

GENERAL SCHEME OF THE [CHILDREN'S HEALTH] BILL 2017

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AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE [TITLE]; TO PROVIDE FOR THE TRANSFER OF EMPLOYEES, ASSETS AND LIABILITIES FROM OUR LADY'S CHILDREN'S HOSPITAL, CRUMLIN, AND TEMPLE STREET CHILDREN'S UNIVERSITY HOSPITAL, AND CERTAIN EMPLOYEES, ASSETS AND LIABILITIES FROM THE ADELAIDE AND MEATH HOSPITAL DUBLIN, INCORPORATING THE NATIONAL CHILDREN'S HOSPITAL, AND FROM THE HEALTH SERVICE EXECUTIVE TO THE [TITLE]; TO MAKE CERTAIN AMENDMENTS TO THE NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD (ESTABLISHMENT) ORDER 2007, INCLUDING AMENDING THE NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD'S FUNCTIONS TO PROVIDE FOR THE DEVELOPMENT OF A MATERNITY HOSPITAL LOCATED ON THE SHARED CAMPUS WITH THE [TITLE] AND TO PROVIDE FOR THE DISSOLUTION OF THE NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD AND TO PROVIDE FOR RELATED MATTERS

EXPLANATORY NOTE:

An Bord Pleanála approved on 28 April 2016 a planning application for construction of a new children's hospital on the St James's Hospital campus in Dublin 8, together with two paediatric outpatients and urgent care centres on the Tallaght and Connolly Hospitals campuses. In April 2017, Government approved the construction investment for the hospital and two Paediatric Outpatients and Urgent Care Centres. It is expected that the Paediatric Outpatients and Urgent Care Centres will open at end of 2018/early 2019, and the main hospital at end 2021.

The new children's hospital will consolidate the existing paediatric services provided in Our Lady's Children's Hospital Crumlin, Temple Street Children's University Hospital, and the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital, to become the single national tertiary/quaternary centre for highly specialised paediatric care with the critical mass to deliver best outcomes. The hospital, together with its two Paediatric Outpatients and Urgent Care Centres, will also provide all secondary, or less specialised, acute paediatric care for children from the Greater Dublin Area. The consolidation of existing Dublin paediatric services into a single hospital was recommended by the 2006 McKinsey report, Children's Health First, which concluded that a population the size of Ireland's could support only one national tertiary paediatric centre. The three existing children's hospitals have agreed to come together in a new single legal entity and to take responsibility for the continued integration of and delivery of healthcare services to children and young people.

The existing hospitals are all separate legal entities established under company law or Charter. Our Lady's Children's Hospital, Crumlin is a Company Limited by Guarantee, (Number 16035). Temple Street Children's University Hospital is a LTD, Private Company Limited by Shares, Number 351404, and registered under the name "Children's University Hospital". The Adelaide and Meath Hospital, incorporating the National Children's Hospital (often referred to simply as Tallaght Hospital) is a body corporate under the Adelaide Hospital Charter 1920 (Letters Patent of the 27th day of November, 1920, granting

incorporation to the Adelaide Hospital, Dublin as amended by SI No 374/1980 – the Adelaide Hospital (Charter Amendment) Order, 1980) and SI No. 228/1996 – The Health Act 1970 (Section 76)(Adelaide and Meath Hospital Dublin incorporating the National Children’s Hospital) Order, 1996.

All three children’s hospitals provide services on behalf of the HSE under Section 38 of the Health Act 2004. The General Scheme provides for the establishment of a body corporate as the new single entity. It will assume responsibility for the governance and management of all services currently provided at Crumlin, Temple Street and the paediatric services at Tallaght; it will underpin and lead the integration of the services and the move to the new hospital and two Paediatric Outpatients and Urgent Care Centres, when built; and it will in due course manage and deliver health services to children and young people in the new hospital and the two Paediatric Outpatients and Urgent Care Centres on behalf of the HSE, under Section 38 of the Health Act 2004, in the same way as the existing children’s hospitals have done, with an additional remit to act as the central component of a national clinical network for acute paediatric services.

This clinical network is outlined in a National Model of Care for Paediatric Healthcare Services in Ireland developed by the HSE and which is the framework within which the new hospital and two Paediatric Outpatients and Urgent Care Centres will deliver services in conjunction with regional and local paediatric services and primary care services. The new model of care sets out the vision for high quality, integrated, accessible healthcare services for children from birth to adulthood with an emphasis on early detection and prompt treatment. The model aims to ensure that all children should be able to access high quality services in an appropriate location, within an appropriate timeframe, irrespective of their geographical location or social background. It is not proposed that the new hospital will take over services appropriate to the HSE, but rather that the role the hospital will play within the framework is particular to it. The implementation of the Model of Care will be an ongoing process.

The legislation will also provide for the transfer of assets, liabilities, staff and data from Our Lady’s Children’s Hospital, Crumlin, Temple Street Children’s University Hospital, and the National Children’s Hospital at Tallaght, to the new body and for the transfer of a small number of staff and assets from the HSE.

In addition, the legislation will provide for certain amendments to the National Paediatric Hospital Development Board (Establishment) Order (SI 246 of 2007) which was confirmed by s5 of the Health (Miscellaneous Provisions) Act 2007, including assigning it the function of developing a maternity hospital in which the Coombe Women & Infants University Hospital will be relocated and for the dissolution of that Board.

PREAMBLE

WHEREAS Our Lady’s Children’s Hospital, Crumlin, Temple Street Children’s University Hospital, and the National Children’s Hospital (part of the Adelaide and Meath Hospital Dublin incorporating the National Children’s Hospital) have been at the forefront of paediatric healthcare in Ireland for many years

WHEREAS it has been agreed by the Boards of Our Lady's Children's Hospital Crumlin, Temple Street Children's University Hospital, and the Adelaide and Meath Hospital Dublin incorporating the National Children's Hospital that there is a need to create a single body to deliver and integrate the services of Our Lady's Children's Hospital Crumlin, Temple Street Children's University Hospital, and the National Children's Hospital on their existing sites and in due course at new premises under development.

WHEREAS it has been agreed by the said Boards that the activities of Our Lady's Children's Hospital Crumlin, Temple Street Children's University Hospital, and the National Children's Hospital should be combined and carried on by a single body corporate

WHEREAS the body corporate established under this Act will fulfil its object and exercise its functions in a manner which has due regard to the culture and tradition of voluntarism and which reflects the values developed with and by the three hospitals for the new body of providing child-centred, compassionate and progressive care, delivered with respect, excellence and integrity.

EXPLANATORY NOTE:

The preamble reflects the particular context for the establishment of the children's hospital, which will take over the functions previously provided by three public voluntary hospitals established under the Companies Acts or by Charter. Over many years, the existing children's hospitals – Our Lady's Children's Hospital, Crumlin, Temple Street Children's University Hospital and the National Children's Hospital – have been at the forefront of paediatric healthcare. Each has demonstrated enormous commitment to, and has established a strong track record and a proud tradition in, the provision of healthcare services to children and young people in Ireland. The three hospital Boards support the development of a single hospital as the national tertiary paediatric centre, the regional hospital for the Greater Dublin Area and for it to play a central role in serving an integrated clinical network for paediatrics in Ireland. Recognising the increasing demands on paediatric services, and with a desire to build on their many years of experience and service to the nation's children and their families, and with the key objectives of developing an improved service and securing better outcomes for children and young people, the three hospitals have agreed to come together in a single legal entity and to take responsibility for the continued integration of and delivery of healthcare services to children and young people. The aim is that the core values of these hospitals, of care, dignity, compassion and excellence, will be respected and enhanced through the new entity. In addition, the three hospitals want the new entity to be child-centred, compassionate and progressive and act with respect, excellence and integrity.

