



Number 17 of 2014

Health Service Executive (Financial Matters) Act 2014



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HEALTH SERVICE EXECUTIVE (FINANCIAL MATTERS) ACT 2014

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ACTS REFERRED TO

Comptroller and Auditor General (Amendment) Act 1993 (No. 8)

Comptroller and Auditor General Acts 1866 to 1998

Health Act 2004 (No. 42)

Health Acts 1947 to 2013

Ministers and Secretaries (Amendment) Act 2011 (No. 10)

Ministers and Secretaries (Amendment) Act 2013 (No. 29)

Valuation Act 2001 (No. 13)



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HEALTH SERVICE EXECUTIVE (FINANCIAL MATTERS) ACT 2014

An Act to amend the Health Act 2004 to provide that the Health Service Executive shall cease to have a separate appropriation vote and shall become part of the appropriation vote of the office of the Minister for Health; to make a consequential amendment to the Valuation Act 2001; and to provide for related matters. [17th July, 2014]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, construction and collective citation

1. (1) This Act may be cited as the Health Service Executive (Financial Matters) Act 2014.
(2) The Health Acts 1947 to 2013 and this Act shall be construed together as one Act and the collective citation “Health Acts 1947 to 2014” shall include this Act.

Definition

2. In this Act “Act of 2004” means the Health Act 2004.

Repeal

3. Section 34 of the Act of 2004 is repealed.

PART 2

AMENDMENT OF HEALTH ACT 2004

Amendment of section 5A of Act of 2004

4. Section 5A of the Act of 2004 is amended by inserting “before 1 January 2015” after “by the Executive”.

Amendment of section 16G of Act of 2004

5. Section 16G of the Act of 2004 is amended by substituting the following subsection for

subsection (3):

“(3) Subsection (2) does not apply to—

- (a) the Director General’s functions as a member of the Directorate or as chairperson of the Directorate, or
- (b) the Director General’s function under section 34A(2).”.

Amendment of section 28 of Act of 2004

6. Section 28 of the Act of 2004 is amended by substituting the following subsection for subsection (1):

“(1) In this Part—

‘approved capital plan’ means a capital plan approved by the Minister under section 31 as read with section 33B(4);

‘approved corporate plan’ means a corporate plan approved by the Minister under section 29;

‘approved service plan’ means—

- (a) a service plan approved by the Minister under section 31, or
- (b) an amended service plan that is approved or deemed to have been approved by the Minister under section 32;

‘capital expenditure’ means expenditure to acquire a fixed asset or to significantly extend the life of an existing fixed asset;

‘capital plan’ means a plan the purpose of which is to acquire a fixed asset or to significantly extend the life of an existing fixed asset;

‘Committee of Public Accounts’ means 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;

‘financial year’ means a period of 12 months ending on 31 December in any year;

‘income’, in relation to the Executive, means all of the income of the Executive for a financial year other than any grant made to the Executive for that year under section 33A;

‘net expenditure’, in relation to the Executive and a financial year or part of a financial year, means the expenditure of the Executive for that financial year or part of a financial year, as the case may be, less the income of the Executive for that financial year or part of a financial year, as the case may be;

‘net non-capital expenditure’, in relation to the Executive and a financial year or part of a financial year, means the non-capital

expenditure of the Executive for that financial year or part of a financial year, as the case may be, less the non-capital income of the Executive for that financial year or part of a financial year, as the case may be;

‘non-capital expenditure’ means expenditure other than capital expenditure;

‘non-capital income’, in relation to the Executive and a financial year or part of a financial year, means the income of the Executive for that financial year or part of a financial year, as the case may be, other than income received by the Executive for the disposal of a fixed asset;

‘section 30A(1) determination’ means a determination made by the Minister under section 30A(1).”.

Insertion of section 30A in Act of 2004

7. The Act of 2004 is amended by inserting the following section after section 30:

“Minister to determine net non-capital expenditure of Executive

30A. (1) Subject to subsections (5) and (6), the Minister shall determine the maximum amount of net non-capital expenditure that may be incurred by the Executive for—

- (a) a financial year of the Executive, or
- (b) if the Minister considers it appropriate to do so in any particular case, such part of a financial year of the Executive as may be specified in the relevant notification under this section.

(2) The Minister shall notify the Executive in writing of a section 30A(1) determination—

- (a) if the period to which the determination relates is a financial year of the Executive or runs from the beginning of such year, not later than 21 days after the publication by the Government of the Estimates for Public Services (within the meaning of section 17(1) (inserted by section 1 of the Ministers and Secretaries (Amendment) Act 2013) of the Ministers and Secretaries (Amendment) Act 2011) for that financial year, and
- (b) in any other case, not later than 21 days after making the determination.

(3) (a) The Minister may amend a section 30A(1) determination by varying the maximum amount of net non-capital expenditure that the Executive may incur for the financial year or part of the financial year to which the determination relates.

