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*Number 40 of 2013*

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**Child and Family Agency Act 2013**

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## **CHILD AND FAMILY AGENCY ACT 2013**

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## **CHILD AND FAMILY AGENCY ACT 2013**

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An Act to provide for the establishment of a body to be known as the Child and Family Agency; to provide for the dissolution of the Family Support Agency and the National Educational Welfare Board; to provide for the transfer of the functions of the National Educational Welfare Board to the Child and Family Agency; to provide for the transfer of certain functions of the Health Service Executive to the Child and Family Agency; to amend the Child Care Act 1991 to provide for registration of early years services and to provide for matters connected therewith.

[15th December, 2013]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the Child and Family Agency Act 2013.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions.

##### **Interpretation**

2. In this Act—

“Agency” means the Child and Family Agency established under *section 7*;

“annual budget” means the Financial Statement and associated material presented by the Minister for Finance to Dáil Éireann, and the Estimates for Public Services presented by the Minister for Public Expenditure and Reform to Dáil Éireann, which set out the Government’s proposals for the year with regard to the raising of tax and other revenues and to public expenditure;

“Board” means the Board of the Agency;

“child” means a person under the age of 18 years other than a person who is or has been married;

“confidential information” means—

- (a) information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description, or
- (b) proposals of a commercial nature or tenders submitted to the Agency by any person;

“couple” means—

- (a) a married couple,
- (b) civil partners within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,
- (c) a man and woman who are not married to each other but are cohabiting as husband and wife, or
- (d) two persons of the same sex who are cohabiting in domestic circumstances comparable to that of a man and woman who are not married to each other but are cohabiting as husband and wife;

“dissolved body” means a body dissolved under *section 71*;

“document” means—

- (a) a book, record or other written or printed material,
- (b) a photograph,
- (c) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and
- (d) any audio or video recording;

“establishment day” means the day appointed under *section 6*;

“family” means spouse, parent, grandparent, step-parent, child (including a step-child), grandchild, brother, sister, half-brother, half-sister, and any other person who, in the opinion of the Agency, has a bona fide interest in the child;

“local authority” means a local authority for the purposes of the Local Government Act 2001;

“Minister” means the Minister for Children and Youth Affairs;

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

“public body” means—

- (a) a Department of State,
- (b) a local authority within the meaning of the Local Government Act 2001,

- (c) any other entity established by or under any enactment (other than the Companies Acts), statutory instrument or charter or any scheme administered by a Minister of the Government,
- (d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government,
- (e) a subsidiary (within the meaning of the Companies Acts) of such a company,
- (f) an entity established or appointed by the Government or a Minister of the Government,
- (g) any entity (other than one within *paragraph (e)*) that is directly or indirectly controlled by an entity within any of *paragraphs (b) to (f)*, or
- (h) an entity on which any functions are conferred by or under any enactment (other than the Companies Acts), statutory instrument or charter,
- (i) an institution of higher education (within the meaning of the Higher Education Authority Act 1971) in receipt of public funding;

“service provider” means a person who enters into an arrangement under *section 56* or *58*;

“spouse” means each person of a couple in relation to the other.

### **Expenses**

3. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### **Regulations**

4. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Repeals**

5. The enactments specified in *Schedule 3* are repealed.

## PART 2

## CHILD AND FAMILY AGENCY

**Establishment day**

6. The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

**Establishment of Child and Family Agency**

7. (1) There shall stand established on the establishment day a body which shall be known as An Ghníomhaireacht um Leanaí agus an Teaghlach or in the English language as the Child and Family Agency (in this Act referred to as the “Agency”) to perform the functions conferred on it by this Act.
- (2) The Agency shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name.

**Functions of Agency**

8. (1) The functions of the Agency shall be to—
- (a) perform the functions transferred to it by *sections 72 and 82*,
  - (b) support and promote the development, welfare and protection of children,
  - (c) support and encourage the effective functioning of families,
  - (d) maintain and develop support services, including support services in local communities, relating to the functions specified in *paragraph (a), (b) or (c)*,
  - (e) carry on such activities or publish such information concerning the functions specified in *paragraphs (a), (b), (c) and (d)* as it considers appropriate,
  - (f) undertake or commission research into matters related to the functions specified in *paragraphs (a), (b), (c) and (d)* or into such other matters as the Minister may request, and
  - (g) provide information or advice, or make proposals, to the Minister on matters relating to the functions of the Agency.
- (2) The functions specified in *subsection (1)(b)* include providing for the protection and care of children in circumstances where their parents have not given, or are unlikely to be able to give, adequate protection and care.
- (3) Without prejudice to the generality of *subsection (1)*, in supporting and encouraging the effective functioning of families pursuant to *subsection (1)(c)*, the Agency shall provide—
- (a) preventative family support services aimed at promoting the welfare of children,
  - (b) care and protection for victims of domestic, sexual or gender-based violence, whether in the context of the family or otherwise, and

- (c) services relating to the psychological welfare of children and their families.
- (4) The services referred to in *subsection (3)(c)* do not include—
  - (a) psychological services associated with the provision of specialist mental health services to children,
  - (b) adult psychological services other than services which relate to the effective functioning of families and the improvement of relationships between parents and children, including effective parenting,
  - (c) psychological services to a child in respect of a disability, or
  - (d) psychological assessments in accordance with section 8 of the Disability Act 2005 or with section 4 of the Education for Persons with Special Educational Needs Act 2004.
- (5) The Agency shall, in the performance of its functions, demonstrate high standards of performance, transparency and accountability.
- (6) The Agency shall collaborate with any person that the Agency considers appropriate in relation to any matter connected to the Agency's functions.
- (7) The Agency shall have all such powers as are necessary or expedient for, or incidental to, the performance of its functions.
- (8) The Agency shall facilitate and promote enhanced inter-agency cooperation to ensure that services for children are co-ordinated and provide an integrated response to the needs of children and their families.
- (9) In the performance of its functions, the Agency shall use the resources available to it in the most beneficial, effective and efficient manner.
- (10) The Agency shall have power to acquire, receive on transfer, hold, sell, mortgage, lease, let or otherwise dispose of land, buildings or premises and to erect, alter or maintain buildings or premises.
- (11) Subject to this Act, the Agency shall be independent in the performance of its functions.
- (12) The Agency may perform any of its functions through or by any member of the staff of the Agency duly authorised in that behalf by the Agency.

#### **Best interests and views of the child**

9. (1) The Agency shall, when making decisions in relation to the performance of its functions under *section 8(1)(a), (b) or (c)*, have regard to the best interests of the child in all matters.
- (2) Notwithstanding the generality of *subsection (1)*, the Agency shall, in performing its functions in respect of an individual child under the Child Care Act 1991 or the Adoption Act 2010, regard the best interests of the child as the paramount consideration.
- (3) The Agency shall, when planning and reviewing the provision of services in

connection with the performance of functions under *section 8(1)(a), (b) or (c)*, ensure that consideration is given to the views of children.

- (4) The Agency shall, in performing its functions in respect of an individual child under the Child Care Act 1991, the Education (Welfare) Act 2000, the Adoption Act 2010 or *section 8(1)(c) or 8(3)*, ensure that the views of that individual child, where that child is capable of forming and expressing his or her own views, be ascertained and given due weight having regard to the age and maturity of the child.

#### **Agreements between Agency and public bodies concerning performance of functions**

10. (1) If any function of a public body should, in its opinion, be performed (whether generally or in a particular case) by the Agency and the Agency is able and willing to perform the function, the Agency and the public body may enter into an agreement for the Agency to perform the function on the public body's behalf.
- (2) If an agreement is entered into for the Agency to perform a function of a public body, the Agency may—
  - (a) perform the function on behalf of the public body in accordance with the agreement, and
  - (b) do any act or thing relating to the performance of that function that the public body would be authorised by law to do if it performed the function.
- (3) If any function of the Agency should, in its opinion be performed (whether generally or in a particular case) by a public body and that body is able and willing to perform the function, the public body and the Agency may enter into an agreement for the public body to perform the function on the Agency's behalf.
- (4) If an agreement is entered into for a public body to perform a function of the Agency, the public body may—
  - (a) perform the function on the Agency's behalf in accordance with the agreement, and
  - (b) do any act or thing relating to the performance of that function that the Agency would be authorised by law to do if it performed the function.
- (5) An agreement under this section may contain terms and conditions relating to—
  - (a) the extent to which and the period for which a party to the agreement is authorised to perform the function of that other party to the agreement,
  - (b) the making of payments or the transfer of financial responsibility, and
  - (c) such other matters as are considered necessary to give effect to the agreement.
- (6) An agreement under this section may provide for charges payable by the party on whose behalf the function is to be performed to the other party to the agreement.
- (7) The power of a local authority to enter into an agreement under this section is a reserved function within the meaning of section 131 of the Local Government Act 2001, of a local authority.



**Informal arrangements between Agency and public bodies concerning performance of functions**

11. (1) If a public body is of the opinion that it would be convenient for duties relating to its functions to be carried out by an employee of the Agency, those duties may, without an agreement being entered into under *section 10*, be assigned by the Agency to any of its employees in the same way as duties relating to its functions.
- (2) If the Agency is of the opinion that it would be convenient for duties relating to its functions to be carried out by an employee of a public body, those duties may, without an agreement being entered into under *section 10*, be assigned by the public body to any of its employees in the same way as duties relating to the functions of the public body.
- (3) Duties assigned in accordance with this section shall be carried out by the employees to whom they are so assigned.

**Seal of Agency**

12. (1) The Agency shall provide itself with a seal as soon as may be after the establishment day.
- (2) The seal of the Agency will be authenticated by—
- (a) the signature of 2 members of the Board, or
  - (b) the signatures of both—
    - (i) a member of the Board, and
    - (ii) an employee of the Agency authorised by the Board to authenticate the seal.
- (3) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and sealed with the seal of the Agency authenticated in accordance with this section, shall, unless the contrary is shown, be received in evidence and be deemed to be that instrument without further proof.

**Annual report**

13. (1) Not later than 31 May in each year, the Agency shall prepare and adopt an annual report in relation to the performance of the Agency's functions during the immediately preceding calendar year.
- (2) An annual report shall include—
- (a) a statement of the activities undertaken by the Agency,
  - (b) a report in relation to the implementation of the Agency's corporate plan approved under *section 42*,
  - (c) a report in relation to the implementation of the Agency's business plan submitted to the Minister under *section 46*,
  - (d) an indication of the Agency's arrangements for implementing the code of governance prepared in accordance with *section 50*,

- (e) particulars in relation to financial statements,
  - (f) other particulars that the Agency considers appropriate or as the Minister after consulting the Minister for Health and the Minister for Education and Skills may require, and
  - (g) the report required by *section 70*.
- (3) As soon as may be, but in any event not later than 21 days after adopting the annual report, the Agency shall submit a copy of the annual report to the Minister.
- (4) The Minister shall, within 21 days of receiving the annual report, cause copies of it to be laid before each House of the Oireachtas.
- (5) The Agency shall publish the annual report—
- (a) on the Internet, or
  - (b) in such other manner as the Minister may specify,
- as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.
- (6) (a) The Minister may omit from a copy of an annual report laid before the Houses of the Oireachtas under *subsection (4)* any matter that would disclose confidential information.
- (b) Where the Minister omits confidential information from a copy, he or she will insert in its place a statement that the matter has been omitted and a general description of the omitted matter.

#### **Duty of Agency to furnish information**

14. (1) The Agency shall—
- (a) monitor and keep under review occurrences and developments concerning matters relating to its functions, and
  - (b) without delay, furnish the Minister with information regarding—
    - (i) any occurrence or development that, in the opinion of the Agency, the Minister is likely to consider significant for the performance of his or her functions (whether under this Act or otherwise), or
    - (ii) any other occurrence or development that falls within a class of occurrences or developments of public interest or concern that has been specified in writing by the Minister.
- (2) The Minister may issue guidelines in relation to the furnishing of information under *subsection (1)* and, if he or she does so, the Agency shall comply with those guidelines.
- (3) The Agency shall submit, when required by the Minister to do so, a report on any matters connected with the functions of the Agency and specified by the Minister.
- (4) A report under *subsection (3)* shall—

- (a) address matters of general or specific concern, and
- (b) be made in such form and within such period,  
specified in the requirement.

#### **Requirement to furnish information and documents**

- 15.** (1) The Minister may, where he or she considers it necessary in the public interest to do so for the performance of his or her functions (whether under this Act or otherwise), require the Agency to furnish him or her with such information or documents as he or she may specify that are in the Agency's procurement, possession or control, and the Agency shall do so within any period that the Minister may specify and, in any event, without delay.
- (2) Nothing contained in an enactment, and no rule of law, which would require obtaining the consent of a person in order for the Agency to furnish the Minister with information or documents referred to in *subsection (1)*, shall operate to prohibit or render such furnishing unlawful.
- (3) Nothing contained in an enactment, and no rule of law, relating to the non-disclosure or confidentiality of information or documents, shall operate to prohibit the Agency from furnishing the Minister with information or documents under this section, or render such furnishing unlawful.
- (4) Nothing contained in an enactment and no rule of law, relating to the hearing of proceedings otherwise than in public shall operate to—
- (a) prohibit the Agency from furnishing the Minister, under this section, with information or documents prepared in relation to, or given in evidence in, such proceedings, whether such proceedings were brought before or after the establishment day, or
  - (b) render such furnishing unlawful.

#### **Minister may share information and documents in certain circumstances**

- 16.** (1) Where the Minister has appointed a person to examine or inquire into any matter, and considers that any information or document that has been furnished under *section 14* or *15* may be relevant to that examination or inquiry, the Minister may furnish that information or document to that person, and that person may receive that information or document.
- (2) Nothing contained in an enactment, and no rule of law, which would require obtaining the consent of another person in order for the Minister to furnish a person referred to in *subsection (1)* with any information or document referred to in *section 14* or *15*, shall operate to prohibit or render unlawful such furnishing, notwithstanding that no such consent has been obtained.
- (3) Nothing contained in an enactment, and no rule of law, relating to the non-disclosure or confidentiality of any information or document, shall operate to prohibit the Minister from furnishing a person referred to in *subsection (1)* with information or

documents referred to in *section 14* or *15*.

#### **Use of information and documents**

- 17.** (1) Subject to *subsection (2)*, the Minister may use any information or documents furnished under *section 14* or *15* as he or she requires for the performance of his or her functions (whether under this Act or otherwise).
- (2) Where any information or document has been furnished under *section 14* or *15*, nothing in this section is to be taken to permit publication, in whole or in part, of the information or document if such publication would not otherwise be lawful.

#### **Saver**

- 18.** Nothing in *sections 14* to *17* shall limit any power of the Minister to require information from or issue directions to the Agency (whether under this Act or otherwise), or to affect, except to the extent required by those sections, the functions of the Agency or the Minister.