The inclusion of such a preamble has previously been seen in the Health Act 1970 (Section 76) (Adelaide and Meath Hospital Dublin incorporating the National Children's Hospital) Order 1996 (SI 228/1996), relating to the establishment of the Adelaide and Meath Hospital Dublin, Incorporating the National Children's Hospital.

PART 1

PRELIMINARY AND GENERAL

HEAD 1 Short title and commencement

1. Provides that the Act may be cited as the Children's Health Act 2017.
2. Provides that the Act will come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

EXPLANATORY NOTE

1. Subhead 1 is a standard provision setting out the short title of the Act.
2. Subhead 2 provides for commencement by order. This is a standard provision allowing for different commencement days to apply to different sections of the Act, in particular in order to allow for transfers provided for in Parts 6, 7, 8 and 9 to come into operation separately to establishment of the new body and for Part 10 to be commenced, in particular the dissolution of the National Paediatric Hospital Development Board.

HEAD 2 Interpretation

Provides that in the Act:

“Board” means the Board referred to in Head 12

“Chairperson of the Children’s Hospital Group Board” means the person appointed in that non-statutory role by the Minister and in post immediately before the establishment day

“Children’s Hospital Group Board” means the non-statutory Board so appointed by the Minister and in place immediately before the establishment day

“hospital” means the premises and services under the governance of the body established under Head 5 [Title]

“company” has the meaning it has in the Companies Act 2014

“Crumlin Hospital” means Our Lady’s Children’s Hospital, Crumlin®

“Establishment day” means the day appointed under Head 5

“Executive” means the Health Service Executive

“Minister” means the Minister for Health

“National Children’s Hospital” has the same meaning as in the Health Act 1970 (Section 76) (Adelaide and Meath Hospital, Dublin, incorporating The National Children’s Hospital) Order, 1996 (SI 228/1996)

“subsidiary” means a subsidiary within the meaning of section 7 of the Companies Act 2014

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

“Tallaght Hospital” means the Adelaide and Meath Hospital, Dublin, incorporating the National Children’s Hospital

“Temple Street Hospital” means Temple Street Children’s University Hospital

EXPLANATORY NOTE:

This is a standard provision providing definition for certain words and terms used in the Act.

The Children’s Hospital Group Board is a non-statutory Board, originally appointed by the Minister for Health in 2013 and is one of the seven hospital groups established as part of the acute health sector reform programme. The three existing children’s hospitals are committed to becoming a single service before the new facilities are open. All three have existing Boards which are established as legal entities and discussions commenced with their Chairs

in January 2013 regarding the establishment of a non-statutory Hospital Group Board. It was eventually agreed that the CHGB should comprise (i) the Chairs of the three children's hospitals; (ii) nine other nominees with the required competencies.

The Children's Hospital Group Board (CHGB) has responsibility for:

1. Overseeing the integration of the three existing children's hospitals into one organisation before transitioning to the new children's hospital;
2. Developing effective corporate and clinical governance structures for the Hospital Group;
3. Developing a services integration/reconfiguration plan and
4. Acting as client for the new children's hospital capital project.

The definitions of "company" and "subsidiary" are similar to those in s2 of the National Cultural Institutions (National Concert Hall) Act 2015

The Department's legal advice raised the question of including a definition for "children" and "paediatric services" for the purposes of this legislation. Much consideration has been given as to whether and how to do this. For the following reasons, it has been decided to not include such definitions. Page 5 of the Executive Summary of the National Model of Care for Paediatric Healthcare Services in Ireland, states "*There is agreement among departments that there should be a 'cut off age' for admission to paediatric services, and that this age should be 16 years. There are many issues in managing older adolescents in a paediatric environment.*" "The three existing children's hospital currently provide services to persons under the age of 16, but as it is also recognised that it may be appropriate to continue to provide care in a paediatric setting for young people aged 16 or older where it is deemed clinically more appropriate for the patient to be treated with paediatric treatments and /or in a paediatric setting by their caregiver, the three hospitals do sometimes provide services to persons over the age of 16. Therefore, a definition with a single "cut off age" does not give the flexibility required for these services, and it would be necessary to define "child" with reference to a number of caveats. It is also possible that in the fullness of time, a policy decision may be taken that it would be appropriate to change the "cut off age" for paediatric services, either upwards or downwards, which would see the legislation out of step and outdated. It would be preferable for the legislation to be future proofed in this regard. It therefore appears preferable to either not define children for the purposes of this legislation, or else to define it in terms of the general policy guiding the provision of services, and be non-specific about age. In relation to the latter, it is noted that, under Head 7, the [TITLE] is to provide paediatric services, (for which it will receive funding for doing so under a Service Level agreement from the HSE (s38 of the Health Act 2004)), and that again under Head 7 the [TITLE] is required to take account of Government policies etc. In other words, the [TITLE] will receive funding to provide paediatric services as it is understood in the general system. Accordingly, even if the legislation did not specify what is meant by "children", it would be clear to practitioners in the system what the "cut off age" would be. In view of the points above, it is proposed to not define "children" or "paediatric services".

HEAD 3 Expenses

Provides that 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.

EXPLANATORY NOTE:

This is a standard provision in regard to the cost of the administration of the Act.

HEAD 4 Making of orders

Provides that

(1) the Minister may—

- (a) make orders for any matter in relation to which orders are provided for in this Act, and
- (b) amend or revoke any such order other than an order under Head 5.

(2) An order made under this Act by the Minister shall be laid before each House of the Oireachtas as soon as practicable after it is made and if a resolution annulling it is passed by either House within the next 21 days on which the House has sat after the order is laid before it, the order shall be annulled but without prejudice to the validity of anything previously done under the order.

EXPLANATORY NOTE:

This Head is a standard provision enabling the Minister to make orders as provided for in the Act, including commencement orders under Head 1 and as provided for in Head 9 (conferral of additional functions on [TITLE]); Heads 61 and 62 (amendment of functions of, and dissolution of the National Paediatric Hospital Development Board). The provision covers the laying before the Houses of the Oireachtas of any orders made under the Act.

PART 2

ESTABLISHMENT AND FUNCTIONS OF THE [TITLE]

HEAD 5 Establishment day

Provides that the Minister shall by order appoint a day to be the establishment day of the [TITLE].

EXPLANATORY NOTE:

This Head provides for the making of an Establishment Order by the Minister specifying the establishment day for the entity as a specific day on which the new entity will stand established.

HEAD 6 Establishment of the [TITLE]

Provides that –

- (1) A body to be known as the [TITLE] is established by the Act on the establishment day whose purpose is to fulfil the object and perform the functions assigned to it by or under this Act.
- (2) The [TITLE] is a body corporate with perpetual succession and an official seal and the power to sue and be sued in its corporate name.

EXPLANATORY NOTE:

Subhead 1 provides for the establishment of the body, on the establishment day specified.

Subhead 2 provides that the [TITLE] is a body corporate with the power to sue and be sued.

HEAD 7 Object and functions

Provides that:-

- (1) the object of the [TITLE] is to improve, promote and protect the health and wellbeing of children in a manner that embodies the entity's values of child-centred, compassionate and progressive care provided with respect, excellence and integrity and in doing that it shall have the right and responsibility to promote the culture and traditional principles of voluntarism in the conduct of its internal and external affairs.
- (2) the [TITLE] has the following functions:
 - a) to plan, conduct, maintain, manage, provide and develop acute paediatric services in the hospital
 - b) to provide for patient safety and quality of patient care in the hospital
 - c) to promote excellence in the practice and provision of paediatric services and provide leadership in the advancement, development, organisation and delivery of acute paediatric services in an integrated clinical network for acute paediatric services
 - d) to facilitate, foster and promote, through educational and other programmes, the personal and professional development of its employees and to provide paediatric medical, nursing and health and social care professional training and education
 - e) to facilitate, foster, promote and carry out research and innovation aimed at improving paediatric services and advancing medical and scientific knowledge of interest to paediatric services through research and scientific investigation and inquiry
 - f) to provide information, advice, advocacy, and assistance in relation to paediatric services to the Minister, the Executive, the Health Information and Quality Authority, and such other bodies as have involvement in the provision of paediatric services, as may be necessary
 - g) to advocate on behalf of children and young adults about healthcare issues
 - h) to engage in or support fundraising and philanthropy in relation to the [TITLE] and the provision of paediatric services in the hospital in pursuit of the [TITLE]'s object
 - i) to carry out such other functions as are necessary to provide paediatric services in the hospital.
- (3) in performing its functions, the [TITLE] shall have regard to

- (a) the objectives of the public health system and its role within the system
- (b) Government policy or guidelines, to the extent that such may affect or relate to the functions of the [TITLE] including such as are notified to it by the Minister and shall comply with any general policy direction that may from time to time be notified to it by the Minister
- (c) the promotion of equity of access to paediatric services and of improved patient outcomes in the hospital
- (d) the effective and efficient use of the resources available to the [TITLE] in relation to the performance of its functions under this Act
- (e) the need to support children and young people to have a voice in decisions that affect their lives regarding the health services delivered to them.