(b) A section 30A(1) determination amended under paragraph (a) shall apply and have effect as so amended.

- (4) The Minister shall notify the Executive in writing of the amendment made under subsection (3) to a section 30A(1) determination not later than 21 days after making the amendment.
- (5) The Minister shall not, in making a section 30A(1) determination for a financial year, or part of a financial year, take into account the effect (if any) of section 33(3) for that financial year, or part of a financial year, as the case may be.
- (6) The Minister shall not, in the financial year 2014, make a section 30A(1) determination except in respect of—
 - (a) the financial year 2015, or
 - (b) part of the financial year 2015.”.

Amendment of section 31 of Act of 2004

8. Section 31 of the Act of 2004 is amended—

- (a) in subsection (2), by substituting the following paragraph for paragraph (a):
 - “(a) the period ending 21 days after the Executive receives the section 30A(1) determination concerned, or”,
- (b) in subsection (4), by inserting the following paragraphs after paragraph (b):
 - “(ba) contain estimates of the income and expenditure of the Executive for the period to which the plan relates, and
 - (bb) be consistent with the section 30A(1) determination for the period to which the plan relates,”
- (c) by deleting subsection (12), and
- (d) by inserting the following subsection after subsection (14):
 - “(15) Section 28(1) and this section, as in force immediately before the enactment of the *Health Service Executive (Financial Matters) Act 2014*, shall apply in relation to a service plan for the financial year 2014 and to a service plan for any part of that financial year and, accordingly, section 28(1) and this section, as in force immediately after such enactment, shall not apply in relation to any such service plan.”.

Amendment of section 32 of Act of 2004

9. Section 32 of the Act of 2004 is amended—

- (a) by inserting the following subsections after subsection (1):
 - “(1A) Subject to subsection (1B), after amending a section 30A(1) determination, the Minister may—
 - (a) direct the Executive to amend, in such manner as the Minister may

specify in the direction, the approved service plan to which the determination relates, or

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

(1B) The Minister shall not, in the financial year 2014, give a direction under subsection (1A) except in respect of—

(a) a service plan for the financial year 2015, or

(b) a service plan for part of the financial year 2015.”,

(b) in subsection (2), by substituting “Subject to subsection (4), the Executive” for “The Executive”, and

(c) in subsection (3), by substituting “subsection (1) or (1A)(b)” for “subsection (1)”.

Amendment of section 33 of Act of 2004

10. Section 33 of the Act of 2004 is amended—

(a) by substituting the following subsections for subsection (1):

“(1) Subject to subsection (1A), the Executive shall manage health and personal social services set out in an approved service plan so as to ensure that—

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

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

(1A) Section 28(1) and subsection (1), as in force immediately before the enactment of the *Health Service Executive (Financial Matters) Act 2014*, shall apply in relation to a service plan for the financial year 2014 and to a service plan for any part of that financial year and, accordingly, section 28(1) and subsection (1), as in force immediately after such enactment, shall not apply in relation to any such service plan.”,

and

(b) by inserting the following subsection after subsection (2):

“(3) (a) If the amount of net expenditure incurred by the Executive in a financial year is greater than the amount determined by the Minister for that year, the Executive shall charge the amount of such excess to its income and expenditure account for the next financial year.

(b) If the amount of net expenditure incurred by the Executive in a financial year is less than the amount determined by the Minister

for that year, the Executive shall, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, credit the amount of such surplus to its income and expenditure account for the next financial year.”.

Insertion of sections 33A and 33B in Act of 2004

11. The Act of 2004 is amended by inserting the following sections after section 33:

“Power of Minister to make grants to Executive

33A. On and from 1 January 2015, the Minister shall, with the consent of the Minister for Public Expenditure and Reform, out of moneys provided by the Oireachtas, make grants to the Executive.

Determination by Minister of capital funding and submission by Executive of capital plans

33B. (1) The Minister shall—

- (a) subject to subsection (9) and with the consent of the Minister for Public Expenditure and Reform, in respect of each financial year of the Executive, determine the maximum amount of funding that the Minister will make available to the Executive in that year for capital expenditure, and
 - (b) notify the Executive in writing of that amount as soon as is practicable.
- (2) After receiving the notification under subsection (1)(b) from the Minister, the Executive shall, in accordance with subsection (3), submit to the Minister for approval an annual capital plan—
- (a) prepared in such form and containing such information as may be specified by the Minister, and
 - (b) relating to the financial year to which that notification relates.
- (3) The annual capital plan shall be submitted to the Minister within—
- (a) 21 days after the Executive receives the notification from the Minister, or
 - (b) such longer period (not exceeding 42 days after the receipt of that notification) as the Minister may allow.
- (4) Subsections (6) to (11) of section 31 shall apply with all necessary modifications to an annual capital plan.
- (5) Notwithstanding any other provision of this section but subject to subsection (10), the Minister may at any time direct in writing the Executive to submit to the Minister for approval a capital plan prepared in such form, containing such information and covering such part of a financial year as may be specified by the Minister in such direction.