### PART 3

#### BOARD OF AGENCY

#### **Membership of Board of Agency**

- 19.** (1) The Agency shall have a Board consisting of a chairperson, a deputy chairperson and 7 ordinary members appointed by the Minister.
- (2) The chairperson, deputy chairperson and members of the Board shall be appointed by the Minister, with the consent of the Minister for Public Expenditure and Reform, from among persons who, in the Minister's opinion, have experience of, and expertise in—
- (a) matters connected to the functions of the Agency, or
- (b) matters connected to organisational governance, management or public administration.
- (3) The Minister shall designate one member of the Board to be the chairperson.
- (4) The Minister shall designate one member of the Board to be the deputy chairperson.
- (5) Subject to *subsections (7)* and *(8)*, the Minister, when appointing a member of the Board, shall fix such member's term of membership of the Board which shall not exceed 5 years.
- (6) The Minister shall, to the extent practicable, endeavour to ensure that there is an equitable balance between men and women in the membership of the Board.
- (7) The persons who are first appointed by the Minister to be ordinary members of the Board shall hold office as follows—

- (a) 4 members for a term of office of 3 years, and
  - (b) 3 members for a term of office of 4 years.
- (8) A member of the Board, appointed under *subsection (2)*, whose term of office expires or is about to expire by the effluxion of time is eligible for reappointment to the Board, but may not serve on the Board for more than 2 consecutive terms.
- (9) A member may resign from office by letter sent to the Minister and the resignation shall take effect on the later of—
- (a) the date specified in the letter, or
  - (b) the date of receipt of the letter by the Minister.
- (10) (a) Where a matter is to be decided by the Board at a meeting, any member of the Board present at the meeting who has an interest in the matter, otherwise than as such a member, shall—
- (i) at the meeting, in advance of any consideration of the matter, disclose to the Board the fact of the interest and the nature of the interest,
  - (ii) neither influence nor seek to influence a decision relating to the matter,
  - (iii) absent himself or herself from any meeting or that part of the meeting during which the matter is discussed,
  - (iv) take no part in any deliberation of the Board or committee relating to the matter, and
  - (v) not vote on a decision relating to the matter.
- (b) Where a member discloses an interest in a matter under this subsection—
- (i) the disclosure shall be recorded in the minutes of the meeting, and
  - (ii) for so long as the matter is being dealt with by the meeting, the member shall not be counted in the quorum for the meeting unless the Board or committee otherwise determines.
- (c) Where, at a meeting of the Board or a committee of the Board, a question arises as to whether or not a course of conduct, if pursued by a member of the Board or committee of the Board, as the case may be, would be a failure by the member to comply with the requirements of *paragraph (a)*—
- (i) the question may be determined by the chairperson of the Board or of the committee of the Board, as the case may be, whose decision shall be final, and
  - (ii) if the question is so determined, particulars of the determination shall be recorded in the minutes of the meeting concerned.
- (d) If satisfied that a member of the Board or a committee of the Board has contravened *paragraph (a)*, the Minister may, if he or she thinks fit, remove that member from office or take any other action that the Minister considers appropriate.

- (e) A person who is removed from office under *paragraph (d)* is disqualified from membership of the Board or of a committee of the Board.
- (11) The Minister shall, as soon as practicable after an appointment to the Board, publish in *Iris Oifigiúil* notice of the name of the person so appointed.
- (12) A member of the Board shall, not later than 3 months after his or her appointment, furnish to the Minister a tax clearance certificate.

**Filling of casual vacancies**

- 20.** (1) If an appointed member resigns, dies, ceases to hold office (other than by effluxion of time), ceases to be qualified to hold office or is removed from office, the Minister shall as soon as practicable appoint a person to fill the casual vacancy so arising.
- (2) A person appointed under *subsection (1)* shall hold office for the unexpired period of his or her predecessor's term of office or such other period as the Minister may determine.
- (3) A member appointed under *subsection (1)* is eligible for reappointment to the Board, on the expiry of the period referred to in *subsection (2)*, but may not serve for more than 2 further consecutive terms and in any event for a period of more than 10 years.

**Role of Board**

- 21.** (1) The Board shall be the governing body of the Agency with authority, in the name of the Agency, to perform the functions of the Agency.
- (2) The Board shall—
- (a) oversee the development of corporate strategy in relation to major plans of action, risk policy, annual budgets and business plans,
  - (b) set performance objectives having regard to *sections 41 and 44*,
  - (c) monitor the implementation of corporate performance and, subject to *section 49*, oversee major capital expenditure,
  - (d) promote high standards of corporate governance with particular regard to a code of conduct issued under *section 37*,
  - (e) establish arrangements for the management of the performance of the chief executive officer and implement the necessary development and appraisal processes, and
  - (f) ensure, having regard to net expenditure limits determined under *section 45*, the integrity of the Agency's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- (3) The Board of the Agency shall be accountable to the Minister for the performance of its functions.

- (4) The Board may delegate to the chief executive officer any of the functions of the Agency with the exception of the functions of the Board under *subsection (2)*.
- (5) If a function of the Agency is delegated to the chief executive officer under *subsection (4)*, the delegation remains in force until the Board revokes the delegation.
- (6) The Board shall notify the Minister in writing of any delegation under *subsection (4)* or revocation under *subsection (5)*.
- (7) Without prejudice to *section 14*, the Board shall inform the Minister of any matter that it considers requires the Minister's attention.
- (8) The Minister may issue directions to the Board in relation to the delegation of functions to the chief executive officer under *subsection (4)*.

### Meetings of Board

- 22.** (1) The Minister in consultation with the Board, shall fix the date, time and place of the first meeting of the Board.
- (2) The Board shall hold as many meetings as are necessary for the performance of its functions but in each year shall hold at least 10 meetings.
  - (3) The chairperson may at any reasonable time call a meeting of the Board.
  - (4) Any 5 members of the Board may call a meeting of the Board if the chairperson—
    - (a) refuses to call a meeting after being presented with a requisition for that purpose signed by not fewer than 5 Board members, or
    - (b) without refusing to call a meeting, does not call one within 7 days of being presented with such a requisition.
  - (5) The members present at a meeting called under *subsection (4)* shall choose one of their number to chair the meeting.
  - (6) The quorum for a meeting of the Board shall be 4 ordinary members of the Board and the chairperson or deputy chairperson, or for a meeting called in accordance with *subsection (4)*, the member chosen under *subsection (5)* to chair the meeting.
  - (7) Where there is a vacancy on the Board, the number of ordinary members required to be present for a quorum shall be 3.
  - (8) A meeting held while there is a vacancy on the Board is validly held notwithstanding the vacancy, so long as there is a quorum.
  - (9) The chairperson shall, if present, preside at all meetings of the Board.
  - (10) Each question at a meeting shall be determined by a majority of the votes of the members present and voting on the question.
  - (11) Where there is an equal division of votes, the chairperson, or in the absence of the chairperson, the deputy chairperson or where the meeting has been called in accordance with *subsection (4)*, the person chosen in accordance with *subsection (5)*, has a second or casting vote.

- (12) The Board may regulate, by standing orders or otherwise, the procedures and business of the Board.

### **Conditions of office**

- 23.** (1) The Minister may at any time remove a member from office if—
- (a) in the Minister's opinion—
    - (i) the member has become incapable through ill-health of performing the functions of the office,
    - (ii) the member has committed stated misbehaviour, or
    - (iii) the member's removal from office is necessary for the Board to perform its functions in an effective manner,
  - (b) the member has contravened, or failed to discharge a duty imposed by 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
  - (c) in performing functions under this Act, the member has not complied with a code of conduct under section 10(3) of the Standards in Public Office Act 2001.
- (2) A person immediately ceases to be a member of the Board if the person—
- (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,
  - (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, is sentenced to a term of imprisonment by a court of competent jurisdiction, or
  - (f) is removed by a competent authority for any reason (other than a failure to pay a fee) from any register established for the purpose of registering members of a profession.
- (3) A Board member 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 failure to attend was due to illness.

### **Removal of all members of the Board from office**

- 24.** (1) The Minister may remove all the members of the Board from office if—
- (a) the Board fails to achieve a quorum for 3 consecutive meetings,
  - (b) the Board does not comply with a judgement, order or decree of any court,
  - (c) the Board 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

- (d) the Minister is satisfied that the Board's functions are not being performed in an effective manner.
- (2) The Minister may, if of the opinion that the Board's functions are not being performed in an effective manner, appoint a person to—
  - (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 such premises, equipment and records as the person may require for the purposes of the review.
- (4) The removal of the members of the Board from office does not revoke or otherwise affect any delegation of the Agency's functions to the chief executive officer under *section 21(4)*.

#### **Committees of Board**

- 25.** (1) The Board may establish committees to assist and advise it on matters relating to its functions and may determine the membership and terms of reference of each committee.
- (2) The Board may appoint to a committee of the Board persons who are not members of the Board but have special knowledge and experience related to the purposes of the committee.
- (3) The appointment of a person to a committee of the Board is subject to such terms and conditions as may be determined—
  - (a) under *section 27*, to the extent that they relate to remuneration and allowances, and
  - (b) by the Board, in any other case.
- (4) The Board shall specify in writing the purpose and terms of reference of each committee of the Board.
- (5) The acts of a committee of the Board are subject to confirmation by the Board unless the Board dispenses with the necessity for confirmation.
- (6) The Board may regulate the procedure of a committee of the Board but, subject to any such regulation, a committee may regulate its own procedure.
- (7) The Board may at any time dissolve a committee of the Board established under this section.

#### **Membership of either House of Oireachtas, European Parliament or local authority**

- 26.** (1) A person is not eligible for appointment as a member of the Board or of a committee of the Board, if the person is—

- (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
  - (c) a member of a local authority.
- (2) A member of the Board or a member of a committee of the Board shall cease to hold office 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,
  - (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.

#### **Remuneration and expenses of the members of the Board and committees**

27. (1) A person—
- (a) appointed as the chairperson of the Board, or
  - (b) who is the deputy chairperson of the Board, in respect of any period during which he or she acts as chairperson,
- shall be paid by the Agency, out of moneys at its disposal, such remuneration and allowances for expenses incurred by him or her as the Minister may from time to time, with the consent of the Minister for Public Expenditure and Reform, determine.
- (2) A member of the Board and a member of the committee of the Board shall be paid by the Agency, out of moneys at its disposal, such remuneration and allowances for expenses incurred by him or her as the Minister may from time to time, with the consent of the Minister for Public Expenditure and Reform, determine.

### PART 4

#### CHIEF EXECUTIVE OFFICER

#### **Appointment of chief executive officer**

28. (1) The Board shall appoint a person recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 to be the chief executive officer of the Agency.
- (2) Notwithstanding *subsection (1)*, the Minister may appoint the first chief executive officer for a term to be determined by the Minister.
- (3) A person shall not be appointed under *subsection (1)* if he or she is not eligible to be appointed to the Board.

- (4) The chief executive officer shall hold office, subject to *subsection (3)*, on such terms and conditions (including those relating to remuneration, allowances and superannuation) as may be determined by the Board with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.
- (5) The chief executive officer shall not hold any other office or position without the consent of the Board.
- (6) The chief executive officer may, with the approval of the Minister, be removed from office by the Board for stated reasons.
- (7) The chief executive officer may attend meetings of the Board and may make submissions, orally or in writing, to and otherwise advise the Board at such meetings in accordance with the procedures of the Board regulated under *section 22(12)*.
- (8) The remuneration and allowances determined under *subsection (4)* are payable to the chief executive officer by the Agency out of funds at its disposal.

#### **Functions of chief executive officer and their performance by deputy**

- 29.** (1) The chief executive officer shall be responsible to the Board for the performance of his or her functions and the implementation of the Agency's corporate plan approved under *section 42* and the business plan submitted under *section 46*.
- (2) The chief executive officer shall—
- (a) carry on and manage and control generally the administration and business of the Agency,
  - (b) perform such other functions as may be assigned to that officer by or under this Act or any other enactment or as may be delegated to him or her by the Board,
  - (c) provide the Board with such information (including financial information) relating to the performance of his or her functions and the implementation of the Board's policies as the Board may require,
  - (d) assist and provide the accounting officer with such information (including financial information and records) relating to the performance of the role of accounting officer within such time and in such format as may be requested by the accounting officer from time to time, and
  - (e) supply the Minister with such information relating to the performance of his or her functions and the implementation of the Minister's policies and priorities as the Minister may require.
- (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 such employee of the Agency, as may be appointed by the Board from time to time to act as acting chief executive officer.
- (4) For the purposes of *subsection (2)*, references in this Act or another enactment that assigns functions to the chief executive officer or that regulates the manner in which a function assigned to the chief executive officer is to be performed are to be read as

references to the employee appointed under this section as acting chief executive officer.

### **Delegation of functions by chief executive officer**

- 30.** (1) Subject to any directions that may be issued by the Board, the chief executive officer may—
- (a) delegate in writing any of his or her functions under *section 29* to employees of the Agency specified by name, grade, position or otherwise, and
  - (b) where and to the extent specified in a delegation made under *paragraph (a)*, authorise the sub-delegation of any or all of the functions delegated under *paragraph (a)* to or by other employees of the Agency.
- (2) Any function delegated or sub-delegated under this section to an employee of the Agency shall be performed by the employee under the general direction and control of the chief executive officer and in compliance with such directions, limitations and guidelines as may be specified by—
- (a) in the case of a delegated function, the chief executive officer, or
  - (b) in the case of a sub-delegated function, the employee who sub-delegated that function.
- (3) The delegation or sub-delegation of a function does not preclude the chief executive officer from performing the function.
- (4) The chief executive officer may—
- (a) vary any delegation of a function under this section, including by modifying the geographical area to which the delegation relates,
  - (b) revoke such delegation, or
  - (c) without revoking the delegation, revoke any sub-delegation of the function.
- (5) On varying or revoking the delegation or sub-delegation of a function, the chief executive officer shall inform each employee to whom the function was delegated or sub-delegated of its variation or revocation.
- (6) An employee of the Agency who sub-delegates a function delegated or sub-delegated to the employee under this section—
- (a) may vary the sub-delegation, including by modifying the geographical area to which it relates,
  - (b) may revoke the sub-delegation, and
  - (c) is not precluded from performing the function.
- (7) On varying or revoking the sub-delegation of a function, the employee who sub-delegated the function under *subsection (6)* shall inform each employee to whom the function was sub-delegated of its variation or revocation.

**Effect of delegation and sub-delegation of functions**

- 31.** (1) If a function of the Agency is delegated by the Board to the chief executive officer under *section 21(4)*, references in a provision of this Act or any other enactment that assigns that function to the Agency or that regulates the manner in which the function is to be performed are to be read as references to the chief executive officer.
- (2) If a function of the chief executive officer under *section 29* is delegated or sub-delegated by him or her to an employee of the Agency under *section 30(1)* or is sub-delegated by an employee authorised to do so under that section, references in this Act or any other enactment that regulates the manner in which that function is to be performed are to be read as references to the employee to whom the function is delegated or sub-delegated.
- (3) If a function is delegated under *section 21(4)* or *section 30* or sub-delegated under *section 30(1)(b)*, the delegation or sub-delegation is to be taken to include the delegation or sub-delegation of any duty or power incidental to or connected with that function.
- (4) Any act or thing done by the chief executive officer pursuant to a delegation by the Board under *section 21(4)* has the same force and effect as if done by the Board.
- (5) Any act or thing done by an employee of the Agency pursuant to a delegation or sub-delegation under *section 30* has the same force and effect as if done by the chief executive officer.
- (6) The revocation of a delegation by the Board or the chief executive officer does not affect a sub-delegation authorised under *section 30*, unless the Board or the chief executive officer, as the case may be, otherwise directs.
- (7) A delegation or sub-delegation of a function does not cease to have effect solely because the person who delegated or sub-delegated the function or authorised its sub-delegation no longer holds the position that the person held when the function was delegated, sub-delegated or authorised to be sub-delegated.