EXPLANATORY NOTE

Subhead (1) sets out the object of the [TITLE]. As proposed it is intended to reflect the commitment of the existing hospitals to children's healthcare and to the welfare of children, as part of the tradition of voluntarism referred to in the preamble which underpins the work of the three hospitals coming together under this legislation. While hard to define, the tradition of voluntarism is one that is mission-focused, with a large emphasis placed on being values-led (as outlined in Head 7(1)), advocating for the improvement of patient services. The three children's hospitals hold strongly to the view that this principle of voluntarism should be reflected in the Act, rather than merely in the preamble. Similar wording is used in s7 of the Institutes of Technology Act 2006 in relation to academic freedom.

Subhead (2) sets out the functions which are described broadly in order to enable the [TITLE] to undertake a wide range of different activities in multiple locations. These locations will include the existing sites at Crumlin, Temple Street and Tallaght, the three future new facilities, and other paediatric units in regional hospitals and facilities through outreach and shared care. It is envisaged that the transfer of staff and undertakings from the existing three children's hospitals will take place before the new buildings are completed, and the [TITLE] on commencement of the appropriate provisions will take over governance and management of services at these locations from the existing bodies. These are voluntary hospitals providing paediatric acute services on behalf of the Executive under s38 of the Health Act 2004. S38 allows the Executive to enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health and personal social service by that person on behalf of the Executive. When the [TITLE] takes over governance and management of these, it will also do so under s38 of the Health Act 2004.

In the future, the [TITLE] will govern and deliver services at two paediatric outpatient and urgent care centres which are currently being developed, one on the campus of Tallaght hospital and one on the campus of Connolly Hospital, and in due course at the new children's hospital being developed in Dublin 8 on the campus shared with St James's Hospital. When

all three new facilities are opened and operational, paediatric services will cease to be provided at their existing locations at Crumlin, Temple Street and Tallaght. At Tallaght, the existing facilities will be used for adult services. The future paediatric services at Tallaght Hospital will be in the new paediatric outpatients and urgent care centre and under the governance and management of the [TITLE].

Specifically, the following activities have been identified which the [TITLE] should have the ability to engage in and will be required to:

- a) Carry out all necessary planning and management to deliver services and provide paediatric services. Until such time as the new children's hospital and two centres are open, the services the [TITLE] will plan and deliver etc will be on the Crumlin, Temple Street and the National Children's Hospital sites, on behalf of the HSE under s38 of the Health Act 2004 in accordance with health policy and parameters. As is the case in all public hospitals, care will be provided to both public and private patients. It will also provide services on an all-island basis where agreed between authorities North and South, on behalf of the HSE.
- b) Provide quality of patient care
- c) Support paediatric services nationally, as the centre of a national integrated clinical network for paediatric care based on the HSE National Model for Care for Paediatric Healthcare in Ireland, through outreach or shared care at other centres or locations throughout the country, on behalf of the HSE under s38 of the Health Act 2004; again, care will be provided to both public and private patients as is the norm across the system. Facilitate in-reach from other local or regional centres or locations.
- d) Be the primary teaching hospital for paediatric medical, nursing, health and social care professionals. This includes providing facilities and resources for teaching of nursing and medical staff, and promoting and fostering paediatric medical and nursing education. It will also involve managing relationships with multiple academic partners, including through the establishment of appropriate structures and linkages
- e) Carry out research under its auspices in the interest of improving children's healthcare, and foster and promote research as a driver of clinical excellence and better healthcare.
- f) Provide advice, information and assistance in relation to paediatric services to the Minister, the HSE, HIQA and other relevant bodies, eg Tusla.
- g) Promote and advocate for children's healthcare and develop services to the extent possible within available resources. Well-recognised children's hospitals reference their advocacy role for children's health. In a health system dominated by the world of adult services, women's and children's health needs within it require organisations that advocate for these services. The staff in the children's hospital and network are well placed to advise on children's health issues and are used both in child health policy development and in public education, awareness raising and influencing public opinion on child health. The staff of the hospital and network are seen as the go-to source for 'thought leadership' on child health. Furthermore, in advocating for what is best for children's health, hospitals on occasion have to make children a ward of court, and also sometimes have to go against the "requests/demands" made by parents

for futile treatments, based on the hospitals' core values of doing what is right for the child in the first instance, and then what is right for the family. The three hospitals in their current remits perform this role and see this as a continuation of this remit, therefore, the organisation is staying true to its values-based approach to children's healthcare. This is also consistent with the principles of voluntarism which are fundamentally important to the existing children's hospitals and to the new body.

- h)* Engage in and/or support fundraising and philanthropic work to raise funding for the new entity
- i)* Such other functions as are necessary to provide paediatric services. This would include all necessary work for the integration of the three children's hospitals and the Children's Hospital Group into one entity and the transfer of services to the new buildings, and provide input to the National Paediatric Hospital Development Board on the project and to the HSE on the ICT requirements.

Subhead (3) relates to

- a. the hospital's role within the wider health system, interacting with other healthcare providers who provide other elements of care for the same patients at different points in the care pathway; and making decisions about the best use of its resources in the context of its role within the wider system.
- b. As part of the public health system there is a need for the TITLE to have regard to Government policy and the policy aims of the Minister for Health in particular and of other Ministers where relevant, in performing its functions and fulfilling its object. Subhead 4(b) replicates language used in the Education and Training Boards Act 2013 (s 10(4)), and s24 of the National Sports Campus Development Authority Act 2006.
- c. In recognition of the principles of voluntary hospitals, many of which were established to provide services for the disadvantaged and people at risk of social exclusion, the legislation makes clear that the [TITLE] shall have regard to the promotion of equity of access to services and of improved health outcomes for patients.
- d. The three existing children's hospitals stress the importance that the legislation reflect their commitment to use all resources in an effective and efficient manner, whether those resources be through funding provided to it as a s38 body or through gifts, fundraising, philanthropy etc. Similar wording is used in 128B (1) of the Local Government Reform Act 2014.
- e. This subhead is informed by Better Outcomes, Brighter Futures: the national Policy Framework for Children and Young People 2014-2010. The vision for Better Outcomes, Brighter Futures is for Ireland to be one of the best small countries in the world in which to grow up and raise a family, and where the rights of all children and young people are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future. Goal 3 of Better Outcomes, Brighter Futures is "listen to and involve children and young people".

Children and young people have a right to have a voice in decisions that affect them, both individually and collectively. Failure to listen to children and young people in the past resulted in a failure to protect them from abuse and neglect. The Government is committed to strengthening efforts to ensure that children and young people have this right and that they are supported to express their views in all matters affecting them and to have those views given their due weight, including those of “seldom-heard” children.