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- (6) In preparing a capital plan for submission under this section, the Executive shall have regard to any priorities that may be determined by the Minister for the financial year or part of a financial year to which the plan relates.
- (7) Subject to subsection (10), the Minister may at any time direct the Executive to amend a capital plan submitted and approved under this section.
- (8) The Executive may, with the prior approval of the Minister, amend a capital plan submitted and approved under this section.
- (9) The Minister shall not, in the financial year 2014, make a determination under subsection (1)(a) except in respect of the financial year 2015.
- (10) The Minister shall not, in the financial year 2014, give a direction under subsection (5) or (7) except in respect of—
 - (a) a capital plan for the financial year 2015, or
 - (b) a capital plan for a part of the financial year 2015.”.

Insertion of sections 34A and 34B in Act of 2004

- 12.** The Act of 2004 is amended by inserting the following sections immediately before section 35:

“Functions of Director General under this Part

34A. (1) The Director General shall take steps to ensure that—

- (a) the Executive’s net non-capital expenditure for a financial year or part of a financial year does not exceed the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be, and
 - (b) the Executive’s capital expenditure for the financial year does not exceed the amount specified in the notification under section 33B(1)(b) received by the Executive which relates to that year.
- (2) The Director General shall, as soon as is practicable, inform the Minister if he or she forms the opinion that an action undertaken by the Executive will, or that a proposed action to be undertaken by the Executive would, if made, result in—
- (a) the Executive’s net non-capital expenditure for a financial year or part of a financial year exceeding the amount specified in the section 30A(1) determination for that financial year or part of a financial year, as the case may be, or
 - (b) the Executive’s capital expenditure for a financial year exceeding the amount specified in the notification under section 33B(1)(b) received by the Executive which relates to that year.

Appearance of Director General before Committee of Public Accounts

- 34B. (1) The Director General shall, whenever required in writing to do so by the Committee of Public Accounts on or after 1 January 2015, give evidence to that Committee on—
- (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 Executive is required by this Act to prepare,
 - (b) the economy and efficiency of the Executive in using its resources,
 - (c) the systems, procedures and practices employed by the Executive for evaluating the effectiveness of its operations, and
 - (d) any matter affecting the Executive referred to in—
 - (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
 - (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann to the extent that it relates to a matter specified in paragraph (a), (b) or (c).
- (2) In carrying out duties under this section, the Director General may 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.”.

Substitution of section 40G of Act of 2004

13. The Act of 2004 is amended by substituting the following section for section 40G:

“Director General to be accounting officer of Executive for specified period

40G. The Director General shall be the accounting officer, for the purposes of the Comptroller and Auditor General Acts 1866 to 1998, in relation to the appropriation accounts of the Executive for the financial year ending on 31 December 2014 and for each of the previous financial years back to and including the financial year ending on 31 December 2005.”.

Amendment of section 40I of Act of 2004

14. Section 40I of the Act of 2004 is amended—

- (a) in subsection (3), by substituting the following paragraphs for paragraph (b):

“(b) compliance by the Executive with—

- (i) sections 33 and 33B, and
- (ii) any other obligations imposed by law relating to financial matters;

- (ba) compliance by the Director General with section 34A;”,
- and
- (b) in subsection (5)(b), by substituting “the Executive’s money” for “the money for which he or she is the accounting officer”.

PART 3

TRANSITIONAL MEASURES RELATING TO FUNDING AND CONSEQUENTIAL AMENDMENT TO VALUATION ACT 2001

Transitional measures relating to funding

- 15.** (1) On and from 1 January 2015, the salaries and expenses of the Executive and certain other services administered by the Executive, including miscellaneous grants, shall cease to be the subject of a separate vote.
- (2) For the financial year ending on 31 December 2015, the salaries and expenses of the Executive and certain other services administered by the Executive, including miscellaneous grants, shall form part of the vote for the Office of the Minister for Health.
- (3) Subject to subsection (4), for the purpose of subsection (2) and the financial year ending on 31 December 2015, an amount not exceeding €10 billion shall be allocated to the vote for the Office of the Minister for Health.
- (4) Subsection (3) shall cease to have effect on the approval by Dáil Éireann of a financial resolution in respect of the vote for the Office of the Minister for Health for the financial year ending on 31 December 2015.
- (5) In this section—
- “Executive” means the Health Service Executive;
- “financial year” means a period of 12 months ending on 31 December in any year.

Amendment of Schedule 4 to Valuation Act 2001

- 16.** Schedule 4 to the Valuation Act 2001 is amended by inserting the following paragraph after paragraph 19:
- “20. Any land, building or part of a building occupied by the Health Service Executive other than any land, building or part of a building referred to in paragraph 8 or 14.”.