**Certificate evidence concerning delegation of functions**

- 32.** (1) In any legal proceedings, a certificate that—
- (a) is signed by the chairperson,
  - (b) states that a specified function of the Agency was on a specified date delegated to the chief executive officer, and
  - (c) states that the delegation of the function remained in force on a specified date,
- is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.
- (2) In any legal proceedings, a certificate that—
- (a) is signed by the chief executive officer or by an employee of the Agency who has sub-delegated a function delegated to him or her under *section 30*,

- (b) states that a specified function of the chief executive officer was on a specified date delegated or sub-delegated, as the case may be, in accordance with *section 30(1)*, to a specified employee of the Agency,
  - (c) states that the delegation or sub-delegation of the function remained in force on a specified date, and
  - (d) specifies the limitations, if any, imposed on the delegation or sub-delegation,
- is, in the absence of evidence to the contrary, proof of the matters stated in the certificate.
- (3) A certificate referred to in *subsection (1)* or *(2)* that appears to be signed by the chairperson, the chief executive officer or the employee concerned, as the case may be, is admissible in any proceedings as evidence of the matters stated in the certificate without proof of his or her signature.

#### **Accountability of chief executive officer to Committee of Public Accounts**

33. (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—
- (a) the general 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 Agency is required by this Act to prepare,
  - (b) the economy and efficiency of the Agency in the use of its resources,
  - (c) the systems, procedures and practices employed by the Agency for the purpose of evaluating the effectiveness of its operations, and
  - (d) any matter affecting the Agency 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.
- (2) When appearing before a Committee referred to in *subsection (1)*, the chief executive officer shall appear as an accountable person and not as an accounting officer.
- (3) 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—
- (a) any policy of the Government or of a Minister of the Government, or
  - (b) the objectives of such a policy.

#### **Accountability of chief executive officer to other Oireachtas Committees**

34. (1) Subject to *subsection (2)*, the chief executive officer shall, at the written request of a

committee, attend before it to give an account of the general administration of the Agency.

- (2) The chief executive officer is not required to give an account before a committee of any matter relating to the general administration of the Agency that is, or is likely to be, the subject of proceedings before a court or tribunal in the State.
- (3) Where the chief executive officer is of the opinion that a matter about which the chief executive officer is requested to give an account before a committee, is a matter to which *subsection (2)* applies, the chief executive officer shall inform the committee of that opinion and the reasons for it.
- (4) The information required under *subsection (3)* to be given to the committee shall be given in writing except where the chief executive officer is before the committee.
- (5) If, on being informed of the chief executive officer's opinion about the matter, the committee decides not to withdraw its request, the High Court may, on application to it under *subsection (6)*, determine whether *subsection (2)* applies to the matter.
- (6) An application for a determination under *subsection (5)* may be made in a summary manner to the High Court by—
  - (a) the chief executive officer not later than 21 days after being informed by the committee of its decision not to withdraw its request, or
  - (b) the chairperson of the committee acting on its behalf.
- (7) Pending the determination of an application under *subsection (6)*, the chief executive officer shall not attend before the committee to give an account of the matter to which the application relates.
- (8) Where the High Court determines that *subsection (3)* applies to the matter, the committee shall withdraw its request relating to the matter, but where the High Court determines that *subsection (2)* does not apply, the chief executive officer shall attend before the committee to give an account of the matter.
- (9) In carrying out 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.
- (10) With the permission of the chairperson of the committee making the request under *subsection (2)*, either—
  - (a) a Board member, or
  - (b) an employee of the Agency nominated by the chief executive officer,may attend before the committee in place of the chief executive officer to give an account of the general administration of the Agency, and in that case a reference in *subsections (2) to (9)* to the chief executive officer is to be read as a reference to the person attending in his or her place.
- (11) In this section “committee” means—
  - (a) a committee appointed by either House of the Oireachtas or jointly by both

Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members' Interests of Dáil Éireann, the Committee on Members' Interests of Seanad Éireann), or

- (b) a subcommittee of a committee referred in *paragraph (a)*.

**Disqualification resulting from membership of either House of the Oireachtas, European Parliament or local authority**

35. The chief executive officer immediately ceases to hold office 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,
- (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.

PART 5

STANDARDS AND DISQUALIFICATIONS

**Standards of integrity**

36. (1) In performing functions under this or any other enactment as—

- (a) a member of the Board of the Agency or a committee of the Board of the Agency,
- (b) the chief executive officer or an employee of the Agency,
- (c) a person engaged by the Agency under *Part 7* as an adviser or consultant, or
- (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 a person referred to in *subsection (1)(d)* in respect only of duties of employment relating to the purposes for which the Agency has engaged that person.

**Codes of conduct**

37. (1) For the purposes of *section 36*, the Agency 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 Agency,
- (b) employees of the Agency,
- (c) engaged under *Part 7* by the Agency as an adviser or consultant, 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)* shall indicate the standards of integrity and conduct to be maintained by them in performing their functions under this or any other enactment.
- (3) A person to whom the code of conduct relates is required to have regard to and be guided by the code in performing functions under this or any other enactment.
- (4) The terms and conditions on which a person is employed by the Agency or by a person referred to in *subsection (1)(c)* or on which a person is engaged by the Agency as an consultant or adviser under *section 55* are deemed to include the requirements that apply to that person under *subsection (3)*.

#### **Availability of codes of conduct**

- 38.** (1) Subject to *subsection (2)*, the Agency, as soon as practicable after issuing a code of conduct, shall make the code available to the persons for whose guidance it issued.
- (2) A code of conduct for the guidance of employees of a person engaged by the Agency as an adviser or consultant shall be issued by the Agency to the employer and shall be made available by the employer to those employees.
  - (3) In the absence of evidence to the contrary, a document purporting to be a code of conduct issued under this section—
    - (a) is that code of conduct, 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.

#### **Gifts**

- 39.** (1) Subject to *subsection (2)*, the Agency may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.
- (2) The Agency shall not accept a gift if the trusts or conditions attaching to it would be inconsistent with the—
    - (a) functions, or
    - (b) obligations,of the Agency under this Act or any other enactment.

#### **Unauthorised disclosure of confidential information**

- 40.** (1) Except in the circumstances specified in *subsection (2)*, a person shall not disclose confidential information obtained while performing functions as—
  - (a) a member of the Board or a committee of the Agency,

- (b) the chief executive officer or an employee of the Agency,
  - (c) a person engaged under *section 55* by the Agency as an adviser or consultant, or
  - (d) an employee of a person referred to in *paragraph (c)*.
- (2) A person shall not contravene *subsection (1)* by disclosing confidential information if the disclosure—
- (a) is made to or authorised by the Agency,
  - (b) is made to the Minister by or on behalf of the Agency or in compliance with this Act, or
  - (c) is required by law.

## PART 6

### ACCOUNTABILITY AND FUNDING OF AGENCY

#### Performance framework

- 41.** (1) The Minister shall develop a performance framework (“Performance Framework”) to provide the Agency with policy guidance, direction and prioritisation parameters for the preparation of its corporate plan.
- (2) The Minister shall provide the Performance Framework to the Board within 6 months of the establishment of the Agency and thereafter 3 months before the end of the period to which the current corporate plan relates in line with the requirements of the Agency to prepare a corporate plan for each 3 year period.
- (3) The Minister may consult the Minister for Health or the Minister for Education and Skills before developing a Performance Framework which includes matters which relate to the functions of those Ministers.

#### Corporate plan of Agency

- 42.** (1) The Agency shall prepare and adopt a corporate plan to be submitted to the Minister for approval, with or without amendment, for each ensuing 3 year period.
- (2) A corporate plan shall—
- (a) include the Agency’s key objectives, outputs and related strategies,
  - (b) except in the case of the first such plan, include a review and evaluation of the work of the Agency in the performance of its statutory functions in the previous 3 years,
  - (c) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister,
  - (d) be prepared and submitted to the Minister no later than—
    - (i) in respect of the first corporate plan, 3 months after the receipt of the

- Performance Framework, developed in accordance with *section 41*,
- (ii) in respect of each subsequent corporate plan, 3 months from the receipt of the relevant Performance Framework,
- and
- (e) accord with the policies and objectives of the Minister and the Government as they relate to the functions of the Agency.
- (3) In preparing the corporate plan, the Agency shall have regard to the Performance Framework provided by the Minister.
- (4) Within 30 days of receiving a corporate plan, the Minister shall—
- (a) approve the plan,
  - (b) issue directions regarding amendments to the proposed plan, or
  - (c) refuse to approve the plan where the plan is not amended in accordance with any directions that may be given by the Minister to the Agency.
- (5) An approved corporate plan may be amended by—
- (a) the Minister at any time, or
  - (b) the Agency, where—
    - (i) the Agency submits the proposed amendment to the Minister for approval, and
    - (ii) the amendment is approved by the Minister.
- (6) Nothing in a corporate plan shall limit the Agency in the performance of its functions.

#### **Publication of approved corporate plan**

43. (1) As soon as practicable after approving a corporate plan, the Minister shall cause a copy of the corporate plan to be laid before each House of the Oireachtas.
- (2) The Agency shall ensure that, as soon as practicable after copies of an approved corporate plan are laid before the Houses of the Oireachtas, the plan is published—
- (a) on the Internet, or
  - (b) in such other manner as the Minister may specify.

#### **Annual performance statement**

44. (1) The Minister shall develop an annual performance statement (“Performance Statement”) to provide the Agency with specific policy guidance, direction, prioritisation and resource parameters in respect of each year for the preparation of its annual business plan.
- (2) The Minister shall provide the Performance Statement to the Board as soon as practicable following the publication by the Government of the annual budget each

year.

- (3) The Performance Statement shall have regard to the Performance Framework and include the determination of net expenditure pursuant to *section 45*.
- (4) The Minister shall not specify a priority or performance target under this section or under *section 41* as respects any function of the Agency relating to a decision concerning the making or recovery of a charge for the provision of a service by or on behalf of the Agency to a particular person or concerning the amount of the charge.

#### **Determination by Minister of net expenditure limits for Agency**

- 45.** (1) Subject to *subsection (2)*, the Minister shall, in respect of a financial year of the Agency—
- (a) determine the maximum amount of net expenditure that may be incurred by the Agency for that financial year, and
  - (b) notify the Agency of the determination of net expenditure in the context of the Performance Statement.
- (2) Where the Minister considers it appropriate in any particular case, a determination under this section may relate to such period (other than the financial year of the Agency) as the Minister may specify in a notification under *subsection (1)*.
- (3) The Minister may amend a determination under *subsection (1)* by varying the maximum amount of net expenditure that the Agency may incur for a particular financial year and, if the Minister varies that amount, the Minister shall notify the Agency in writing of the amendment as soon as may be and the amended determination shall apply and have effect.

#### **Business plan**

- 46.** (1) Within 30 days of receipt of the Performance Statement prepared in accordance with *section 44*, the Agency shall submit to the Minister a business plan for the year.
- (2) A business plan shall—
- (a) be prepared in accordance with the Performance Statement developed by the Minister under *section 44*,
  - (b) outline the Agency's proposed activities for the period to which the business plan relates and the performance targets relating to those activities,
  - (c) detail the proposed allocation of the total resources (both financial and human) of the Agency for the period to which the plan relates,
  - (d) include a statement of estimated income and expenditure relating to the plan that is consistent with the determination of the expenditure notified pursuant to *section 45* in respect of the period to which the plan relates,
  - (e) contain any other information specified by the Minister, and
  - (f) accord with the policies and objectives of the Minister and the Government as

they relate to the functions of the Agency.

- (3) In preparing the business plan, the Agency shall have regard to the Performance Statement developed by the Minister under *section 44*, any corporate plan in operation at that time approved under *section 42* and any direction by the Minister given under *section 47*.
- (4) The Agency shall implement the business plan prepared in accordance with *subsection (2)* unless the Minister, within 30 days of the submission of the plan, directs the Agency in writing to amend the plan if, in the Minister's opinion, the plan—
  - (a) does not contain any information required under *subsection (2)*,
  - (b) does not comply in any other respect with *subsection (2)*, or
  - (c) has been prepared without regard to the matters specified in *subsection (2)* or (3).
- (5) When giving a direction to the Agency under *subsection (4)*, the Minister shall give his or her reasons in writing for the direction to the Agency.
- (6) The Agency shall comply with a direction under *subsection (4)* within the period, if any, specified in the direction.
- (7) The Agency may amend a business plan, in accordance with a direction under *subsection (4)*, and where it does so *subsections (2) to (6)* shall apply, with any necessary modifications, to the preparation of the amended plan as they apply to a business plan prepared under *subsection (1)*.
- (8) The chairperson shall—
  - (a) inform the Minister of the measures taken to achieve the priorities determined and the performance targets established under this section and of the outcome of those measures, and
  - (b) provide that information at intervals specified by the Minister or, if no such intervals are specified, in the annual report.

#### **Power of Minister to give direction to Agency**

- 47.** (1) Notwithstanding *sections 41* and *44* and directions issued under those sections, the Minister may give an additional direction in writing to the Agency for any purpose relating to this Act and concerning—
- (a) any matter or thing referred to in this Act or any other enactment, and
  - (b) the implementation of any policy or objective of the Minister or the Government.
- (2) The Agency shall comply with a direction given by the Minister under this section.
- (3) As soon as practicable after giving a direction to the Agency pursuant to *subsection (1)*, the Minister shall—
- (a) cause the direction to be published in *Iris Oifigiúil*, and
  - (b) lay a copy of the direction before each House of the Oireachtas.

- (4) The chairperson shall, within the time specified by the Minister in the direction, inform the Minister of the measures taken by the Agency to comply with that direction.
- (5) A direction given by the Minister under *subsection (1)* shall not interfere with the exercise of professional judgment in a particular case in the performance by the Agency of its functions.
- (6) The Minister shall not give a direction as respects any function of the Agency relating to a decision concerning the making or recovery of a charge for the provision of a service by or on behalf of the Agency to a particular person or concerning the amount of the charge.

#### **Power of Minister to issue guidelines to Agency**

- 48.** (1) Notwithstanding the guidance provided by the Performance Framework under *section 41* or a Performance Statement under *section 44*, the Minister may at any time issue additional guidelines in writing to the Agency for the purposes of this Act.
- (2) Such guidelines may relate to—
- (a) additional policy guidance or changes in policy, and
  - (b) changes in prioritisation of business plan commitments.
- (3) In performing its functions under this Act, the Agency shall have regard to any guidelines issued by the Minister under this section.

#### **Permission of Minister needed for major capital spending**

- 49.** The Agency shall not, without the prior written permission of the Minister, enter into an agreement or arrangement or otherwise commit itself in respect of capital spending on an undertaking, if the total amount spent on the undertaking would exceed an amount that may be specified from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.