HEAD 8 Establishment of subsidiaries and other structures

Provides that

- (1) The [TITLE] may, with the consent of the Minister and the Minister for Public Expenditure and Reform,
 - a) form and establish one or more subsidiaries, partnerships or other appropriate vehicles or structures
 - b) promote and take part in the formation of such entities or structures or enter into joint ventures or partnerships for the purpose of
 - (i) managing relationships with multiple academic partners
 - (ii) pursuing philanthropic activities
 - (iii) pursuing fundraising activities and
 - (iv) other such activities as may be approved by the Minister

in support of the [TITLE]’s object and functions.
- (2) The [TITLE] may, with the prior consent of the Minister and the Minister for Public Expenditure and Reform, acquire, hold and dispose of shares or other interests in a company and become a member of a company.
- (3) The memorandum and articles of association of a subsidiary shall be in such form consistent with this Act as may be determined by the Board, with the consent of the Minister and the Minister for Public Expenditure and Reform.

EXPLANATORY NOTE:

Head 8 enables the [TITLE] to establish a subsidiary and other structures with the consent of the Minister and the Minister for Public Expenditure and Reform. It also enables the [TITLE] to promote or take part in the formation of such structures or enter into joint ventures or partnership with other entities. The TITLE can hold shares in a company or become a member.

This provision is modelled on Article 28 of the National Cultural Institutions (National Concert Hall) Act 2015 but for the purpose of this Act three specific functions are identified:

- a) As set out in subhead 1 (b)(i), establishing a vehicle to manage relationships with academic partners, consistent with the vision of a paediatric academic health sciences network. As the primary paediatric centre for the training of doctors and nurses and other paediatric healthcare professionals, and for research and innovation in paediatric healthcare, the [TITLE] will have multiple academic partners involving all

universities. In this context it is intended that it will have the power to set up appropriate structures to manage these relationships effectively consistent with its object and relevant functions.

- b) As set out in subhead 1 (b)(ii) and (iii), to arrange for or engage in philanthropic fundraising to support capital developments as well as ongoing children's health service developments and research and innovation within the body, which may include the setting up of appropriate structures to manage philanthropy and/or fundraising.

It is appropriate for the formation of any subsidiaries to be subject to the consent of the Minister and the Minister for Public Expenditure and Reform, in the context of the line of accountability to the Minister.

HEAD 9 Conferral of additional functions

Provides that the Minister may by order confer on the [TITLE] such additional functions connected with the functions for the time being of the [TITLE] as the Minister determines, subject to such conditions (if any) as may be specified in the order.

EXPLANATORY NOTE:

This provision allows for other connected functions to be conferred on the [TITLE].

HEAD 10 Land, property, gifts and borrowing

Provides that the [TITLE] may:

- (1) sell, exchange, let or otherwise dispose of any land and other property vested in it with the approval of the Executive, the consent of the Minister and of the Minister for Public Expenditure and Reform.
- (2) for the purpose of the performance of its functions, with the approval of the Executive and the consent of the Minister and the Minister for Public Expenditure and Reform and the Minister for Finance, and subject to such conditions, if any, as may be imposed by the Executive, Minister and Minister for Public Expenditure and Reform and Minister for Finance, borrow money for capital or current purposes and purchase or take on lease any land
- (3) accept gifts of money, land or other property on such trusts or conditions as may be specified by the donor but may not accept such gifts if the conditions attaching are inconsistent with its object or functions
- (4) in relation to any gift made on or after the establishment day, references in such a gift to Crumlin Hospital, Temple Street Hospital or the National Children's Hospital, unless the context otherwise requires or where it is expressly provided that such act of construing cannot be made, shall be construed as references to the [TITLE]

EXPLANATORY NOTE:

Subhead (1) allows the hospital to sell or otherwise dispose of land and property vested in it subject to consent/approval. The provision is modelled on Article 25(2) of the St James's Hospital Board Establishment Order 1971, as amended by the Health (Miscellaneous Provisions) Act 2007.

Subhead (2) allows the hospital to borrow money subject to the approval of the Minister and the Minister for Public Expenditure and Reform. Circumstances in which the hospital would borrow money or engage in activities that have an element of borrowing may arise in regard to leasing or licensing of commercial areas or carparking, or leasing of equipment. Similar provisions are included in the Sport Ireland Act 2015 and the St James's Hospital Board (Establishment) Order 1971 (Article 25), as amended. In the former, the approval of the relevant Minister and consent of the Minister for Public Expenditure and Reform is required. In the latter, the approval of the HSE only is required; however, it is considered appropriate to provide for Ministerial consent along with HSE approval in this Act. Article 25 of the St James's Hospital Board (Establishment) Order 1971, as amended also provides for the power to purchase or take on lease any land and this is provided for here also.

Subhead (3) allows the hospital to accept gifts where there are no attached conditions that would be inconsistent with its object and functions. The hospital may be the recipient of existing property from the existing hospitals, or it may receive gifts or bequests of property. Article 26 of the St James's Hospital Board (Establishment) Order, as amended, is a similar provision.

Subhead (4) allows the hospital to accept gifts which were made to any one or all of the three existing children's hospitals. This is to ensure that where a person intended or intends to leave a gift to any of the three existing children's hospitals and that gift falls due to be made after establishment day, that such gift will automatically be transferred to the [TITLE] on or following establishment day. It is important to note also that some gifts/bequests/legacies may be incorrectly willed after establishment day to one of the existing children's hospitals, and it is intended that these should also be transferred to the [TITLE].

Clause 28 (c) of the Tallaght Charter provides that in respect of sums payable to the Hospital, the following provisions shall have effect as respects any gift whether testamentary or *inter vivos* made on or after the transfer day (November 1996)- "references in such a gift to the National Children's Hospital, unless the context otherwise requires, be construed as references to the National Children's Hospital (within the meaning of Clause 34). Clause 34 provides that the "National Children's Hospital" means the company incorporated under that name on the 24th day of April 1952 or any body for which the time being assumes the functions of or acts as successor to the said company.

HEAD 11 Processing of personal data

Provides that:

(1) the [TITLE] may process personal data for the purpose of the functions assigned to it by or under this Act.

(2) Such processing may go no further than is necessary for the carrying out of those functions.

EXPLANATORY NOTE:

With effect from 25 May 2018, the General Data Protection Regulation (GDPR) will come into force across the EU, replacing the existing Data Protection Directive 95/46/EC. The GDPR introduces substantial changes to EU data protection law. These include introducing a higher bar on relying on consent, and increase the amount of information that a body must provide to data subjects when collecting their personal data, to ensure that processing activities are fair and transparent.

Our understanding is that public bodies are required to have a legislative basis for the processing (collecting etc) of personal data, as it may be more difficult for them to rely on consent, particularly in cases “where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation” (recital 43 of the EU General Data Protection Regulation). The General Data Protection Regulation makes no material change to the principle that consent may provide a lawful basis for data processing activities. However, it makes it significantly more difficult for organisations to obtain valid consent. Given that a question arises in respect as to whether consent was freely given where the controller is a public authority, it is prudent that a legislative basis is provided for the processing of personal data by the [TITLE] having regard to Article 6(1)(e) and 6(3) together with recital 45 of the EU General Data Protection Regulation.

Subhead 1 provides that the [TITLE] can collect, collate, analyse etc personal data for the purposes of its functions.

Subhead 2 provides that that the [TITLE] may not use that data for purposes other than its functions.

PART 3

BOARD OF THE [TITLE]

HEAD 12 Role of the Board

Provides that

- (1) there shall be a Board of the [TITLE] which shall be the governing body of the [TITLE] with authority, in the name of the [TITLE] , to perform the functions of the [TITLE]
- (2) The Board shall
 - a) Ensure that the object of the [TITLE] is fulfilled and that its functions are performed efficiently, effectively and to the highest standards
 - b) Set the strategic objectives of the [TITLE] consistent with the object and functions of the [TITLE] set out in the legislation
 - c) Ensure that the appropriate systems and procedures are in place to achieve the [TITLE]'s strategic objectives, fulfil its object and perform its functions
- (3) In performing its functions, the Board shall act in utmost good faith with care, skill and diligence
- (4) The Board may delegate to the Chief Executive Officer the day-to-day running of the [TITLE] and any of its functions which it considers should be carried out by the Chief Executive Officer and the Board shall be responsible for monitoring, approving or reviewing performance of such functions by the Chief Executive Officer
- (5) Provides that if a function of the Board is delegated to the Chief Executive Officer under subhead (4), then the delegation remains in force until the Board revokes it.
- (6) The Board shall submit such information regarding the performance of its functions as may be requested by the Minister.

