



Number 18 of 2010

HEALTH (MISCELLANEOUS PROVISIONS) ACT 2010

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Number 18 of 2010

HEALTH (MISCELLANEOUS PROVISIONS) ACT 2010

AN ACT TO PROVIDE FOR THE DISSOLUTION OF THE SAINT LUKE'S HOSPITAL BOARD; TO AMEND THE HEALTH (NURSING HOMES) ACT 1990, THE HEALTH ACT 2007, THE MEDICAL PRACTITIONERS ACT 2007 AND THE NURSING HOMES SUPPORT SCHEME ACT 2009; TO REPEAL SECTION 44 OF THE HEALTH ACT 1947 AND SECTION 36(2) OF THE HEALTH ACT 1953; AND TO PROVIDE FOR RELATED MATTERS.

[9th July, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Health (Miscellaneous Provisions) Act 2010. Short title and commencement.

(2) This Act (other than *sections 3(1), 14, 15, 16 and 17(a)*) shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

2.—In this Act—

Definitions.

“Board” means the Saint Luke’s Hospital Board;

“Executive” means the Health Service Executive;

“Minister” means the Minister for Health and Children.

3.—(1) Section 44 of the Health Act 1947 and section 36(2) of the Health Act 1953 are repealed. Repeals and revocation.

(2) The Saint Luke’s Hospital Board (Establishment) Order 1999 (S.I. No. 253 of 1999) is revoked.

Pr.1 [No. 18.] *Health (Miscellaneous Provisions) Act* [2010.]
2010.

Expenses. 4.—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 moneys provided by the Oireachtas.

PART 2

DISSOLUTION OF SAINT LUKE'S HOSPITAL BOARD

Dissolution of Board. 5.—The Board is dissolved.

Land and other property of Board. 6.—(1) All land which, immediately before the commencement of this Part, was vested in the Board and all rights, powers and privileges relating to or connected with that land shall, on that commencement and without any conveyance, transfer or assignment, stand vested in the Executive for all the estate or interest for which it was vested in the Board but subject to all trusts and equities affecting that land subsisting and capable of being performed.

(2) All property other than land (including choses-in-action) which, immediately before the commencement of this Part, was the property of the Board shall, on that commencement and without any transfer or assignment, stand transferred to the Executive.

(3) Every chose-in-action transferred by *subsection (2)* may, on and after the commencement of this Part, be sued on, recovered or enforced by the Executive in its name and it shall not be necessary for the Executive to give notice to a person bound by any such chose-in-action of the transfer effected by that subsection.

(4) Any moneys, stocks, shares or securities transferred to the Executive by *subsection (2)* which, immediately before the commencement of this Part, are in the name of the Board shall, on the request of the Executive, be transferred into its name.

(5) Subject to *subsection (6)*, the Executive shall use the land vested in it by this section for the purposes of the delivery of health and personal social services within the meaning of the Health Act 2004.

(6) Notwithstanding section 89(1) (as amended by section 75 of, and Schedule 6 to, the Health Act 2004) of the Health Act 1947, the Executive may not, without the consent of the Minister, sell, exchange, let or otherwise dispose of any land vested in it by this section.

Transfer of rights and liabilities of Board. 7.—(1) All rights and liabilities of the Board arising by virtue of any contract or commitment (express or implied) entered into by the Board before the commencement of this Part shall, on that commencement, stand transferred to the Executive.

(2) Every right and liability transferred by *subsection (1)* to the Executive may, on and after the transfer, be sued on, recovered or enforced by or against the Executive in its name and it shall not be necessary for the Executive to give notice to a person whose right or liability is transferred by that subsection of that transfer.

8.—Every contract or agreement made between the Board or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the commencement of this Part, shall continue in force and shall be construed and have effect as if the name of the Executive were substituted therein for that of the Board or, as may be appropriate, its trustee or agent, and shall be enforceable by or against the Executive.

Preservation of contracts made by Board.

9.—Where, immediately before the commencement of this Part, any legal proceedings to which the Board is a party are pending, the name of the Executive shall be substituted for that of the Board in the proceedings and the proceedings shall not abate by reason of that substitution.

Pending legal proceedings.

10.—(1) Every person who, immediately before the commencement of this Part, is a member of the staff of the Board shall, on that commencement, be transferred to and become an employee of the Executive.

Transfer of members of staff of Board.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, on the commencement of this Part, be made subject to less beneficial terms and conditions of service (including those relating to tenure of office) or of remuneration than the terms and conditions of service (including those relating to tenure of office) or of remuneration to which he or she was subject immediately before that commencement.

(3) The previous service of a person transferred under *subsection (1)* shall be reckonable for the purposes of, but subject to the exceptions or exclusions in, the following:

- (a) the Redundancy Payments Acts 1967 to 2007;
- (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;
- (e) the Terms of Employment (Information) Acts 1994 and 2001;
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (g) the Unfair Dismissals Acts 1977 to 2007;
- (h) the Maternity Protection Acts 1994 and 2004;
- (i) the Parental Leave Acts 1998 and 2006;
- (j) the Adoptive Leave Acts 1995 and 2005;
- (k) the Carer's Leave Act 2001.

(4) Any superannuation benefits awarded to or in respect of a person transferred under *subsection (1)*, and the terms and conditions relating to those benefits, shall be no less favourable than

those applicable to or in respect of the person immediately before the commencement of this Part.