#### **Code of governance**

- 50.** (1) The Agency shall, as soon as practicable after it is established, prepare and submit to the Minister for approval a code of governance that includes an outline of—
- (a) the guiding principles applicable to the Agency as a public body having regard to its functions under *section 8*,
  - (b) the structure of the Agency, including the roles and responsibilities of the Board and chief executive officer,
  - (c) the processes and guidelines to be followed to ensure compliance with the reporting requirements imposed on the Agency by or under this Act,
  - (d) the Agency's internal controls, including its procedures relating to internal audits, risk management, public procurement and financial reporting, and

- (e) the nature and quality of service that persons being provided with or seeking services provided by the Agency in accordance with its functions can expect.
- (2) The first code of governance shall include details of the methods to be used to bring about the integration of the governance systems deriving from a transfer of functions to the Agency from—
  - (a) the Health Service Executive, and
  - (b) the dissolved bodies.
- (3) The Agency shall review the code of governance periodically and at such intervals as may be specified by the Minister and shall revise the code as the Agency considers appropriate.
- (4) In preparing or making any revisions to the code of governance, the Agency shall have regard to the Performance Framework issued pursuant to *section 41*.
- (5) Following the Minister's approval of the code of governance or of any revisions to it, the Agency shall arrange for the publication of the code or revised code.
- (6) The Agency shall indicate in its annual report its arrangements for implementing and maintaining adherence to the code of governance.

#### **Accounts of Agency**

- 51.** (1) The chief executive officer shall cause to be kept all proper and usual books or other records of account of—
- (a) all income and expenditure of the Agency,
  - (b) the source of the income and the subject matter of the expenditure, and
  - (c) the property, assets and liabilities of the Agency.
- (2) The chief executive officer shall, in respect of each financial year, cause to be prepared annual financial statements (including accounts of income and expenditure and a balance sheet) in such form as the Minister may direct.
- (3) The annual statements shall be prepared by the Agency in accordance with accounting standards specified by the Minister.
- (4) Without prejudice to the generality of *subsection (1)*, the chief executive officer will also keep such special accounts as the Minister may direct.
- (5) The books, records and special accounts kept under this section shall be kept—
- (a) in such form, and
  - (b) for such accounting periods,
- as the Minister may specify, with the consent of the Minister for Public Expenditure and Reform.
- (6) The accounts of the Agency prepared by the chief executive officer and approved by the Board shall be submitted to the Comptroller and Auditor General for audit not less

than 3 months after the end of the financial year to which the accounts relate.

- (7) Within one month of the Comptroller and Auditor General issuing an audit certificate for the accounts of the Agency, a copy of—
- (a) the accounts, and
  - (b) 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 thereof to be laid before each House of the Oireachtas.
- (8) If required by the Minister, the Agency shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the Agency.
- (9) The Agency, the chief executive officer and other employees of the Agency—
- (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 Agency in respect of any financial year or other period, and
  - (b) shall facilitate the examination,
- and the Agency shall pay such fee as may be fixed by the Minister for the examination.

#### **Advances by Minister to Agency**

52. The Minister may, from time to time, with the consent of the Minister for Public Expenditure and Reform, advance to the Agency, out of moneys provided by the Oireachtas, such amounts on such terms and conditions in such manner as the Minister may think fit for the purposes of expenditure by the Agency in the performance of its functions.

## PART 7

### EMPLOYEES AND ADVISERS

#### **Employees of Agency**

53. (1) Subject to any directions that may be issued by the Minister in relation to the matters specified in *subsections (2) and (3)*, the Agency may appoint persons to be the Agency's employees and may determine their duties.
- (2) Members of staff of the Agency shall be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.
- (3) The Agency, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, shall determine—
- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of employees appointed under this section, or



- (b) the grades of the employees of the Agency and the numbers of employees in each grade.
- (4) A person is not eligible for appointment as an employee of the Agency 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) The remuneration and allowances of the Agency's employees are payable by the Agency to the employees out of funds at the Agency's disposal.

### **Superannuation**

- 54.** (1) As soon as may be the Agency shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of—
- (a) persons who were accepted into its employment in accordance with *section 73* or *83*,
  - (b) such other members of its staff (including the chief executive officer), other than persons to whom the Single Public Service Pension Scheme applies by virtue of Chapter 2 of Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, as it considers appropriate, and
  - (c) former members of the staff of a dissolved body (other than those who were accepted into the employment of the Agency in accordance with *section 73*), including those who are deceased.
- (2) Every scheme will 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.
  - (3) The Agency may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section.
  - (4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the Agency in accordance with its terms.
  - (5) A scheme under this section shall make provision for appeals.
  - (6) A superannuation benefit shall not be granted by the Agency to or in respect of any of its staff (including the chief executive officer) who are members of a scheme under this section and no other arrangement shall be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office other than in accordance with such scheme or schemes submitted and approved under this section or an arrangement approved by the Minister and the Minister for Public Expenditure and Reform.
  - (7) (a) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association and approved by the Minister with the consent of

the Minister for Public Expenditure and Reform, a scheme under *subsection (1)* shall, as respects—

- (i) a person accepted into the employment of the Agency in accordance with *section 73* or *83*, or
- (ii) a former member of the staff of a dissolved body referred to in *paragraph (c)* of *subsection (1)*,

provide for the granting to or in respect of him or her of superannuation benefits upon and subject to such terms and conditions as are not less favourable to him or her than the terms and conditions in relation to the grant of such benefits that applied to him or her immediately before the establishment day.

- (b) Any period of service by a person as a member of the staff of a dissolved body which was a period of reckonable service for the purposes of a scheme for the granting of superannuation benefits to or in respect of members of the staff of a dissolved body shall be regarded as a period of reckonable service for the purposes of any scheme under *subsection (1)*.
- (8) (a) 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 accepted into the employment of the Agency in accordance with *section 73* or *83*, the benefit shall be calculated and paid by the Agency in accordance with such scheme, arrangements or enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Agency shall be aggregated with his or her previous pensionable service.
- (b) 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 (including a person who is deceased) who was a member of the staff of a dissolved body but was not accepted into the employment of the Agency in accordance with *section 73* or *83*, the benefit shall be calculated and paid by the Agency in accordance with such scheme, arrangements or enactments in relation to superannuation, as applied to the person immediately before the establishment day.
- (9) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.
- (10) In this section “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

### **Consultants and advisers**

55. (1) The Agency, with the approval of the Minister given with the consent of the Minister

for Public Expenditure and Reform, may engage such consultants or advisers as it considers necessary for the performance of its functions.

- (2) Any fees due to a consultant or adviser engaged under this section are payable by the Agency out of funds at its disposal.

## PART 8

### PROVISION OF SERVICES

#### Arrangements with service providers

- 56.** (1) The Agency may, subject to its available resources and having regard to the required level of service identified in the corporate plan or annual business plan and any directions issued by the Minister under *section 47*, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of child and family services or services provided pursuant to *section 8(3)(b)*.
- (2) Before entering into an arrangement under *subsection (1)*, the Agency shall determine, in respect of a financial year of the Agency, the maximum amount of funding (whether capital funding or non-capital funding) that it proposes to make available during the course of that year under such an arrangement and the level of service it expects to be provided for that funding.
  - (3) A service provider shall—
    - (a) keep in such form as may be approved by the Agency in accordance with any general direction issued by the Minister, all proper and usual accounts and records of income received and expenditure incurred by it,
    - (b) submit such accounts annually for audit, and
    - (c) supply a copy of the audited accounts and the auditor's certificate and report on the accounts to the Agency within such period as may be specified by the Agency.
  - (4) The expenses of an audit of accounts submitted in accordance with *subsection (3)* are payable by the service provider submitting them for audit.
  - (5) *Subsection (3)* does not apply to a service provider—
    - (a) who in any financial year receives from the Agency in respect of services provided on foot of an arrangement entered into under *subsection (1)* an amount of money that does not exceed an amount of money or a percentage of the annual income of that service provider that may be determined by the Board with the approval of the Minister, or
    - (b) who belongs to a category of service provider specified by the Minister.
  - (6) The Agency may make such arrangements as it considers appropriate to monitor—
    - (a) the expenditure incurred in the provision of services by service providers exempted under *subsection (5)*, and

- (b) the provision of those services by such service providers.
- (7) The service providers referred to in *subsection (6)* shall facilitate arrangements made by the Agency under that subsection.
- (8) The Agency may request from a service provider any information that it considers material to the provision of a service by the service provider.
- (9) A service provider shall comply with a request made under *subsection (8)*.
- (10) Where a service provider fails to comply with a request under *subsection (8)*—
  - (a) the Agency shall not enter into an arrangement under *subsection (1)* with that provider, and
  - (b) where such an arrangement has been entered into, the Agency may terminate the arrangement concerned.
- (11) When requested to do so by the Minister, the Agency shall supply the Minister with any information obtained in response to a request under *subsection (8)*.
- (12) Nothing in this Act shall empower the Agency to delegate to a service provider the duty imposed on it under section 4 of the Child Care Act 1991 to take a child into its care or to make an application for an order under Part III, IV, IVA (as amended by the Child Care (Amendment) Act 2011) or VI of that Act.
- (13) The Minister may prescribe requirements in respect of—
  - (a) the expenditure incurred by the Agency in the provision of services by service providers, and
  - (b) the provision of those services by service providers.
- (14) For the avoidance of doubt, an arrangement under this section shall not give rise to an employment relationship between a service provider, its employees or agents on the one hand and the Agency on the other.
- (15) In this section “service provider” means a person involved in the provision of child and family services otherwise than for profit, which services, in the opinion of the Agency, are services that are similar to activities carried out by the Agency and consistent with its functions.

#### **Provision of services by statutory body**

- 57.** (1) For the purpose of enabling the Agency to perform its functions, a statutory body may provide any service to the Agency on such terms and conditions (including payment for such service) as may be agreed and the Agency may avail of such service.
- (2) A statutory body, where it has entered into a service contract with the Agency, shall appoint, from among its employees, persons to be authorised officers for the purpose of the contract and shall, as soon as may be, inform the Agency of any such appointment and such persons shall have all the powers available to authorised officers under this Act or Part VII of the Child Care Act 1991 when carrying out duties under a service contract.

- (3) Every authorised officer appointed under this section shall be furnished, by the statutory body concerned, with a warrant of his or her appointment as an authorised officer and when exercising any power conferred on him or her by this section shall, if requested by a person affected by such exercise, produce the warrant or a copy thereof to that person.
- (4) An appointment made under this section shall cease where—
  - (a) the relevant service contract is terminated,
  - (b) the appointment is for a fixed period, upon the expiry of that period, or
  - (c) where the person appointed ceases to be an employee of the statutory body concerned.
- (5) Where a contract has been entered into in accordance with *subsection (1)*, proceedings in relation to a summary offence may be brought and prosecuted by the statutory body concerned.
- (6) In this section “service” includes the use of premises or equipment and the use of services or employees.

**Particular arrangements — special care and residential places**

- 58.** (1) The Agency may make arrangements with any suitable person to discharge its obligations under section Part IVA and Part VI of the Child Care Act 1991 (as amended by the Child Care (Amendment) Act 2011).
- (2) A person referred to in *subsection (1)* shall—
    - (a) keep in such form as may be approved by the Agency, in accordance with any general direction issued by the Minister, all proper and usual accounts and records of income received and expenditure incurred by it,
    - (b) submit such accounts annually for audit, and
    - (c) supply a copy of the audited accounts and the auditor’s certificate and report on the accounts to the Agency within such period as may be specified by the Agency.
  - (3) The expenses of an audit of accounts submitted in accordance with *subsection (2)* are payable by the person submitting them.
  - (4) The Agency may request from a person referred to in *subsection (1)* any information that it considers material to the provision of a service by such a person in such form as it may specify.
  - (5) A person shall comply with a request made under *subsection (4)* within a reasonable period of time.
  - (6) Where a person fails to comply with a request made under *subsection (4)*, the Agency—
    - (a) shall not enter into an arrangement with that person under *subsection (1)*, and
    - (b) where such an arrangement has been entered into, the Agency may proceed to

terminate the arrangement.

- (7) At the Minister's request, the Agency shall supply the Minister with any information obtained in response to a request under *subsection (4)*.
- (8) Nothing in this Act shall empower the Agency to delegate to a service provider the duty imposed on it under section 4 of the Child Care Act 1991 to take a child into its care or to make an application for an order under Part III, IV, IVA (as amended by the Child Care (Amendment) Act 2011) or VI of that Act.
- (9) The Minister may prescribe requirements relating to the provision of services by service providers in accordance with this section.
- (10) For the avoidance of doubt, an arrangement under this section shall not give rise to an employment relationship between a service provider and its employees or agents on the one hand and the Agency on the other.

### **Supplemental service**

- 59.** (1) The Agency may, subject to any directions given by the Minister in accordance with *section 47*, and on such terms and conditions as it considers appropriate, give assistance to a person that provides or proposes to provide, otherwise than for profit, a service supplemental to services provided by the Agency.
- (2) Assistance under this section may be provided by—
    - (a) a grant, or
    - (b) a contribution in kind, whether by way of materials or labour or any other service.
  - (3) Assistance may be provided to a person under this section whether or not the person is also a service provider who has entered into an arrangement under *section 56*.
  - (4) The Agency may make such arrangements, including the imposition of requirements on a person, as it considers appropriate to monitor—
    - (a) the use of grant aid, and
    - (b) where the person provides services directly to a child or family, the provision of those services.
  - (5) The Agency may request a person to provide it with any information that it considers material to accountability in respect of the funds provided.
  - (6) A person shall within a reasonable period of time comply with any requirement imposed by the Agency under *subsection (4)* or any request made by the Agency under *subsection (5)*.
  - (7) Where a person fails to comply with a requirement under *subsection (4)* or a request under *subsection (5)*, the Agency may not give further assistance to that person under *subsection (1)*.
  - (8) In this section “service supplemental to services provided by the Agency” means—

- (a) the provision of a community development resource to promote child and family support services, or
- (b) activities which are ancillary to child and family support services provided by the Agency or by a service provider on its behalf.

## PART 9

### COMPLAINTS

#### **Definitions (Part 9)**

**60.** In this Part—

“action” means anything done or omitted to be done—

- (a) by the Agency, or
- (b) by a service provider in connection with the provision of a service that is the subject of an arrangement under *section 56* or *58*;

“close relative”, in relation to another person, means a person who—

- (a) is a parent, guardian, son, daughter, spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of the other person, or
- (b) is cohabiting with the other person;

“complainant” means a person who is entitled under *section 61* to make a complaint under this Part on the person’s own behalf or on behalf of another;

“complaint” means a complaint made under this Part about any action of the Agency or a service provider in accordance with procedures established under *section 64(1)(a)* that—

- (a) it is claimed does not accord with fair or sound administrative practice, and
- (b) adversely affects the person by whom or on whose behalf the complaint is made;

“complaints officer” means a person designated—

- (a) by the Agency for the purpose of dealing with complaints made to it in accordance with procedures established under *section 64(1)(a)*, or
- (b) by a service provider for the purpose of dealing with complaints made to the service provider in accordance with procedures established under *section 64(1)(a)* or *(2)*.

#### **Persons who may make complaints**

**61.** (1) Any person who is being or was provided with a service by the Agency or by a service provider or who is seeking or has sought provision of such service may complain, in accordance with the procedures established under this Part, about any action of the Agency or a service provider that—

- (a) it is claimed does not accord with fair and sound administrative practice, and
  - (b) adversely affects or affected that person.
- (2) For the purposes of this Part, an action does not accord with fair and sound administrative practice if it is—
- (a) taken without proper authority,
  - (b) taken on irrelevant grounds,
  - (c) the result of negligence or carelessness,
  - (d) based on erroneous or incomplete information,
  - (e) improperly discriminatory,
  - (f) based on undesirable administrative practice, or
  - (g) in any other respect contrary to fair or sound administration.
- (3) If a person entitled under this section to make a complaint is unable to do so because of age, illness or disability, the complaint may be made on that person's behalf by—
- (a) a close relative or carer of the person,
  - (b) any person who, by law or by appointment of a court, has the care of the affairs of that person,
  - (c) any legal representative of the person,
  - (d) any other person with the consent of the person, or
  - (e) any other person who is appointed as prescribed in regulations made under *section 68*.
- (4) If a person who would otherwise have been entitled under this section to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative or carer of that person.