EXPLANATORY NOTE:

As a statutory board, the Board will be governed by the Code of Practice for the Governance of State Bodies, effective from the 1st September 2016, and associated Code requirement and guidance documents, which provide a framework for the application of best practice in corporate governance. As a State body, the new entity will be required to confirm to the Minister for Health that it complies with the Code in its governance practices and procedures.

Subhead (1) sets out the role of the Board as the governing body of the [TITLE] with authority in the name of the [TITLE] to lead and direct and control the [TITLE] in the performance of its functions and the fulfilment of its object. A similar provision can be found in the Child and Family Agency Act 2013 (s 21).

Subhead (2) provides detail on the functions of the Board which is collectively responsible for promoting the success of the [TITLE] in achieving its object and functions, by leading and directing the [TITLE]'s activities. The Board will oversee the formulation and development of strategy, and provide strategic guidance to the hospital. Similar provisions can be found in the National Asset Management Agency Act, 2009 (s 18). The Child and Family Agency Act 2010 similarly sets out functions of the Board separately to functions of the agency (s 21).

Subhead (3) relates to the need for Board members to act in good faith, with due diligence and care, and in the best interest of the [TITLE]. A similar provision is found in the National Asset Management Agency Act, 2009 (s18).

Subhead (4) provides for the delegation by the Board of the running of the [TITLE] on a day to day basis to the CEO. In this context a key part of its role is holding the CEO to account. The Board will approve, monitor and review the hospital's performance, and the activities and effectiveness of management, holding the CEO to account. Similar provisions are included in the Child and Family Agency Act 2013 (s 21(4)) and the Health Act 2007 (s14).

Subhead (5) is a standard provision and is similar to provisions in the Health Act 2007, s 14, and the Child and Family Agency Act 2010, s 21.

Subhead (6) provides that the Board will be required to submit such information regarding the performance of its functions as may be requested by the Minister. It is intended that this is to include past and future performance.

HEAD 13 Membership of the Board

Provides that:

- (1) The [TITLE] will have a Board consisting of 12 members, one of whom will be the Chairperson.
- (2) All 12 members shall be appointed by the Minister and shall be people who have experience or expertise in matters connected with the functions of the [TITLE], or with corporate governance and management generally
- (3) Subject to subhead (9), of those 12 members
 - (a) Four shall be nominated by the Minister
 - (b) Eight shall be nominated by the Board subject to subhead (6).
- (4) When making an appointment under subhead (2), the Minister and Chairperson shall consult each other in relation to the experience and expertise required on the Board.
- (5) Provides that:
 - (a) where persons are appointed to succeed those serving a three-year term under subhead 10(a) or subhead 14(c), or persons serving a two-year term under subhead 14(c) 2 members will be nominated by the Minister and 4 will be nominated by the Board
 - (b) where persons are appointed to succeed those serving a five-year term under subhead 10(a) or persons serving a two-year term under subhead 14(c), 2 members will be nominated by the Minister and 4 will be nominated by the Board
- (6) The nomination by the Board under subhead (3)(b) of the persons to be members of the Board will be made on the basis of a selection process submitted by the Board to the Minister and approved by him or her.
- (7) The Board shall elect from among its members a member to be notified to the Minister for appointment with the Minister's consent, as Chairperson, who shall be appointed for the period remaining of his or her appointment as a member or for a longer period up to a maximum of four years.
- (8) Members shall hold office for a period of up to four years from the date of appointment except where otherwise provided for under subheads (10) and (14) or where the term is extended under subhead (7).
- (9) The Board on establishment day will comprise those persons who are immediately before the establishment day, members of the Children's Hospital Group Board and the Chairperson on establishment day shall be the person who, immediately before the establishment day, is the Chairperson of the Children's Hospital Group Board. In the

event that this results in fewer than 11 members and 1 Chairperson, the Minister shall appoint persons to the Board to make up the number.

(10) Of the persons who on establishment day are to comprise the members of the Board or who are appointed by the Minister to make up the number as per subhead (9):

(a) 6 such members shall hold office for a term of three years

(b) 6 such members, including the Chairperson, shall hold office for a term of five years

and ordinary members who are to hold office for the periods specified in (a) and (b) will be determined at the first meeting of the Board by lot to be drawn in the manner agreed at the meeting

(11) A person is not eligible for membership of the Board or a Committee of the Board if the person is a member of the staff of the [TITLE].

(12) The Board and 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

(13) Provides that:

(a) a member of the Board whose term of office expires or is about to expire by the effluxion of time is eligible for reappointment to the Board subject to subparagraph (b)

(b) a person may not be a member of the Board for more than 2 consecutive terms but is otherwise eligible for appointment to the Board

(14) Provides that:

Where the Minister has removed all members of a Board under Head 17, then:

(a) The Minister nominates and appoints all members of the next Board,

(b) At the first meeting of the Board, the Board shall elect the member to be Chairperson who shall serve five years

(c) 6 members who are to hold office for a term of three years will be determined by lot to be agreed at the meeting, with the remaining number to serve five years.

EXPLANATORY NOTE

General: The first Board of the TITLE will be the Board of the Children's Hospital Group in place immediately before establishment day. The Chair and five others will serve for five

years, the remaining six for three years. It is intended that every four years, six members will be reappointed/replaced on the ratio of two Ministerial nominations, and four nominations by the Board. If the entire Board is removed, then the Minister appoints all twelve new members, (let's call this a replacement Board), six of whom, including the Chairperson who will have been elected by the Board members, will serve five years and the remaining six members three years. The replacement of these will be as before – two Ministerial nominations and four Board nominations. The Minister will approve the process, to be used by the Board, for Board nominees. Casual vacancies arising will be filled in the same way as the person who occasioned it was nominated, except where the casual vacancy arises from the departure of a person appointed to a Board entirely nominated by the Minister, ie the first Board, or a replacement Board. In that case, the first vacancy to arise will be filled on the nomination of the Board, the second on the nomination of the Minister, and so on (this is provided for in Head 14)

Subhead (1) provides that the Hospital will have a Board appointed by the Minister, comprising twelve members, of whom one will then be appointed as Chairperson.

Subhead (2) specifies the competencies, skills and expertise required for Board membership.

Subhead (3) provides that for the second and subsequent Boards, four persons will be nominated by the Minister to be Board members, and the remaining eight will be nominated by the Board itself. The way in which the nominations will be made is set out in subhead (6).

Subhead (4) provides that the Board and the Minister will consult with each other in relation to the requirements of the Board. A mix of competencies will be required and it is important that the Minister and the Board, in determining who their nominees will be, need to agree how the combined nominees of the Board and the Minister will ensure that the Board has the competencies needed to be effective.

Subhead (5) provides that every two years, when the term of office of six of the twelve members falls due, the Minister will nominate two and the Board will nominate two persons to be appointed to the Board. The six people whose term of office ends after three years, as per subhead 10(a) and subhead 14(c) will also be replaced by two persons nominated by the Minister and four by the Board.

