children to the Authority.

Section 87 allows for the transfer to the Authority of the Health Service Executive employees. Currently, the Health Service Executive carries out inspections of private nursing homes and voluntary sector child care residential services. This section contains similar provisions to *section 85*.

Section 88 provides that the Authority will assume responsibility for the pension payments for former employees of the specified bodies which are being subsumed into it.

Section 89 provides for the transfer of all the land, property and liabilities of the specified bodies to the Authority on the establishment day. It is a standard provision in legislation which provides for the dissolution of bodies and their transfer to another body.

Section 90 provides for the continuation on and after establishment day of any contracts, agreements or arrangements which a specified body had with another person but that the Authority shall be named in place of the specified body. It also provides that the contract,

agreement or arrangement is enforceable by or against the Authority.

Section 91 deals with the records of specified bodies and provides that each record held by a specified body immediately before the establishment day is on that day transferred to and deemed to be held by the Authority. It also makes provision for continuing any existing rights of access to those records under the Freedom of Information Acts.

Section 92 is a standard provision which has the purpose of ensuring that all legal proceedings to which the specified bodies were party prior to their dissolution on the Establishment Day will continue but the name of the Authority will be substituted for the name of the specified body.

Sections 93 and 94 deal with the final accounts and final reports of specified bodies.

PART 13

REGULATIONS

Section 95 is a standard provision which enables the Minister to make regulations and orders under the Act. It also provides that orders made under the Bill, other than the Order establishing the Authority, may be amended or revoked.

Section 96 provides for the Minister to make regulations under the Act dealing with the registration of persons in relation to designated centres.

Section 97 empowers the Minister, under the Act, to make regulations relating to procedures to be followed by the Authority in setting standards under section 7(1).

Section 98 sets out that the Minister may, under the Act, make different regulations for different purposes and for different categories of designated centres. This includes requiring registered providers to make arrangements for dealing with complaints subject to the provisions of Part 9 of the Health Act 2004. However, regulations governing children's residential centres will continue to be made in accordance with the Child Care Acts 1991 and 2001.

Section 99 is a standard provision and requires that all orders (other than the Establishment Order establishing the Authority) and regulations made under this Act must be laid before each House of the Oireachtas. Either House can annul the Order or regulation within the subsequent 21 sitting days by passing a resolution to do so. However, such an annulment will not prejudice the validity of actions already carried out on foot of the Order or regulation.

PART 14

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Section 100 deals with repeals and revocations, in whole or in part as specified, of Acts and Orders in Parts 1 and 2, respectively, of Schedule 1. It also provides that each order, regulation and rule that was made under a provision of an enactment repealed or revoked by this Act and that was in force immediately before such repeal or revocation continues in force under the corresponding provision, if any, of this Act, subject to such adaptations and modifications as the

Minister, by regulation, may make for the purpose of bringing any such order, regulation or rule into conformity with this Act.

Section 101 deals with amendments to other Acts which are specified in Schedule 2.

Schedule 1 sets out the Acts and Orders to be repealed or revoked.

Schedule 2 sets out the amendments to other Acts.

An Roinn Sláinte agus Leanaí
Nollaig, 2006.