(5) The pension payments and other superannuation liabilities of the Board in respect of its former members of staff shall, on the commencement of this Part, become the liabilities of the Executive.

(6) A person referred to in *subsection (1)* shall be subject to and employed in accordance with the Health Acts 1947 to 2009.

(7) In this section—

“member of the staff of the Board” includes an officer or servant of the Board;

“recognised trade union or staff association” means a trade union or staff association recognised by the Executive for the purposes of negotiations which are concerned with the remuneration, conditions of employment or working conditions of the persons concerned.

Records of Board.

11.—Each record held by the Board immediately before the commencement of this Part shall, on that commencement, stand transferred to the Executive and shall, on and after that commencement, be regarded as being held by the Executive.

Final accounts of Board.

12.—(1) As soon as may be, but not more than one year, after the commencement of this Part, the Executive shall cause to be prepared final accounts of the Board in respect of the financial year or part thereof of the Board ending immediately before that commencement.

(2) Accounts prepared pursuant to this section shall be submitted by the Executive to the Comptroller and Auditor General as soon as may be for audit and, immediately after the audit, a copy of the accounts as so audited and a copy of the Comptroller and Auditor General’s report thereon shall be presented to the Minister who shall cause copies of those accounts and that report to be laid before each House of the Oireachtas.

Final report of Board.

13.—As soon as may be, but not more than one year, after the commencement of this Part, the Executive shall cause to be prepared and shall furnish a final report of the activities of the Board to the Minister in respect of the period that has not already been the subject of a report to the Minister and that ends immediately before the commencement of this Part.

PART 3

MISCELLANEOUS

Amendment of Health (Nursing Homes) Act 1990.

14.—The Health (Nursing Homes) Act 1990 is amended—

(a) in section 2(3) (inserted by section 2(b) of the Health (Nursing Homes) (Amendment) Act 2007), by the substitution of “registered under the Health Act 2007 as a designated centre within the meaning of that Act or are premises in which a person is carrying on the business of

a nursing home pursuant to section 69 of that Act” for
“a registered nursing home”,

and

- (b) in subsection (1) of section 7 (inserted by section 3 of the Health (Nursing Homes) (Amendment) Act 2007), by the substitution of the following definition for the definition of “nursing home”:

“ ‘nursing home’ includes—

- (a) a premises referred to in section 2(1)(h), and
- (b) a nursing home in Northern Ireland which is registered under that law of, or that law applicable to, Northern Ireland that is equivalent to the Health Act 2007;”.

15.—Section 55 of the Health Act 2007 is amended—

Amendment of
section 55 of Health
Act 2007.

- (a) in subsection (3), by the substitution of “Subject to subsection (4), a decision referred to in subsection (1) does not take effect” for “A decision referred to in subsection (1) does not take effect”,

and

- (b) by the addition of the following subsections:

“(4) If the applicant or the registered provider—

- (a) informs the chief inspector in writing that the applicant or the registered provider, as the case may be, accepts the decision concerned of the chief inspector and does not intend to appeal that decision to the District Court, and
- (b) requests the chief inspector in writing that the decision concerned of the chief inspector take effect on a date that is earlier than that specified in subsection (3)(a),

that decision shall take effect on such date, that is earlier than the expiration of a period of 28 days after the receipt by the applicant or registered provider, as the case may be, of written notice under this section, as may be determined by the chief inspector.

(5) Notwithstanding section 57, an appeal to the District Court may not be brought from a decision of the chief inspector that takes effect under subsection (4).”.

16.—The Medical Practitioners Act 2007 is amended—

Amendment of
Medical
Practitioners Act
2007.

- (a) in section 39(2)(c), by the substitution of “being a period reasonable in the circumstances but, in any case, not less than 6 months” for “being a period reasonable in the circumstances but, in any case, not less than 6 months”,

and

- (b) in paragraph 7(3) of Schedule 2, by the substitution of “a casual vacancy occurs among the members of the Council appointed under section 17(1)(n)” for “a casual vacancy occurs among the members of the Council appointed under section 17(1)(l)”.

Amendment of
Nursing Homes
Support Scheme
Act 2009.

17.—The Nursing Homes Support Scheme Act 2009 is amended—

- (a) in section 3(1), by the substitution of the following paragraph for paragraph (b) of the definition of “proprietor”:

“(b) in relation to an approved nursing home, means the registered provider, within the meaning of section 2 of the Health Act 2007, of the nursing home or the person who is carrying on the business of the nursing home pursuant to section 69 of that Act;”,

and

- (b) in paragraph 1 of Part 3 of Schedule 1—

- (i) in paragraph (a)(v) of the definition of “allowable deduction”, by the substitution of “but for the purposes of this subparagraph any payments made by a person or his or her partner in respect of care services shall not be included” for “but for the purposes of this subparagraph any payments made by a person in respect of care services shall not be included”,

and

- (ii) in the definition of “minimum retained income threshold”, by the substitution of the following paragraph for paragraph (b):

“(b) for the purposes of the assessment of a person who is a member of a couple—

- (i) in a case where the partner of the person—

(I) is receiving financial support, the weekly assessed income of the partner, or

(II) is habitually resident in a relevant facility or a nursing home, the amount of any charge imposed on the partner in accordance with section 53(2) of the Health Act 1970,

together with 40 per cent of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support,

- (ii) in any other case, the maximum weekly amount of State pension (Non-Contributory) together with 20 per cent of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support;”.