It provides that other than for the twelve persons appointed to the Board on Establishment day or to make up the number (in the event that the Board of the Children's Hospital Group does not number twelve on the day immediately before establishment day) as per subhead (7), all other persons appointed to the Board will either be nominated by the Board or by the Minister on a ratio of 8:4. This means that every two years (except for the first Board when the first six vacancies will arise after three years) the terms of six Board members will come to an end and fall to be replaced or reappointed - of those six, four will be Board nominees and two will be Ministerial nominees. Before the expiry of those three years, the Board will nominate four persons to replace four of the six persons whose term of office is three years, and the Minister will nominate the other two members to be appointed. Then two years later, before the expiry of the five-year term of the remaining six original members of the Board

(including Chairperson), the Board will nominate four persons and the Minister will nominate two members, and so on.

Subhead (6) provides that the Board will submit for approval to the Minister the mechanism by which the Board will select its nominees for appointment by the Minister.

Subhead (7) provides that the Board will elect a member to be the Chair of the Board, (this is what happens currently on the boards of the three children's hospitals coming together to create the Hospital), and that the person so elected shall be appointed Chairperson by the Minister, with the Minister consenting to the appointment. As the proposed Chairperson of a State body, that person will be required to make him/herself available to the appropriate Oireachtas Committee to discuss the approach he/she will take to his/her role as Chairperson. That person will serve for the period of his/her appointment as a member, which may be two years or four years (depending on whether the Chairperson has just been appointed to the Board, or is a person who has already served two years on the Board). Schedule 1(4) of the Pharmacy Act 2007 provides a mechanism whereby the Chairperson and Vice-Chairperson are elected at a meeting of the Council.

If the Chairperson is not operating effectively, there is scope under Head 16 (Conditions of office of membership of the Board) for the Board to request the Minister to remove an appointed member from office, which it is intended will also apply to an appointed member who has been elected by the Board to be Chairperson.

Subhead (8) provides that each term of office will be for a period of up to four years. It is intended that the term of office would be four years but, in case there is a delay in appointing a member, it would not be desirable for that person to be appointed for four years, thereby ending his or her term on a different date to other Board members, potentially leading to a myriad of starting dates for Board members.

Subhead (9) provides that the first Board of the hospital will be the elevent members and one Chairperson of the non-statutory Children's Hospital Group Board in existence prior to establishment day. If, by any chance, one or more members decided prior to establishment day to not serve, or if there was a vacancy on the Children's Hospital Group Board, the subhead allows the Minister to select a person or persons to make up the number.

Subhead (10) provides that the first Board will draw lots to determine that six ordinary members will serve for a period of three years on the Board, and the remaining five ordinary members and Chairperson will serve for five years.

Subhead (11) provides that a staff member cannot be a member of the Board or of a Committee of the Board. This includes the Chief Executive Officer.

Subhead (12) is a standard provision regarding gender balance on the Board.

Subhead (13) provides that a person may serve more than 2 terms, but may not serve 3 or more consecutively. This provides the flexibility to have a person on the Board for more than

two terms, which may be required given the specialist nature of the experience and skills required for this Board.

Subhead (14) provides a mechanism for appointing a Board and Chairperson in the event that the Minister exercises his power under Head 17 to remove the entire Board. In the event of the entire Board being removed, it is necessary for the Minister to select and appoint the entire replacement Board, with the intention that 6 would serve 3 years, and 6, including the person nominated as Chairperson, would serve 5 years.

HEAD 14 Filling of casual vacancies

- (1) Provides that if a member of the Board dies, resigns, or ceases to hold office for any reason (other than having fulfilled his or her appointed term), the Minister shall appoint a person to fill the resulting casual vacancy so occasioned in the same manner as the member who occasioned the casual vacancy was so appointed subject to subhead (3). The person appointed in this way may hold office for the unexpired period of his or her predecessor's term of office.
- (2) For the purposes of Head 13(13)(b) a person who fills or occasions a casual vacancy shall be considered to have served a term as a member of the Board even though he or she will have served only part of a term.
- (3) A casual vacancy arising on the first Board or on a Board appointed under Head 17, will be filled on nomination of the Board alternating with a nomination by the Minister, beginning with the Board and subject to the Minister having four nominees.

EXPLANATORY NOTE:

Subhead (1) provides for situations where a Board member has resigned or ceased to hold office before the expiry of their term. It provides for the filling of the vacancy for the unexpired period. It would be expected that the person appointed would be on the Minister's own nomination, or on the nomination of the existing Board, depending on the nomination process for the original office holder or otherwise as set out in Head 13.

Subhead (2) provides that a person who fills a casual vacancy shall be considered to have served a term, so that the rules which apply to reappointment under Head 13 will apply. This will allow them to serve for the remainder of the casual vacancy, then another term, then take a break of 2 years and eligible for re-appointment again at that stage.

Subhead (3) recognises that the first 12 members of the Board will be appointed by the Minister. Without this subhead, any vacancy arising from any of the original 12 appointed by the Minister would need to be filled by a nominee of the Minister (as per subhead 1). However, the intention of this legislation is that the Board will be able to nominate members. Accordingly, this provision is to allow casual vacancies arising from any of the original 12 to be filled by nomination of the Board and of the Minister. The first of the original 12 to leave will be replaced by a nominee of the Board, then Minister, then Board etc subject to the Minister having 4 nominees. However, when 6 members of the Board fall to be replaced or to be reappointed (including any person who was appointed to fill a casual vacancy), they will be replaced or reappointed on the basis of 2 Minister's nominees, and 4 Board's nominees.

HEAD 15 Meetings of the Board

Provides that

- (1) The Board shall hold as many meetings as are necessary for the performance of its functions and shall hold no less than 6 in each period of 12 months
- (2) The Chairperson may at any reasonable time call a meeting of the Board.
- (3) Any 6 members of the Board may call a meeting of the Board if the Chairperson refuses to call a meeting after being presented with a requisition for that purpose signed by at least 6 members, or does not call a meeting within seven days of being presented with such a requisition.
- (4) At a meeting called under subhead (3), or where the Chairperson has called a meeting and cannot attend, or where the office of chairperson is vacant, the members present will choose one of those present to chair the meeting
- (5) The quorum for a meeting of the Board will be 6 members.
- (6) A meeting held while there is a vacancy on the Board will be valid irrespective of the vacancy, as long as there is a quorum
- (7) With the exception of a meeting called in accordance with subhead (3), the Chairperson will preside at all meetings of the Board at which he or she is present
- (8) Any question at a meeting shall be determined by a majority of the votes of the members present and voting on the question
- (9) where there is an equal division of votes, the Chairperson has a second and casting vote at all meeting as which he or she is present except where the meeting has been called in accordance with subhead (3), in which case the member chosen in accordance with subhead (4) to chair that meeting will have a second and casting vote
- (10) The Board may regulate, by standing orders or otherwise, the procedures and business of the Board.

EXPLANATORY NOTE:

The provisions set out in Head 14 govern the way in which the Board conducts its business.

Subhead (1) is a standard provision.

Subhead (2) allows the Chairperson to call a meeting of the Board.

Subhead (3) provides a mechanism for calling a meeting where 6 members are in agreement that one should be called and the Chairperson refuses or fails to do so.

Subhead (4) provides that a member will be chosen to chair the meeting where the meeting called under subhead (3), or where the Chairperson cannot attend.

Subhead (5) is a standard provision.

Subhead (6) is a standard provision.

Subhead (7) clarifies that the chairperson will preside at all meetings he or she attends, except where that meeting was called under subhead 3.

Subhead (8) is a standard provision.

Subhead (9) clarifies that the person chairing the meeting has the second and casting vote, irrespective of whether or not the Chairperson is present at the meeting.

Subhead (10) is a standard provision.