#### **Time limit for making complaints**

- 62.** (1) A complaint must be made within the period specified under *subsection (2)* or the extended time limit under *subsection (3)*.
- (2) The specified period is 12 months beginning not later than—
- (a) the date of the action giving rise to the complaint, or
  - (b) the date the person by whom or on whose behalf the complaint is to be made became aware of the action giving rise to the complaint.
- (3) A complaints officer may extend the time limit for making a complaint if in the opinion of the complaints officer special circumstances make it appropriate to do so.



**Matters excluded from right to complain**

- 63.** (1) A person is not entitled to make a complaint about any of the following matters:
- (a) a matter that is or has been the subject of legal proceedings before a court or tribunal or the subject of an appeal under section 15 of the Education (Welfare) Act 2000;
  - (b) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of either the Agency or a service provider;
  - (c) an action taken by the Agency or a service provider solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph (b)*;
  - (d) a matter relating to the recruitment or appointment of an employee by the Agency or a service provider;
  - (e) a matter relating to or affecting the terms or conditions of a contract of employment that the Agency or a service provider proposes to enter into or of a contract with a consultant or adviser that the Agency proposes to enter into under *section 55*;
  - (f) a matter relating to the Social Welfare Acts;
  - (g) a matter that could prejudice an investigation being undertaken by the Garda Síochána;
  - (h) a matter that has been brought before any other complaints procedure established under an enactment.
- (2) *Subsection (1)(h)* does not prevent a complaints officer from dealing with a complaint that was made to the Ombudsman or the Ombudsman for Children and that is referred by him or her to a complaints officer.
- (3) In relation to a contract referred to in *subsection (1)(e)* “terms or conditions” includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures.

**Complaint and review procedures to be established**

- 64.** (1) Subject to *subsection (2)* and any regulations under *section 68*, the Agency shall establish procedures for—
- (a) dealing with complaints against the Agency or a service provider, and
  - (b) reviewing, at the request of a complainant, any recommendation made by a complaints officer following the investigation of a complaint.
- (2) Any service provider may, with the agreement of the Agency, establish procedures, in place of the procedures established under *subsection (1)(a)*, for dealing with complaints against the service provider.
- (3) The Agency may agree to a service provider establishing such procedures if satisfied that they will be of a comparable standard to the procedures established by the

Agency under *subsection (1)(a)*.

- (4) Subject to any regulations under *section 68*, the Agency may assign to another person the Agency's functions under *subsection (1)*.

### **Refusal to investigate or further investigate complaints**

**65.** (1) A complaints officer shall not investigate a complaint if—

- (a) the person who made the complaint is not entitled under *section 61* to do so either on the person's own behalf or on behalf of another,
- (b) the complaint is made after the expiry of the period specified in *section 62(2)* or any extension of that period allowed under *section 62(3)*.

(2) A complaints officer may decide not to investigate or further investigate an action to which a complaint relates if, after carrying out a preliminary investigation into the action or after proceeding to investigate such action, that officer—

(a) is of the opinion that—

- (i) the complaint does not disclose a ground of complaint provided for in *section 61*,
- (ii) the subject matter of the complaint is excluded by *section 63*,
- (iii) the subject matter of the complaint is trivial, or
- (iv) the complaint is vexatious or not made in good faith,

or

(b) is satisfied that the complaint has been resolved.

(3) A complaints officer shall, as soon as practicable after determining that he or she is prohibited by *subsection (1)* from investigating a complaint or after deciding under *subsection (2)* not to investigate or further investigate a complaint, inform the complainant in writing of the determination or decision and the reasons for it.

### **Restriction on type of recommendations complaints officers may make and power to suspend implementation of recommendations**

**66.** (1) A complaints officer shall not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause—

- (a) the Agency to make a material amendment to its business plan prepared under *section 46* or its corporate plan approved under *section 42*, or
- (b) a service provider and the Agency to make a material amendment to an arrangement under *section 56* or *58*.

(2) If, in the opinion of the relevant person, such a recommendation is made, that person shall either—

- (a) amend the recommendation in such manner as makes the amendment to the

business plan, corporate plan or arrangement unnecessary, or

- (b) reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.
- (3) Pending the outcome of a review, the relevant person may suspend the implementation of a recommendation made by a complaints officer if satisfied that, in the interests of fair and sound administration, it is appropriate to do so.
- (4) In this section “relevant person” means—
  - (a) in relation to a complaint dealt with by the Agency in accordance with the procedures established under *section 64(1)*, the chief executive officer, and
  - (b) in relation to a complaint dealt with in accordance with the procedures established by a service provider under *section 64(2)*, the service provider.

#### **Adherence to complaint and review procedures to be condition of arrangements with service providers**

67. (1) It is a condition of any arrangement under *section 56* or *58* with a service provider that the service provider shall—
- (a) adhere to the complaints procedures established by the Agency in accordance with *section 64(1)* and any regulations under *section 68*, or
  - (b) establish the procedures agreed under *section 64(2)* and adhere to those procedures.
- (2) In addition, it is a condition of such arrangement that the service provider shall cooperate with the Agency, or with any person to which the Agency assigns its functions under *section 64(4)*, in any review of a recommendation made by a complaints officer following the investigation of a complaint against the service provider.
- (3) The Agency shall exercise any rights or remedies available to it under such arrangement if the service provider concerned does not fulfil any of the applicable conditions specified in *subsections (1)* and *(2)*.

#### **Regulations for the purposes of this Part**

68. The Minister may prescribe matters, including the following, for the purposes of this Part:
- (a) requirements to be complied with by complainants;
  - (b) the appointment of persons as complaints officers and the functions of complaints officers;
  - (c) the procedure to be followed in investigating complaints;
  - (d) the making of recommendations by complaints officers following the investigation of complaints and the nature of the recommendations that, subject to *section 66*, they are authorised to make;

- (e) the implementation of recommendations made by complaints officers;
- (f) the appointment of persons as review officers and the functions of those officers;
- (g) the procedure to be followed in undertaking reviews;
- (h) the making of recommendations by review officers following the review of a complaint and the nature of the recommendations that they are authorised to make;
- (i) the implementation of recommendations made by review officers;
- (j) the assignment by the Agency of functions under *section 64(4)*.

#### **Referral of complaints to Ombudsman or Ombudsman for Children**

- 69.** (1) Nothing in this Part prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint under this Part or with a review under this Part from referring the complaint to the Ombudsman or the Ombudsman for Children.
- (2) For the purposes of the Ombudsman Acts 1980 to 2012 and the Ombudsman For Children Act 2002, any action taken by a service provider in relation to a service in respect of which the service provider has entered into an arrangement under *section 56* or *58* is deemed to have been taken by the Agency.

#### **Annual report to include report on complaints and reviews**

- 70.** (1) The Agency shall submit to the Minister, as part of the Agency's annual report, a general report on the performance of its functions under this Part during the previous year containing such information as the Agency considers appropriate or as the Minister may specify.
- (2) A service provider who has established a complaints procedure by agreement with the Agency shall in each year, at such time and in such manner as the Agency may determine, provide the Agency with a general report on the complaints received by the service provider during the previous year indicating—
- (a) the total number of complaints received,
  - (b) the nature of the complaints,
  - (c) the number of complaints resolved by informal means, and
  - (d) the outcome of any investigations into the complaints.
- (3) If the Agency assigns its functions under *section 64(4)* to another person, that person shall in each year, at such time and in such manner as the Agency may determine, provide the Agency with a general report on the complaints dealt with and reviews conducted by it during the previous year indicating—
- (a) the total number of complaints and reviews,
  - (b) the nature of the complaints and reviews, and

- (c) the outcome of the complaints and reviews.

## PART 10

### DISSOLUTION OF FAMILY SUPPORT AGENCY AND NATIONAL EDUCATIONAL WELFARE BOARD

#### **Dissolution of Family Support Agency and National Educational Welfare Board**

71. On the establishment day the Family Support Agency and the National Educational Welfare Board are dissolved.

#### **Transfer of functions to Agency**

72. (1) The administration and business in connection with the performance of any of the functions transferred by *subsection (2)* are transferred, on the establishment day, to the Agency.
- (2) The functions vested in the National Educational Welfare Board by or under section 10(1) of the Education (Welfare) Act 2000 shall, on the establishment day, stand transferred to the Agency.

#### **Transfer of members of staff of dissolved bodies**

73. (1) Each person who, immediately before the establishment day, was a member of staff of a dissolved body is, on that day, transferred to and becomes a member of staff of the Agency.
- (2) Save in accordance with any enactment or a collective agreement negotiated with any recognised trade union or staff association, a person transferred to the Agency under *subsection (1)* shall not, on the establishment day, be subject to less beneficial terms and conditions of service (including those relating to tenure of office) or remuneration than the terms and conditions of service (including those relating to tenure of office) or remuneration to which he or she was subject immediately before the establishment day.
- (3) In relation to persons transferred to the Agency under *subsection (1)*, previous service with a dissolved body shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2007, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Unfair Dismissals Acts 1977 to 2007.

#### **Property and rights and liabilities of dissolved bodies**

74. (1) On the establishment day, all property that was immediately before that day, the property of a dissolved body is to be transferred to and vested in the Agency without any conveyance or assignment.
- (2) All rights and liabilities of a dissolved body arising by virtue of any contract,

agreement or arrangement—

- (a) entered into by or on behalf of a dissolved body before the establishment day, and
  - (b) in effect immediately before the establishment day,
- are on the establishment day transferred to the Agency.
- (3) Each right and liability transferred under this section, on or after its transfer to the Agency, may be sued on, recovered or enforced by or against the Agency in the Agency's own name.
  - (4) The Agency need not give notice of the transfer to the person whose right or liability is transferred to the Agency.

#### **Preservation of contracts made by dissolved bodies**

75. Every contract, agreement or arrangement made between a dissolved body or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the establishment day, shall continue in force and shall be construed and have effect as if the name of the Agency were substituted therein for that of the dissolved body concerned or, as may be appropriate, its trustee or agent, and shall be enforceable by or against the Agency.

#### **Records of dissolved bodies**

76. Each record held by a dissolved body immediately before the establishment day shall, on that day, stand transferred to the Agency and shall, on and after that day, be the property of the Agency and be regarded as being held by the Agency.

#### **Liability for loss occurring before establishment day**

77. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of a dissolved body shall on and after that day, lie against the Agency and not against the dissolved body concerned.
- (2) Any legal proceedings pending immediately before the establishment day to which a dissolved body is a party, shall be continued, with the substitution in the proceedings of the Agency, in so far as they so relate, for the dissolved body concerned.
  - (3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against a dissolved body, be enforceable against the Agency and not the dissolved body concerned.
  - (4) Any claim made or proper to be made by a dissolved body in respect of any loss or injury arising from the act or default of any person before the establishment day shall be regarded as having been made by or proper to be made by the Agency and may be pursued and sued for by the Agency as if the loss or injury had been suffered by the

Agency.

#### **References to dissolved bodies in enactments made before establishment day**

78. References (however expressed) to a dissolved body in any enactment or instrument under an enactment shall after the establishment day, unless the context otherwise requires, be construed as references to the Agency.

#### **Final accounts of dissolved bodies**

79. (1) As soon as may be, but not more than 3 months, after the establishment day, the Agency shall cause to be prepared final accounts of each dissolved body in respect of the accounting period or part thereof of the dissolved body concerned ending immediately before the establishment day.
- (2) Accounts prepared pursuant to this section shall be submitted by the Agency 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 annual report of dissolved bodies**

80. (1) The Agency shall prepare a final annual report for each of the dissolved bodies and shall submit that report to the Minister not later than 6 months after the establishment day.
- (2) *Subsections (4) to (6) of section 13* shall apply in relation to publication of the final annual report.

#### **Transitional provisions consequent upon transfer of functions of dissolved bodies**

81. Anything commenced by or under the authority of a dissolved body and not completed before the establishment day may be carried on or completed on or after the establishment day by the Agency.

### PART 11

#### TRANSFER OF CERTAIN STAFF, FUNCTIONS, ETC. OF HEALTH SERVICE EXECUTIVE TO AGENCY

#### **Transfer of certain functions of Health Service Executive**

82. (1) The administration and business in connection with the performance of any of the functions transferred by *subsection (2)* are transferred, on the establishment day, to the Agency.
- (2) The functions vested in the Health Service Executive by or under the enactments specified in *Schedule 1* shall, on the establishment day, stand transferred to the

Agency.

#### **Transfer of certain employees of Health Service Executive**

- 83.** (1) Such persons as are designated by the Minister for Health, following consultation with the Minister, and who, immediately before the establishment day, were employees of the Health Service Executive, shall, on such day or days as may be specified for the purpose by the Minister for Health, following consultation with the Minister, be transferred to and become members of staff of the Agency.
- (2) Save in accordance with any enactment or a collective agreement negotiated with any recognised trade union or staff association, a person transferred to the Agency under *subsection (1)* shall not, on the establishment day, be subject to less beneficial terms and conditions of service (including those relating to tenure of office) or remuneration than the terms and conditions of service (including those relating to tenure of office) or remuneration to which he or she was subject immediately before the establishment day.
- (3) In relation to persons transferred to the Agency under *subsection (1)*, previous service with the Health Service Executive shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2007, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Unfair Dismissals Acts 1977 to 2007.

#### **Land and other property of Health Service Executive**

- 84.** On the establishment day, all such land and other property as is agreed between the Minister and the Minister for Health, which immediately before that day, was the property of the Health Service Executive shall be transferred to and vested in the Agency without any conveyance or assignment.

#### **Transfer of rights and liabilities of Health Service Executive**

- 85.** (1) All rights and liabilities of the Health Service Executive arising by virtue of any contract, agreement or arrangement, or commitment (express or implied) entered into by the Health Service Executive and all obligations imposed on the Health Service Executive by virtue of an order of a court or tribunal before the establishment day, insofar as they relate to functions transferred under *section 82*, shall, on that establishment day, stand transferred to the Agency.
- (2) Every right and liability transferred by *subsection (1)* may, on and after the transfer, be sued on, recovered or enforced by or against the Agency in its name and it shall not be necessary for the Agency to give notice to a person whose right or liability is transferred by that subsection.

#### **Preservation of contracts of Health Service Executive**

- 86.** (1) Every contract, agreement or arrangement insofar as it relates to functions transferred



under *section 82* made between the Health Service Executive or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the establishment day, shall continue in force and shall be construed and have effect as if the name of the Agency were substituted therein for that of the Health Service Executive or, as may be appropriate, its trustee or agent, and shall be enforceable by or against the Agency.

- (2) Notwithstanding *subsection (1)*, where a contract, agreement or arrangement relates to a service required in connection with the performance of a function transferred under *section 82* and also relates to a service required in connection with the performance of a function which, after the establishment day, remains a function of the Health Service Executive, the Health Service Executive and the Agency may agree in writing that such contract, agreement or arrangement shall continue in force as if the name of the Agency were included therein with that of the Health Service Executive or, as may be appropriate, its trustee or agent, and the contract, agreement or arrangement concerned shall be enforceable by or against the Agency in so far as the service the subject matter of the contract, agreement or arrangement is required in connection with the performance of a function transferred under *section 82* and by or against the Health Service Executive in so far as the service the subject matter of the contract, agreement or arrangement is required in connection with the performance of a function of the Health Service Executive.