HEAD 16 Conditions of office of membership of the Board

- (1) Provides that a person shall not be qualified for office and a member shall cease to be so qualified and shall cease to hold office if he or she
 - a) is adjudicated bankrupt
 - b) is convicted of an indictable offence
 - c) is convicted of an offence involving fraud or dishonesty
 - d) is disqualified or restricted from being a director of a company (is or is deemed to be the subject of an order under Section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014)
 - e) is sentenced to a term of imprisonment by a court of competent jurisdiction
 - f) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession.
- (2) Provides that a 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 failure to attend was due to illness or unless the absence was approved by the Chairperson with the consent of the Minister.
- (3) Provides that:
 - (a) A member may resign from the Board by letter sent to the Minister and the resignation should take effect from the date specified in the letter, or the date of its receipt by the Minister, whichever is the later
 - (b) A member who resigns from the Board by letter sent to the Minister should, no later than at the time of notifying the Minister, notify the Chairperson of his or her intention to resign
- (4) The Minister may, at the request of the Board or following consultation with the Chairperson, remove at any time a member from office if:
 - a) the member has become incapable through ill-health of performing the functions of the office
 - b) the member has committed stated misbehaviour or

- c) the removal of the member appears necessary for the effective performance by the hospital of its functions.

EXPLANATORY NOTE:

Subhead (1) sets out the circumstances in which a person may not be appointed to the Board and under which a member of the Board will automatically cease to hold office. Similar wording is used in the Pharmacy Act 2007 (Schedule 1 (2)). There are similar provisions in s11(3) of the National Cultural Institutions (National Concert Hall) Act 2015 and s23(2) of the Child and Family Agency Act 2013. Subhead 1(f) is similar to s23(2)(f) of the Child and Family Agency Act 2013 and is included in recognition of the fact that some members appointed to the Board may be members of professional bodies in the health sector.

Subhead (2) is similar to s23(3) of the Child and Family Agency Act 2013. It recognises that effective working of the Board will mean that Board members, when appointed, should be available for regular attendance at Board meetings. A Board member may be absent for a longer period than that specified, if approved by the Chairperson with the consent of the Minister. A similar provision is in the Education for Persons with Special Educational Needs Act 2004 (Schedule 1) where it is provided that a person will not cease to be a member of the Council where his or her absence from meetings was approved the Council. In these Heads, it is proposed that the Minister's consent be also required.

Subhead (3) is a standard provision setting out the process by which a member of the Board may resign. As a member of the Board, subhead 3(a) also applies to the Chairperson.

Subhead (4) sets out the specific circumstances under which a member may be removed from office by the Minister at the request of the Board or following consultation with the Chairperson. These are similar to provisions in the Child and Family Agency Act 2013 (s23(1)) and the National Cultural Institutions (National Concert Hall) Act 2015 (s11(1)).

HEAD 17 Removal of all members of the Board from office

- (1) Provides that the Minister may remove all members of the Board if
 - (a) the Board fails to achieve a quorum for three consecutive meetings
 - (b) the Board does not comply with a judgement, order or decree of a Court save where such judgement, order or decree is the subject of an appeal or other similar process
 - (c) the Minister is satisfied following an independent review of any matters concerned with the effective performance by the Board of its functions that the Board's functions are not being performed in an effective manner

- (2) Provides that
 - (a) The Minister may, if of the opinion that the Board's functions are not being performed in an effective manner, appoint a person to conduct an independent review of any matter giving rise to that opinion and submit a report to the Minister on the results of the review.
 - (b) the independent review referred to in subhead 2(a) will be conducted by a person appointed by the Minister, who will submit a report to the Minister on the results of that review. Such report will be submitted to the members of the Board within 21 days of the Minister's receipt of the report.
 - (c) the Board shall co-operate with 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.

EXPLANATORY NOTE:

Subhead (1) sets out the Minister's powers to remove the Board.

Subhead (2) deals with the potential failure of a Board to perform effectively, or to comply with what is required of it. Failure by the Board to perform effectively could have potentially significant and serious consequences for quality and safety or the availability of services. In these circumstances, it is necessary to give the Minister the power to remove the Board as a whole, subject to an independent process that confirms that the Board is not operating effectively. It would not be expected that such a response would be triggered by normal operational issues such as resource pressures or service challenges, which would be addressed in a practical and cooperative way at operational level through the Service Level Agreement in operation between the [TITLE] and the HSE under s38 of the Health Act 2004.

This subhead is modelled on Child and Family Agency Act 2013, s24(2) which also provides for removal of all members of the Board from office.

HEAD 18 Committees of the Board

Provides that

- (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 Board is required to specify in writing the purpose and terms of reference of each committee of the Board
- (4) the acts of a committee of the Board are subject to confirmation by the Board unless the Board dispenses with the necessity for confirmation
- (5) 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.
- (6) the Board may at any time dissolve a committee of the Board established under this section.

EXPLANATORY NOTE:

These subheads allow for the Board to establish committees to give expert advice in relation to matters of relevance to its functions. These may include committees such as the audit committee, quality and safety committee, the Board selection/nominations committee or others with specific remits. There are similar provisions in the Child and Family Agency Act 2013 (section 25) and the Health Act 2004 (Section 15).

Head 13 already establishes that staff members cannot be members of committees, although it is intended that the CEO can be an executive member of a Board committee.

HEAD 19 Membership of either House of Oireachtas or European Parliament or local authority

Provides that

(1) a person is not eligible for appointment to the Board or a committee of the Board if the person is a member of either House of the Oireachtas or of the European Parliament, or is or becomes regarded pursuant to section 19 of the European Parliaments Election Act 1997 as having been elected to the European Parliament to fill a vacancy, or a member of a local authority.

(2) A member of the Board or a committee of the Board shall cease to hold office on being nominated to Seanad Eireann or being elected to either House of the Oireachtas or of the European Parliament or on becoming a member of a local authority.

EXPLANATORY NOTE:

These are standard provisions to provide that a person may not be appointed to either the Board or a Committee of the Board, nor remain on the Board or a Committee of the Board, if he or she is, or becomes, a TD, Senator, local councillor, or MEP.

HEAD 20 Expenses of members of Board and committees

Provides that:

A member of the Board or committee of the Board shall be paid by the hospital, out of moneys at its disposal, such allowances for expenses properly incurred in respect of the member's attendance at a meeting of the Board or of a committee, as the case may be, or otherwise in connection with the affairs of the Board as the Minister, with the consent of the Minister for Public Expenditure and Reform, may allow.

EXPLANATORY NOTE:

This provision allows Board members or members of Committees of the Board to be recouped expenses in line with DPER rules. However, there is no provision made for the payment of fees – in line with the voluntary ethos of the existing children's hospitals, no fees shall or can be paid to Board members or to members of committees of the Board.

HEAD 21 Seal of the [TITLE]

(1) Provides that

1. the [TITLE] shall as soon as possible after the establishment day provide itself with a seal
2. the seal of the [TITLE] will be authenticated by the signature of any two members of the Board or the signatures of a member of the Board and an employee of the [TITLE] authorised by the Board to authenticate the seal
3. judicial notice will be taken of the seal and every document that is purporting to be an instrument made by the [TITLE] and sealed by the seal of the [TITLE] 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

EXPLANATORY NOTE:

This is a standard provision.

PART 4

CHIEF EXECUTIVE OFFICER, EMPLOYEES

HEAD 22 Chief Executive Officer

Provides that

- (1) There shall be a chief executive officer of the [TITLE] (who is in this Act referred to as the “Chief Executive Officer”).
- (2) The Chief Executive Officer shall be appointed by the Board in accordance with the procedures determined by the Board with the prior consent of the Minister.
- (3) The Chief Executive Officer shall hold office on such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as may be determined by the Board with the approval of the Executive given with the consent of the Minister and the approval of the Minister for Public Expenditure and Reform.
- (4) Notwithstanding subheads (1) and (2), the person who is contracted by the Executive to be the Chief Executive Officer of the Children’s Hospital Group immediately before the establishment day shall become the Chief Executive Officer contracted by the Board for the remaining unexpired period under the contract he or she holds as Chief Executive Officer of the Children’s Hospital Group and shall hold office on such terms and conditions as are specified under that contract.
- (5) the remuneration and allowances determined under subsection (3) and payable under subsection (4) are payable to the Chief Executive Officer of the [TITLE] out of funds at its disposal.
- (6) The Chief Executive Officer shall not hold any other office or position without the consent of the Board.
- (7) The Chief Executive Officer may be removed from office by the Board for stated reasons.
- (8) 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 Head 15(1).