#### **Records of Health Service Executive**

87. Each record held by the Health Service Executive immediately before the establishment day insofar as it relates to functions transferred under *section 82* shall, on that establishment day, stand transferred to the Agency and shall, on and after that establishment day, be the property of the Agency and be regarded as being held by the Agency.

#### **Pending legal proceedings — Health Service Executive**

88. Where, immediately before the establishment day, legal proceedings to which the Health Service Executive is a party and which relate to functions referred to in *section 82* are pending, the name of the Agency, on the establishment day, shall be substituted for that of the Health Service Executive in the proceedings and the proceedings shall not abate by reason of that substitution.

#### **Continuation of delegations and sub-delegations made under Health Act 2004**

89. (1) A delegation or a sub-delegation made under the Health Act 2004 (amended by the Health Service Executive (Governance) Act 2013), which relates to a function transferred to the Agency under this Act, shall continue to have effect where the employee to whom the function was delegated or sub-delegated is transferred to and becomes a member of staff of the Agency under *section 83*.
- (2) The Agency may amend or revoke a delegation or sub-delegation referred to in *subsection (1)*.

**References to Health Service Executive in enactments made before establishment day**

90. References (however expressed) to the Health Service Executive in any enactment or instrument under an enactment shall after the establishment day, insofar as they relate to a function transferred to the Agency by *section 82* unless the context otherwise requires, be construed as references to the Agency.

**Transitional provisions consequent upon transfer of certain functions of Health Service Executive**

91. Anything commenced by or under the authority of the Health Service Executive and not completed before the establishment day may, insofar as it relates to a function transferred to the Agency under *section 82*, be carried on or completed on or after the establishment day by the Agency.

## PART 12

## AMENDMENT OF CHILD CARE ACT 1991

**Amendment of Child Care Act 1991**

92. The Child Care Act 1991 is amended by the insertion of the following after Part VII:

## “PART VIIA

## SUPERVISION OF EARLY YEARS SERVICES

**Definitions for this Part**

58A. In this Part—

‘Agency’ has the same meaning as it has in the *Child and Family Agency Act 2013*;

‘arts’ has the same meaning as it has in the Arts Act 2003;

‘authorised person’ means a person appointed under section 58I to be an authorised person for the purposes of this Part;

‘competitive sport’ has the same meaning as it has in the Irish Sports Council Act 1999;

‘early years service’ means a service providing—

- (a) a pre-school service, or
- (b) a school age service;

‘pre-school child’ means a child who has not attained the age of six years, and who is not attending a recognised school;

‘pre-school service’ means any pre-school, play group, day nursery, crèche, day-care or other similar service which caters for pre-school

children;

‘recognised school’ has the same meaning as it has in the Education Act 1998;

‘recreational sport’ has the same meaning as it has in the Irish Sports Council Act 1999;

‘register’ means the register established and maintained in accordance with section 58C;

‘school age child’ means a child who is attending a school age service;

‘school age service’ means any early years service, play group, day nursery, crèche, day-care or other similar service which—

- (a) caters for children enrolled in a recognised school providing primary education,
- (b) provides a range of activities that are developmental, educational and recreational in manner and which take place outside of school hours, and
- (c) the basis for access to which is made publicly known to the parents and guardians of the children referred to in paragraph (a) of this definition,

but excludes those services—

- (i) solely providing activities relating to—
  - (I) the Arts,
  - (II) youth work,
  - (III) competitive or recreational sport, or
  - (IV) tuition,
- or
- (ii) for whom statutory provision for inspection exists, prior to the commencement of this section;

‘youth work’ has the same meaning as it has in the Youth Work Act 2001.

### **Regulations**

58B. (1) The Minister shall, after consultation with the Minister for Education and Skills and the Minister for the Environment, Community and Local Government, make regulations for the purpose of securing the health, safety and welfare and promoting the development of children attending early years services.

(2) Without prejudice to the generality of subsection (1), regulations may—

- (a) prescribe any matter or thing referred to in this Part as prescribed

or to be prescribed,

- (b) prescribe requirements as to the heating, lighting, ventilation, cleanliness, repair and maintenance of premises in which early years services are carried on and as to the equipment and facilities to be provided,
  - (c) provide for the enforcement and execution of the regulations by the Agency,
  - (d) prescribe the fees to be paid to the Agency by persons carrying on prescribed early years services towards the cost of inspections under this Part,
  - (e) prescribe the minimum level of qualifications for any class or classes of persons working in an early years service, and
  - (f) prescribe any additional particulars and details required in relation to the register.
- (3) Regulations under this section may—
- (a) make different provision for different classes of early years services,
  - (b) prescribe different requirements for different classes of early years services,
  - (c) provide for exemptions from any provision or provisions of the regulations for a specified class or classes of early years services.

### **Register**

- 58C. (1) The Agency shall establish and maintain a register to be known as the register of prescribed early years services (the ‘register’).
- (2) The register shall contain the names of persons who provide prescribed early years services (‘registered providers’), the addresses of the premises on which those services are provided, the number of children each service can accommodate, the date of registration and any other details required by regulations made under section 58B.
  - (3) The register may be established and maintained in paper or electronic form.
  - (4) The register shall be available for inspection by members of the public, free of charge, at such times and in such manner as may be prescribed.

### **Registration**

- 58D. (1) A person shall not provide a prescribed early years service unless his or her name is entered in the register as a provider of that service.
- (2) The provider of a prescribed early years service or a person who proposes to provide a prescribed early years service shall make an

application to the Agency to be registered in the register.

- (3) An application under subsection (2) shall be in such form as may be prescribed and accompanied by such fee as may be prescribed.
- (4) The period of a registration shall be 3 years from the date of registration.
- (5) The Agency may, on application to it in that behalf by a person who is providing or proposes to provide a prescribed early years service—
  - (a) register the provider concerned,
  - (b) register that provider with a condition or conditions attached to that registration,
  - (c) refuse to register that provider or proposed provider.
- (6) The Agency may remove a registered provider from the register.
- (7) Where the Agency becomes aware that any particular entered in the register is incorrect it may amend the register to correct the matter.
- (8) The Agency shall attach a condition to a registration, refuse a registration, or remove a registered provider from the register where it is satisfied that—
  - (a) the premises in which the prescribed early years service is, or is proposed to be, provided do not comply with regulations made under this Part, or
  - (b) the carrying on of the prescribed early years service concerned is not, or will not be, in compliance with such regulations.
- (9) The Agency shall refuse to register an applicant and shall remove from the register a registered provider—
  - (a) who has been convicted of—
    - (i) an offence under this Part, or
    - (ii) any offence that in the Agency's opinion renders such person unfit to carry on or be in charge of such service,
  - (b) who has failed to furnish, within 21 days or such further period as the Agency considers reasonable in the circumstances, the Agency with information the Agency has reasonably required for the performance of its functions under this Part, or has knowingly furnished the Agency with information that is false or misleading in a material particular, or
  - (c) who has, within the 12 months preceding the date on which registration or removal from the register would take effect, contravened a condition attached to the registration concerned.
- (10) The registered provider, not less than 2 months before the expiry of the

period of registration concerned, shall apply to the Agency in accordance with subsection (2) to be registered and, where the Agency does not propose to refuse to register or to attach a condition to the registration of the prescribed early years service concerned, it shall renew the registration and the date of registration shall be the day following the day of expiry of the previous registration.

- (11) Where the Agency proposes to refuse to register an applicant, to remove a registered provider from the register, to attach a condition to, or amend or revoke a condition attached to, a registration, it shall notify in writing the applicant or the registered provider, as the case may be, of its proposal and of the reasons for it.
- (12) A notification under subsection (11) shall include a statement that the person concerned may, within 21 days of the receipt by him of the notification—
  - (a) make representations to the Agency, or
  - (b) appeal to the District Court under section 58F against the decision.
- (13) A person who has been notified of a proposal under subsection (11) may, within 21 days of the receipt of the notification, make representations in writing to the Agency and the Agency shall—
  - (a) before deciding the matter, take into consideration any representations duly made to it by that person, and
  - (b) notify the person in writing of its decision within 21 days of the receipt of any representations made to it and of the reasons for it.
- (14) Where a registered provider ceases to provide a prescribed early years service that provider shall inform the Agency in writing as soon as reasonably practicable of that cessation.

#### **Notice to Health Service Executive**

58E. A person who, before the amendment of this Part by the *Child and Family Agency Act 2013*, gave notice to the Health Service Executive in the manner prescribed under section 51 of the Child Care Act 1991 shall be deemed for the purposes of this Part to be a registered provider for a period of 3 years from the date of commencement of this section.

#### **Appeals to District Court**

58F. (1) A registered provider or an applicant, may, within 21 days of the receipt of the notification of a decision under section 58D, appeal to the District Court against a decision of the Agency to—

- (a) refuse to register the applicant under section 58D,
- (b) remove the registered provider from the register, or
- (c) attach a condition, or amend or revoke a condition attached, to that registration.

- (2) The court may, if it so thinks proper, confirm the decision of the Agency under section 58D or direct the Agency, as may be appropriate, to register an applicant, to restore the registration of a registered provider, to attach or withdraw a condition or amend or revoke a condition, of the registration concerned.
- (3) The jurisdiction conferred on the District Court by this section shall be exercised by the judge of the District Court for the time being assigned to the district court district in which the premises in which the registered provider provides the prescribed early years service, or the premises in which it is proposed that an applicant shall provide a prescribed early years service, is situated.
- (4) A decision of the District Court under this section on a question of fact shall be final.

**Duty of person providing early years service**

58G. It shall be the duty of every person providing an early years service to take all reasonable measures to safeguard the health, safety and welfare of children attending the service and to comply with regulations made by the Minister under this Part.

**Supervision of early years services**

58H. The Agency shall cause to be visited from time to time each prescribed early years service in order to ensure that the person carrying on the service is complying with this Part.

**Authorised persons**

- 58I. (1) The Agency shall appoint such and so many persons as it thinks fit to be authorised persons for the purposes of this Part.
- (2) Every authorised person shall be furnished with a warrant of his or her appointment as an authorised person, and, when exercising any power conferred on an authorised person under this Part, shall, if requested by any person affected, produce the warrant to that person.

**Inspection by authorised persons**

- 58J. (1) An authorised person may, at all reasonable times, enter any premises in which a registered provider is providing a prescribed early years service for the purpose of ensuring compliance with this Part.
- (2) A judge of the District Court may, if satisfied on information on oath that there are reasonable grounds for believing that a prescribed early years service is being provided in any premises (including a private dwelling) by a person who is not a registered provider, issue a warrant authorising an authorised person to enter and inspect the premises.
  - (3) An authorised person who enters any premises in accordance with subsection (1) or (2) may make such examination into the condition of the premises and the care and attention which the children are receiving in those premises as may be necessary for the purposes of

this Part.

- (4) A warrant under subsection (2) may be issued by a judge of the District Court for the time being assigned to the district court district where the premises, in which the prescribed early years service is being provided, are situated.

#### **Offences under Part VIIA**

58K. (1) A person who—

- (a) refuses to allow an authorised person to enter any premises in accordance with subsection (1) or (2) of section 58J or who obstructs or impedes an authorised person in the exercise of any of his powers under subsection (3) of that section,
- (b) contravenes a condition of registration under section 58D, or
- (c) contravenes the requirements of this Part or of any regulations made thereunder,

shall be guilty of an offence and shall be liable on summary conviction to a Class A fine.

- (2) Where a person is convicted of an offence under this Part the court may, either in addition to or in substitution for the imposition of a fine, by order declare that the person shall be prohibited for such period as may be specified in the order from carrying on an early years service.
- (3) A person who contravenes an order made under subsection (2) shall be guilty of an offence and shall be liable on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or both.

#### **Exemptions from provisions of this Part**

58L. For the avoidance of doubt it is hereby declared that the provisions of this Part shall not apply to—

- (a) the care of one or more children undertaken by a relative of the child or children or the spouse of such relative,
- (b) a person taking care of one or more children of the same family and no other such children (other than that person's own such children) in that person's home,
- (c) a person taking care of not more than 3 children of different families (other than that person's own such children) in that person's home."



## PART 13

## MISCELLANEOUS

**Continuation of appointments, designations and authorisations**

93. Any person who is, immediately before enactment—

- (a) appointed an educational welfare officer or an authorised person or designated a liaison officer under the Education (Welfare) Act 2000;
- (b) a person authorised to carry out functions under section 12 of the Adoption Act 2010;
- (c) appointed a coordinator under the Children Act 2001;
- (d) a designated officer under the Protections for Persons Reporting Child Abuse Act 1998;
- (e) appointed an authorised person or an authorised officer under the Child Care Act 1991,

continues to hold that appointment, designation or authorisation until it is revoked or amended by the Agency.

**Agency's discretion to publish other reports**

94. (1) The Agency, as it considers relevant and appropriate, may prepare and adopt reports in addition to the annual report on matters related to the Agency's activities and functions.
- (2) As soon as may be, but in any event not later than 14 days after adopting a report under *subsection (1)*, the Agency shall submit a copy of that report to the Minister.
- (3) The Agency shall, as soon as practicable after submitting the report to the Minister, publish a report adopted under *subsection (1)*—
- (a) on the Internet, or
  - (b) in such other manner as the Minister may specify.

**Charges in relation to functions**

95. (1) Notwithstanding section 70 of the Child Care Act 1991, the Agency may, with the consent of the Minister, make regulations specifying such charges as it considers necessary and appropriate in consideration of—
- (a) the performance by it of its functions under *paragraphs (a), (b) and (c) of section 8(1)*, and
  - (b) services provided by it under section 37 of the Adoption Act 2010.
- (2) A charge shall not be specified under *subsection (1)* for a service provided by the Agency to a person under 18 years.

- (3) A charge specified in regulations made under *subsection (1)* may be reduced or waived if the Agency is of the opinion that, having regard to the financial circumstances of the person concerned (including whether or not that person has dependants), it is necessary to do so in order to avoid undue financial hardship in relation to that person.
- (4) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from any person by whom it is payable any amount due and owing under *subsection (1)*.

#### **Amendment of the Taxes Consolidation Act 1997**

**96.** The Taxes Consolidation Act 1997 is amended by the insertion of the following after section 896B (inserted by the Finance Act 2010):

“896C. (1) In this section—

‘Acts’ has the meaning assigned to it by section 1078(1);

‘Agency’ means the Child and Family Agency.

- (2) The Agency shall, at such intervals as are specified by the Revenue Commissioners, supply to the Revenue Commissioners such information held by the Agency for the purposes of Part VIIA of the Child Care Act 1991 as may be required for the performance of the functions of the Revenue Commissioners under the Acts.”.

#### **Consequential amendments of other Acts**

**97.** The enactments specified in *Schedule 2* are amended as indicated in that Schedule.

[2013.]

*Child and Family Agency Act 2013.*

[No. 40]

SCHEDULE 1

*Section 82.*

FUNCTIONS OF HEALTH SERVICE EXECUTIVE TRANSFERRED TO AGENCY

Child Care Act 1991

Child Abduction and Enforcement of Custody Orders Act 1991

Refugee Act 1996

Immigration Act 1999

Children Act 2001

Immigration Act 2003

Adoption Act 2010

Family Law Act 1995

Domestic Violence Act 1996

## SCHEDULE 2

Section 93.

## AMENDMENTS OF OTHER ACTS

## PART 1

## GUARDIANSHIP OF INFANTS ACT 1964

Item	Provision affected	Amendment
1.	Section 15	In subsection (2)— (a) substitute the following for paragraph (c): “(c) the child has been maintained in the care of the Health Service Executive under section 4 (as amended by section 4 of the Child Care (Amendment) Act 2011) of the Child Care Act 1991 or the Child and Family Agency.”, (b) insert “or the Child and Family Agency” after “pay to the Health Service Executive” and (c) substitute “, or by the Executive or the Agency” for “or by the health board or the Executive”.
2.	Section 16	In paragraph (b), substitute “, the Health Service Executive or the Child and Family Agency” for “or the Health Service Executive”.

## PART 2

## FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

Item	Provision affected	Amendment
1.	Section 16	In subsection (1), insert “the Child and Family Agency,” after “the Health Service Executive,”.

## PART 3

## THE UNFAIR DISMISSALS ACT 1977

Item	Provision affected	Amendment
1.	Section 2	In subsection (1), substitute the following for paragraph (k): “(k) the Director General of the Health Service Executive for the purposes of section 17 of the Health Act 2004,

		(l) the chief executive officer of the Child and Family Agency appointed under <i>section 28</i> of the <i>Child and Family Agency Act 2013</i> .”.
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## PART 4

## CHILD CARE ACT 1991

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.
2.	Whole Act	Substitute “Agency” for “Executive” in each place where it occurs.
3.	Section 2	(a) Delete the definition of “area”. (b) Substitute the following for the definition of “Minister”: “ ‘Minister’ means the Minister for Children and Youth Affairs.”.
4.	Section 4	Substitute the following for subsection (5): “A child who was taken into care under this section by the Health Service Executive before the coming into operation of the <i>Child and Family Agency Act 2013</i> and who is in the care of the Health Service Executive immediately before the establishment day of that Agency shall be deemed to have been taken into care by the Agency and to be in its care on and from that day.”.
5.	Section 7	(a) Substitute the following for subsection (1): “(1) The Child and Family Agency shall establish one or more child care advisory committees to advise the Agency on the performance of its functions under this Act and the Agency shall consider and have regard to any advice so tendered to it.

Item	Provision affected	Amendment
		<p>(1A) A child care advisory committee that, before the amendment of this section by the <i>Child and Family Agency Act 2013</i>, was established for a functional area of the Executive and that was in existence immediately before the establishment of the Child and Family Agency shall be deemed to have been established by the Agency in compliance with subsection (1) of this section.”</p> <p>(b) Substitute the following for subsection (5A) and (5B) (inserted by section 75 of the Health Act 2004):</p> <p>“(5A) Directions given by the Minister for Health in relation to child care advisory committees in existence immediately before the establishment day of the Child and Family Agency shall, subject to the amendment or revocation of those directions under subsection (5B), apply to child care advisory committees established or deemed to have been established by the Agency, unless the Minister otherwise directs.</p> <p>(5B) The Minister may amend or revoke directions given in relation to child care advisory committees.”</p> <p>(c) In subsection (6), delete “for a functional area of the Executive”.</p> <p>(d) In subsection (7), delete “in a functional area of the Health Service Executive”.</p>
6.	Section 8	<p>(a) Substitute the following for subsection (1):</p> <p>“(1) The Child and Family Agency shall—</p>

Item	Provision affected	Amendment
		<p>(a) not later than 6 months after the establishment day of the Agency, prepare the report that, but for the amendment of this section by the <i>Child and Family Agency Act 2013</i>, the Health Service Executive would have been required to have prepared under this section, and</p> <p>(b) annually thereafter prepare a report on the adequacy of the child care and family support services available.”.</p> <p>(b) Substitute the following for subsection (3)—</p> <p>“(3) The Child and Family Agency shall give notice of the preparation of a report under subsection (1) to—</p> <p>(a) each child care advisory committee, and</p> <p>(b) such bodies as the Agency sees fit whose purposes include the provision of child care and family support services,</p> <p>and shall have regard to any views or information furnished by such committees or bodies in the preparation of the report.”.</p>
7.	Section 9	<p>Substitute the following for subsection (2):</p> <p>“(2) Nothing in the <i>Child and Family Agency Act 2013</i> shall empower the Child and Family Agency to delegate to a voluntary body or to any other person the duty conferred on it under section 4 to receive certain children into care or the power to apply for an order under Part III, IV, IVA (as amended by the Child Care (Amendment) Act 2011) or VI.”.</p>
8.	Section 12	Substitute the following for subsection (5):

Item	Provision affected	Amendment
		<p>“(5) Where a child was removed to safety in accordance with subsection (1) of this section or section 254(4) of the Children Act 2001 and the child is not delivered up to the custody of the Health Service Executive before the establishment day of the Child and Family Agency—</p> <p>(a) the child shall as soon as possible be delivered up to the custody of the Agency, and</p> <p>(b) subsection (4) of this section applies in relation to the child as though the child had been delivered up to the Agency in accordance with subsection (3) of this section.”.</p>
9.	Section 20	<p>Substitute the following for subsection (5):</p> <p>“(5) Where the Health Service Executive was directed to undertake an investigation into a child’s circumstances and the investigation has not been undertaken or all matters relating to or arising from the investigation have not been concluded before the establishment day of the Child and Family Agency—</p> <p>(a) any direction given under this section by the court to the Health Service Executive in respect of the child concerned shall be deemed to have been given to the Agency,</p> <p>(b) the investigation may be completed by the Agency, and</p> <p>(c) subsections (3) and (4) apply as though all of the investigation had been undertaken and completed by the Agency.”.</p>
10.	Section 23B	(a) Substitute the following for subsection (4):



Item	Provision affected	Amendment
		<p>“(4) Notwithstanding subsection (3) and subject to subsection (5), the Child and Family Agency may, for the purposes of this Part, enter into an arrangement with a person under <i>section 58</i> of the <i>Child and Family Agency Act 2013</i> (relating to arrangements with service providers) in respect of the provision by that person of special care and the provision, maintenance and administration of a special care unit.”.</p> <p>(b) In subsection (5), substitute “<i>section 58</i> of the <i>Child and Family Agency Act 2013</i>” for “section 38 (as amended by the Act of 2007) of the Health Act 2004”.</p>
11.	Section 23F	<p>Substitute the following for subsection (12):</p> <p>“(12) Where the Health Service Executive convened a family welfare conference in respect of a child pursuant to subsection (5) and a determination is not made by the Health Service Executive pursuant to subsection (7) before the establishment of the Child and Family Agency, that Agency shall be deemed for the purposes of this section to have convened the conference.”.</p>
12.	Section 23P	<p>Substitute the following for subsection (3):</p> <p>“(3) Any person arranging or undertaking a private foster care arrangement who has submitted to the Health Service Executive before the establishment of the Child and Family Agency the information the Health Service Executive required in relation to the arrangement or undertaking shall be deemed to have complied with subsection (1).”.</p>
13.	Section 37	Substitute the following for subsection (2):

Item	Provision affected	Amendment
		<p>“(2) Any person who is dissatisfied with arrangements made by the Child and Family Agency under subsection (1) or (1A) or by the Health Service Executive under those subsections before the establishment of that Agency may apply to the court, and the court may—</p> <p>(a) make such order as it thinks proper regarding access to the child by that person, and</p> <p>(b) vary or discharge that order on the application of any person.”.</p>
14.	Section 43	<p>Substitute the following for subsection (1):</p> <p>“(1) The Child and Family Agency may, in accordance with any regulations made by the Minister, remove a child in its care from the custody of any person with whom the child has been placed under section 36 before the establishment day of the Child and Family Agency.”.</p>
15.	Section 46	<p>Insert the following after subsection (2):</p> <p>“(2A) A request made by the Health Service Executive to the Garda Síochána under subsection (2) before the establishment of the Child and Family Agency shall be deemed to have been made by the Child and Family Agency if the child in respect of whom the request was made is not delivered up to the Health Service Executive before the establishment day of the Agency.”.</p>
16.	Section 59	<p>Substitute—</p> <p>(a) in the definition of “children’s residential centre”, “the Child and Family Agency” for “the Health Service Executive” in each place where it occurs, and</p>

Item	Provision affected	Amendment
		<p>(b) the following for the definition of “register”:</p> <p>“ ‘register’ means a register of children’s residential centres that is established or deemed to have been established by the Child and Family Agency under section 61, and cognate words shall be construed accordingly;”.</p>
17.	Section 61	<p>(a) Substitute the following for subsection (1):</p> <p>“(1) The Child and Family Agency shall establish and maintain a register of children’s residential services.</p> <p>(1A) For the purpose of subsection (1), each register of children’s residential centres established by the Health Service Executive before the establishment day of the Child and Family Agency shall be deemed to have been established by the Child and Family Agency and shall be maintained by the Agency.”.</p> <p>(b) Substitute the following for paragraph (3)(c):</p> <p>“(c) An application for registration made to the Health Service Executive before the establishment of the Child and Family Agency shall be deemed to have been made to the Child and Family Agency if the Health Service Executive has not, before the establishment day of the Agency, registered or refused to register the centre in relation to which the application was made.”.</p> <p>(c) In subsection (6A), substitute “<i>Child and Family Agency Act 2013</i>” for “Health Act 2004” and “Child and Family Agency” for “Health Service Executive”.</p>
18.	Section 65	Substitute the following for subsection (3):

Item	Provision affected	Amendment
		“(3) A notice given to the Health Service Executive before the establishment day of the Child and Family Agency in accordance with subsection (1) shall be deemed to have been given to the Child and Family Agency.”.

## PART 5

## CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT 1991

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.

## PART 6

## FAMILY LAW ACT 1995

Item	Provision affected	Amendment
1.	Section 47(1)(b)	In subsection (1)(b) substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.

## PART 7

## DOMESTIC VIOLENCE ACT 1996

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.

## PART 8

## REFUGEE ACT 1996

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.

## PART 9

## FREEDOM OF INFORMATION ACT 1997

Item	Provision affected	Amendment
1.	Section 2	<p>(a) In subsection (1) in the definition of “director”, substitute “, the Health Service Executive, the Child and Family Agency” for “or the Health Service Executive”.</p> <p>(b) In subsection (1) in paragraph (ix) of the definition of “personal information”, substitute “the Health Service Executive, the Child and Family Agency” for “Health Service Executive”.</p>
2.	Section 15	<p>In subsection (2), substitute the following for paragraphs (c) and (d):</p> <p>“(c) in the case of the Health Service Executive, 6 months after the establishment day,</p> <p>(d) in the case of the Child and Family Agency, 6 months after the establishment day of that body, and</p> <p>(e) in case the body is a body standing prescribed under section 3 for the purposes of subparagraph (5) of paragraph (1) of the First Schedule, upon such prescription.”.</p>
3.	Section 16	<p>In subsection (2), substitute the following for paragraphs (c) and (d):</p> <p>“(c) in the case of the Health Service Executive, 6 months after the establishment day,</p> <p>(d) in the case of the Child and Family Agency, 6 months after the establishment day of that body, and</p> <p>(e) in case the body is a body standing prescribed under section 3 for the purposes of subparagraph (5) of paragraph (1) of the First Schedule upon such prescription.”.</p>

Item	Provision affected	Amendment
4.	First Schedule	In paragraph 1(4), substitute “the Health Service Executive and the Child and Family Agency” for “the Health Service Executive”.
5.	Third Schedule, Part 1	Insert:  (a) in column (2):  “ <i>Child and Family Agency Act 2013</i> ”,  and opposite that insertion,  (b) in column (3) “ <i>section 40.</i> ”.

## PART 10

## PROTECTION FOR PERSONS REPORTING CHILD ABUSE ACT 1998

Item	Provision affected	Amendment
1.	Section 1	Substitute the following for the definition of “designated officer”:  “ ‘designated officer’ means an employee of the Health Service Executive or the Child and Family Agency appointed under section 2 of this Act to be a designated officer for the purposes of this Act.”.
2.	Section 2	Substitute the following for section 2:  “2. (1) The Health Service Executive and the Child and Family Agency shall from time to time as occasion may require (including a case in which a direction is given under this section), appoint one or more employees of the Health Service Executive or of the Child and Family Agency as the case may be, to be a designated officer or officers for the purposes of this Act; in making any such appointment, the Health Service Executive and the Child and Family Agency shall comply with any direction under this section for the time being in force.

Item	Provision affected	Amendment
		<p>(2) The Minister may, with the consent of the Minister for Health, give a direction in writing to the Health Service Executive or the Minister may give a direction in writing to the Child and Family Agency requiring it to appoint to be designated officers each person falling within a category or categories of employee of the Health Service Executive or the Child and Family Agency specified in the direction.</p> <p>(3) The Minister may give a direction in writing to the Health Service Executive or the Child and Family Agency amending or revoking a direction given to it under this section (including a direction under this subsection).”.</p>

## PART 11

## EDUCATION ACT 1998

Item	Provision affected	Amendment
1.	Section 2	In subsection (1), in the definition of school, substitute “the Child and Family Agency in accordance with the Child Care Act 1991” for “the Child Care Act 1991”.
2.	Section 6	In paragraph (g), insert “the Child and Family Agency,” after “the Health Service Executive.”.
3.	Section 29 (amended by the Education (Miscellaneous Provisions) Act 2007)	In subsection (4E), substitute “Child and Family Agency” for “National Educational Welfare Board”.
4.	Section 33	In paragraph (j)(iii), insert “and the Child and Family Agency” after “the Health Service Executive”.

## PART 12

## IMMIGRATION ACT 1999

Item	Provision affected	Amendment
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1.	Section 5 (as amended by section 75 of the Health Act 2004)	In subsection (4)(c), substitute “Child and Family Agency” for “Health Service Executive”.
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## PART 13

## EDUCATION (WELFARE) ACT 2000

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Board” in each place where it occurs.
2.	Section 2	Delete the definitions of “Board” and “Chief Executive”.
3.	Section 14	Delete “, on the commencement of this section,”.
4.	Section 25	Delete subsection (8).

## PART 14

## CHILDREN ACT 2001

Item	Provision affected	Amendment
1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.
2.	Part 2	<p>After section 15A (as amended by section 72 of the Health Act 2004) insert the following:</p> <p style="text-align: center;"><b>“Transitional provisions relating to the Child and Family Agency Act 2013</b></p> <p>15B. (1) In this section, a reference to a provision of this Act is to that provision as it was before it was amended by the <i>Child and Family Agency Act 2013</i>.</p> <p>(2) Where a family welfare conference convened under section 7 on behalf of the Health Service Executive has not discharged its functions before the establishment day of the Child and Family Agency, the conference shall be deemed to have been convened by or on behalf of the Agency.</p>



Item	Provision affected	Amendment
		<p>(3) Where a direction given by the Health Service Executive under section 7(3) to a family welfare conference is not complied with before the establishment day of the Child and Family Agency, the direction shall be deemed to have been given by the Agency.</p> <p>(4) Where a recommendation has been made or a matter has been referred to the Health Service Executive by a family welfare conference under section 8 and all matters relating to or arising from the conference proceedings relating to the child concerned have not been concluded under this Act or the Child Care Act 1991 before the establishment day of the Child and Family Agency, the recommendation shall be deemed for the purposes of this Act and the Child Care Act 1991 to have been made or the matter referred to the Agency.”.</p>

## PART 15

## LOCAL GOVERNMENT ACT 2001

Item	Provision affected	Amendment
1.	Section 2	<p>Substitute the following for paragraph (g) in the definition of “public authority”:</p> <p>“(g) the Child and Family Agency established under <i>section 7</i> of the <i>Child and Family Agency Act 2013</i>, and</p> <p>(h) such other body as may be prescribed by regulations made by the Minister for the purposes of any provision of this Act.”.</p>
2.	Section 13	In subsection (1) substitute the following for paragraph (i):

Item	Provision affected	Amendment
		“(i) is a person employed by a local authority, the Health Service Executive or the Child and Family Agency and is not the holder of a class, description or grade of employment designated by order under section 161(1)(b) or deemed to have been made under that section, or”.
3.	Section 85	Substitute the following for subsection (7):  “(7) This section is without prejudice to section 8 of the Health Act 2004 or <i>section 10</i> of the <i>Child and Family Agency Act 2013</i> and an agreement shall not be entered into under this section in any case in which an agreement could be entered into under either of those sections.”.

## PART 16

## SEX OFFENDERS ACT 2001

Item	Provision affected	Amendment
1.	Section 25 (amended by section 75 of the Health Act 2004)	In subsection (1), in paragraph (e) of the definition of “State work or a service” insert “or the Child and Family Agency” after “Health Service Executive”.

## PART 17

## YOUTH WORK ACT 2001

Item	Provision affected	Amendment
1.	Section 20	In subsection (2)(b)(iv), substitute “Child and Family Agency” for “Health Service Executive”.

## PART 18

## IMMIGRATION ACT 2003

Item	Provision affected	Amendment
1.	Section 5 (amended by section 75 of the Health Act 2004)	In subsection (2)(d), substitute “Child and Family Agency” for “Health Service Executive”.

Item	Provision affected	Amendment
2.	Section 8 (amended by section 75 of the Health Act 2004)	In subsection (4), insert “the Child and Family Agency,” after “the Health Service Executive,”.

## PART 19

## HEALTH ACT 2004

Item	Provision affected	Amendment
1.	Section 10A (inserted by section 6 of the Health Service Executive (Governance) Act 2013)	By deleting subsection (2).
2.	Section 31	<p>(a) In subsection (8), by substituting “the Minister shall—” for “the Minister shall, having consulted with the Minister for Children and Youth Affairs—”.</p> <p>(b) By substituting the following for subsection (9):</p> <p>“(9) The Minister may direct the Executive to amend a service plan submitted under this section if, in the opinion of the Minister, the plan—</p> <p>(a) does not contain any information required to be included in the service plan pursuant to subsection (4),</p> <p>(b) does not in some other respect comply with subsection (4),</p> <p>(c) has been prepared by the Executive without sufficient regard to the matters referred to in subsection (5), or</p>

Item	Provision affected	Amendment
		(d) does not accord with the policies and objectives of the Minister or the Government to the extent that those policies and objectives relate to the functions of the Executive and have been communicated in writing to the Executive prior to the commencement of the specified period.”.
3.	Section 32(5)	In subsection (5), by substituting “the Minister may—” for “the Minister may, having consulted with the Minister for Children and Youth Affairs—”.
4.	Section 37(2)(g)	By substituting “or as the Minister may specify.” for “as the Minister may, having consulted with the Minister for Children and Youth Affairs, may specify.”.
5.	Section 40B	<p>(a) In subsection (1)—</p> <p>(i) in paragraph (b)(ii) by substituting “Minister.” for “Minister, and”, and</p> <p>(ii) by deleting paragraph (c).</p> <p>(b) In subsection (2), by deleting “, in consultation with the Minister for Children and Youth Affairs,” after “Minister may”.</p>
6.	Section 40C	<p>(a) By deleting subsection (1A).</p> <p>(b) In subsection (2), by deleting “or the Minister for Children and Youth Affairs” after “furnish the Minister”.</p> <p>(c) In subsection (3), by deleting “or the Minister for Children and Youth Affairs” after “furnishing the Minister”.</p> <p>(d) In subsection (4)(a), by deleting “or the Minister for Children and Youth Affairs” after “furnishing the Minister”.</p>
7.	Section 40D	(a) By deleting subsection (1A).

Item	Provision affected	Amendment
		<p>(b) In subsection (2), by substituting “the Minister to furnish a person referred to in subsection (1) with information” for “the Minister or the Minister for Children and Youth Affairs to furnish a person referred to in subsection (1) or, as the case may be, subsection (1A), with information”.</p> <p>(c) In subsection (3), by substituting “the Minister from furnishing a person referred to in subsection (1) with information” for “the Minister or the Minister for Children and Youth Affairs from furnishing a person referred to in subsection (1) or, as the case may be, subsection (1A), with information”.</p> <p>(d) In subsection (4)(a), by substituting “the Minister from furnishing a person referred to in subsection (1) with information” for “the Minister or the Minister for Children and Youth Affairs from furnishing a person referred to in subsection (1) or, as the case may be, subsection (1A), with information”.</p>
8.	Section 40E	By deleting subsection (1A).
9.	Section 40F	<p>(a) By substituting “any power of the Minister” for “any power of the Minister or the Minister for Children and Youth Affairs”.</p> <p>(b) By substituting “the functions of the Executive or the Minister” for “the functions of the Executive, the Minister or the Minister for Children and Youth Affairs”.</p>

## PART 20

## HEALTH ACT 2007

Item	Provision affected	Amendment
1.	Section 2	<p>In subsection (1)—</p> <p>(a) insert the following definition:</p>

Item	Provision affected	Amendment
		<p data-bbox="963 286 1361 432">“ ‘Agency’ means the Child and Family Agency established under the <i>Child and Family Agency Act 2013</i>;”</p> <p data-bbox="786 454 1361 521">(b) substitute the following for the definition of “designated centre”:</p> <p data-bbox="963 544 1361 611">“ ‘designated centre’ means an institution—</p> <p data-bbox="954 633 1361 969">(a) at which residential services are provided by the Executive, the Agency, a service provider under this Act or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004—</p> <p data-bbox="995 992 1361 1059">(i) in accordance with the Child Care Act 1991,</p> <p data-bbox="986 1081 1361 1193">(ii) to persons with disabilities, in relation to their disabilities, or</p> <p data-bbox="976 1216 1361 1328">(iii) to other dependent persons, in relation to their dependencies,</p> <p data-bbox="1002 1350 1026 1373">or</p> <p data-bbox="954 1395 1305 1429">(b) that is a special care unit,</p> <p data-bbox="954 1451 1361 1630">(c) 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:</p> <p data-bbox="995 1653 1361 1765">(i) a centre registered by the Mental Health Commission;</p> <p data-bbox="986 1787 1361 1888">(ii) an institution managed by or on behalf of a Minister of the Government;</p>

Item	Provision affected	Amendment
		<p>(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;</p> <p>(iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;</p> <p>(v) a children detention school as defined in section 3 of the Children Act 2001;”,</p> <p>(c) substitute the following for the definition of “service provider”:</p> <p>“ ‘service provider’ means a person who—</p> <p>(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,</p> <p>(b) is in receipt of assistance under section 39 of the Health Act 2004 in an amount that exceeds an amount prescribed for the purpose of this subparagraph, or</p> <p>(c) is a service provider under the <i>Child and Family Agency Act 2013</i>;”.</p>
2.	Section 8	<p>(a) In subsection (1)—</p> <p>(i) substitute the following for paragraphs (a) and (b) of subsection (1):</p> <p>“(1) The functions of the Authority are as follows:</p>

Item	Provision affected	Amendment
		<p>(a) subject to this Act and to the extent practicable, to further the Authority's object;</p> <p>(b) to set standards on safety and quality in relation to—</p> <p>(i) services provided by the Executive, the Agency or a service provider in accordance with—</p> <p>(I) the Health Acts 1947 to 2011, except for services under the Mental Health Acts 1945 to 2009 that, under the Health Act 2004, are provided by the Executive,</p> <p>(II) the Child Care Acts 1991 to 2013,</p> <p>(III) the Children Act 2001, and</p> <p>(ii) services provided by a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,</p> <p>in this section called the “services”, and advise the Minister, the Minister for Children and Youth Affairs, the Agency and the Executive as may be appropriate in relation to the particular service in respect of which the standards are set.”,</p>



Item	Provision affected	Amendment
		<p>(ii) in paragraph (c) insert “and the Agency’s” after “the Executive’s” and substitute “the Minister, the Minister for Children and Youth Affairs, the Executive and the Agency accordingly;” for “the Minister and the Executive accordingly;”,</p> <p>(iii) in paragraph (e) insert “or the Minister for Children and Youth Affairs” after “the Minister” and substitute “the Executive and the Agency;” for “the Executive;”,</p> <p>(iv) in paragraph (j) substitute “the Minister, the Minister for Children and Youth Affairs, the Executive and the Agency” for “the Minister and the Executive”,</p> <p>(v) in paragraph (k) substitute “the Executive, the Agency and service providers” for “the Executive and service providers”,</p> <p>(vi) in paragraph (l) substitute “the Minister, the Minister for Children and Youth Affairs, the Executive and the Agency” for “the Minister and the Executive”.</p> <p>(b) In subsection (2)(c) substitute “the Executive and the Agency,” for “the Executive.”.</p> <p>(c) In subsection (4) substitute “as defined in section 2(1), the Executive or the Agency.” for “as defined in section 2(1) or the Executive.”.</p>
3.	Section 9	<p>(a) In subsection (1), substitute the following for paragraph (b):</p> <p style="padding-left: 40px;">“(b) the risk may be the result of any act, failure to act or negligence on the part of—</p> <p style="padding-left: 80px;">(i) the Executive,</p> <p style="padding-left: 80px;">(ii) the Agency,</p>

Item	Provision affected	Amendment
		<p>(iii) a service provider to which paragraphs (a) or (b) of the definition of service provider applies,</p> <p>(iv) a service provider to which paragraph (c) of the definition of service provider applies,</p> <p>(v) the registered provider of a designated centre to which paragraphs (a)(ii), (iii) or (c) of the definition of designated centre applies,</p> <p>(vi) the registered provider of a designated centre to which paragraphs (a)(i) or (b) of the definition of designated centre applies,</p> <p>(vii) the person in charge of a designated centre referred to in subparagraph (v), if other than its registered provider,</p> <p>(viii) the person in charge of a designated centre referred to in subparagraph (vi) if other than its registered provider.”.</p> <p>(b) Substitute the following for subsection (2):</p> <p>“(2) The Minister may, if he or she believes on reasonable grounds that—</p> <p>(a) there is a serious risk of the kind mentioned in paragraph (a) of subsection (1), and</p> <p>(b) the risk may be the result of any act, failure or negligence of the kind mentioned in paragraph (b)(i), (iii), (v) or (vii) of subsection (1),</p>

Item	Provision affected	Amendment
		<p>require the Authority to undertake an investigation in accordance with this section.</p> <p>(2A) The Minister for Children and Youth Affairs may, if he or she believes on reasonable grounds that—</p> <p>(a) there is a serious risk of the kind mentioned in paragraph (a)(i) of subsection (1), and</p> <p>(b) the risk may be the result of any act, failure or negligence mentioned in paragraph (b) (ii), (iv), (vi) or (viii) of subsection (1),</p> <p>require the Authority to undertake an investigation in accordance with this section.”.</p>
4.	Section 10	In subsection (2), substitute “it shall submit the proposed standards to the Minister for approval and, where the standards relate to services provided under the <i>Child and Family Agency Act 2013</i> , the Minister shall not approve the proposed standards without the consent of the Minister for Children and Youth Affairs” for “it shall submit the proposed standards to the Minister for approval”.
5.	Section 12	<p>(a) Substitute “the Executive, the Agency or a service provider” for “the Executive or a service provider”.</p> <p>(b) Substitute “the Executive, the Agency or by the service provider” for “the Executive or by the service provider”.</p>
6.	Section 39	In subsection (1)(a), substitute “the Executive, the Agency or a service provider” for “the Executive or a service provider”.
7.	Section 41	In subsection (1), substitute the following for paragraph (a):

Item	Provision affected	Amendment
		“(a) inspect the performance by the Executive of the Executive’s functions under section 10 of the Health (Nursing Homes) Act 1990 and the performance by the Agency of the Agency’s functions under sections 39 to 42 and 53 of the Child Care Act 1991,”.
8.	Section 45	<p>(a) Substitute the following for subsection (1):</p> <p>“(1) The Minister, by written direction, may require the Executive to carry out inspections of nursing homes as defined in section 2 of the Health (Nursing Homes) Act 1990 and the Minister for Children and Youth Affairs, by written direction, may require the Agency to carry out inspections of children’s residential centres, as defined in section 2(1) of the Child Care Act 1991, which are provided in accordance with section 38(1) of that Act.”.</p> <p>(b) In subsections (2) to (5), substitute “Executive or the Agency” for “Executive” wherever it occurs.</p>
9.	Section 60	In subsection (6), insert “or the Agency as the case may be” after “the Executive” wherever it occurs.
10.	Section 64	In subsections (1) to (4), substitute “Executive or the Agency as the case may” for “Executive”.
11.	Section 68	In subsection (3), substitute “Executive or the Agency as the case may be” for “Executive” wherever it occurs.
12.	Section 71	<p>(a) In subsection (1), substitute “Executive or the Agency as the case may be” for “Executive”.</p> <p>(b) In subsection (2), substitute the following for paragraph (a):</p>

Item	Provision affected	Amendment
		“(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) arrangements under section 56 or 58 of the <i>Child and Family Agency Act 2013</i> .”.
13.	Section 73	(a) In subsection (1)(i), substitute “Executive, the Agency or a service provider,” for “Executive or a service provider”. (b) In subsection (2)— (i) in paragraph (a), insert “or the Agency” after “Executive”, and (ii) in paragraph (b), substitute “Executive, the Agency or a service provider,” for “Executive or a service provider.”. (c) In subsection (4)(a), substitute “the Executive or the Agency,” for “the Executive,”.
14.	Section 98	In subsection (1), insert “, having consulted the Minister for Children and Youth Affairs as may be appropriate,” after “The Minister”.
15.	Section 99	Insert “, having consulted the Minister for Children and Youth Affairs as may be appropriate,” after “the Minister”.
16.	Section 100	Insert “, having consulted the Minister for Children and Youth Affairs as may be appropriate,” after “The Minister”.
17.	Section 101	In subsection (1)(a) insert “, having consulted the Minister for Children and Youth Affairs as may be appropriate,” after “the Minister”.

## PART 21

## AMENDMENT OF ADOPTION ACT 2010

Item	Provision affected	Amendment
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1.	Whole Act	Substitute “Child and Family Agency” for “Health Service Executive” in each place where it occurs.
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## SCHEDULE 3

*Section 5.*

## REPEALS

**Acts Repealed**

Number and Year	Short Title	Extent of Repeal
No. 17 of 1991	Child Care Act 1991	Section 10 and Part VII
No. 22 of 2000	Education (Welfare) Act 2000	Sections 9, 13, 32, 33, 34, 35, 36, 37, 38, 39, 41 and the Schedule
No. 54 of 2001	Family Support Agency Act 2001	The whole Act
No. 26 of 2007	Child Care (Amendment) Act 2007	Sections 5 to 13