EXPLANATORY NOTE:

Subhead (1) provides that the [TITLE] will have a Chief Executive Officer.

Subhead (2) provides that the person appointed to this role is to be appointed in line with a selection process which the Board of the Hospital will determine, with the prior consent of the Minister.

Subhead (3) addresses pay and conditions for the CEO recognising the need for appropriate approvals as set out in Section 21(3) of the Health Act 2007.

Subhead (4) provides that the first CEO shall be the CEO of the Children's Hospital Group, which was established on a non-statutory basis to bring together the three existing hospitals. The current Group CEO is an employee of the HSE and, following open competition by PAS, was appointed on a contract basis as Group CEO of the Children's Hospital Group. Subhead 2 provides that the person so appointed under this contract will become the first CEO of the new entity as an employee of the entity. It is proposed this will continue for the remaining period of the contract as Group CEO from establishment day, on the pay and conditions as per his/her current contract.

***** For drafting guidance*** Legal advice is of the view that CHG may require to be precisely defined. If this is required, and it is not possible to do this satisfactorily, another mechanism to appoint the CEO may be required (see below for alternative).**

Other statutes were consulted. Some statutes make references to person designated by the Minister to be the CEO. This may provide a solution, in that the legislation could make clear that while the person to be the CEO is designated by the Minister, the Minister can only designate the person who is contracted by the HSE as CEO of the CHG .

The Minister may, immediately before the establishment day, designate a person to be the first Chief Executive Officer and the person so designated shall be the person who is contracted by the Executive to be the Chief Executive Officer of the Children's Hospital Group immediately before the establishment day, the Minister shall designate that person to be the first Chief Executive Officer.

If, immediately before the establishment day, a person stands designated by the Minister under the subhead above, that person shall be the first Chief Executive Officer and shall hold office on such terms and conditions as are specified under the contract that person held as Chief Executive Officer of the Children's Hospital Group for the remaining unexpired period of that contract.

Subhead (5) is a standard provision. The first CEO shall be paid such allowances and remuneration as are provided for in his/her contract, and subsequent CEOs shall be paid such allowances and remuneration as are determined by the Board with the consent of the HSE, and relevant Ministers.

Subhead (6) is a standard provision.

Subhead (7) allows for the removal of the CEO by the Board.

Subhead (7) is a standard provision making explicit provision for the CEO to attend Board meetings. In the context of good governance and hence separation of the Board and the executive management, this is proposed as a “may” as opposed to a “shall” provision.

HEAD 23 Functions and responsibility of the Chief Executive Officer

Provides that the Chief Executive Officer

- 1) Shall have overall responsibility for the day-to-day operation and management of the [TITLE] in accordance with the strategic objectives set out by the Board
- 2) Shall deliver on the [TITLE]'s strategic plan in the most effective and efficient manner
- 3) Shall perform any other functions as may be delegated to him or her by the Board or that may be assigned by or under this Act or another enactment
- 4) Shall supply the Board with such information including financial information relating to the performance of his or her functions as the Board may require
- 5) Is responsible to the Board for the performance of his or her functions and for the implementation of the Board's policies
- 6) The CEO may make proposals to the Board on any matter relating to the functions of the [TITLE]
- 7) If the Chief Executive Officer is absent or the position of Chief Executive Officer is vacant, the functions of the Chief Executive Officer may be performed by a member of the staff of the [TITLE] designated by the Board.

EXPLANATORY NOTE:

Subheads (1) to (4) deal with the role of the CEO which will be to lead the executive management team and to have overall responsibility for the performance of the TITLE and for the day-to-day running and management of the TITLE, under delegated authority from the Board. The CEO will need to develop and deliver on the TITLE's strategic plan in the most effective and efficient manner. He or she must provide the Board with such information as it requires. These provisions also cover the possibility that other functions may be assigned to the CEO by this or another enactment.

Subhead (5) relates to the Board's obligation to hold the CEO to account, and review and monitor the performance of the organisation as led by the CEO and the executive team. It is therefore essential that the CEO provide all necessary information to the Board to enable it to fulfil its role. Typically the CEO will attend Board meetings but for good governance it is important to maintain separation of the Board and the executive management and hence there is scope for the Board to meet without the CEO also. Similar wording is used in National Cultural Institutions (National Concert Hall) Act 2015.

Subhead (5) provides that the CEO will be responsible to the Board; this provision sets out the accountability line of the CEO to the Board. S 24(2) of the Inland Fisheries Act 2010 makes the same provision.

Subhead (6) empowers the CEO to make proposals to the Board and is modelled on a provision in the National Cultural Institutions (National Concert Hall) Act 2015, s18.

Subhead (7) provides that the functions of the CEO can be carried out by someone other than the CEO. Similar wording is provided in the Health (Miscellaneous Provisions) Act 2014 (s8 amending s11 of the Health and Social Care Professionals Act 2005).

HEAD 24 Employees

Provides that:

- (1) The [TITLE] may, subject to subhead (2) appoint persons to be its employees using an appropriate and transparent recruitment and selection process approved by the Board, and determine their duties
- (2) The [TITLE], with the approval of the Executive given with the consent of the Minister and the approval of the Minister for Public Expenditure and Reform, will determine the terms and conditions of employment, including those relating to remuneration and allowances of employees appointed under this section other than for those employees who become employees of the [TITLE] on transfer under Parts 6, 7, 8 and 9 on their existing terms and conditions
- (3) Remuneration and allowances of employees are payable by the hospital out of funds at its disposal.

EXPLANATORY NOTE:

- (1) Subhead 1 enables the hospital to appoint employees to carry out its object and functions. From an operational perspective, the way the hospital manages is envisaged as similar to the way in which the voluntary and joint board hospitals currently operate ie the hospital will manage its own recruitment.
- (2) Subhead 2 relates to determination of terms and conditions. The Child and Family Agency Act 2013 provides in relation to employees that:

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.

....

(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.

The Sport Ireland Act 2015 provides that, subject to provisions on the transfer of employees from other agencies:

- *Sport Ireland may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform—*
- *appoint such and so many persons to be members of the staff of Sport Ireland as it may from time to time determine, and*
- *determine the grades of such staff of Sport Ireland and the number of staff in each grade.*

Subject to s38 , the terms and conditions of service, including terms and conditions relating to—

(a) remuneration, and

(b) allowances for expenses,

which shall be paid by Sport Ireland out of moneys at its disposal, of the members of the staff of Sport Ireland shall be such as Sport Ireland may from time to time, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, determine.

(3) Subhead 3 is a standard provision.

HEAD 25 Superannuation provision

Provides that

(1) A person who immediately before his or her transfer to TITLE under Head 28, 36 and 44 is a member of the relevant superannuation scheme or the Single Public Service Pension Scheme shall, on transfer continue to be a member of such scheme in accordance with its terms and conditions.

(2) A person who immediately before his or her transfer to the entity under Head 52 is not a member of the relevant superannuation scheme or the Single Public Service Pension Scheme shall, on transfer become and be a member of the relevant superannuation scheme.

(3) Subject to section 48 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, a pensionable public servant who—

- (a) is not a member of the Single Public Service Pension Scheme, and
- (b) is appointed under Head 24 to be a member of staff of the TITLE

shall, on his or her appointment to the TITLE, become and be a member of the relevant superannuation scheme in accordance with its terms and conditions.

(4) Nothing in this section prevents the relevant superannuation scheme being varied in accordance with its terms and conditions.

(5) In this section,

(a) “pensionable public servant” shall be construed in accordance with Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012

(b) “relevant superannuation scheme” means the Voluntary Hospitals’ Superannuation Schemes 1969 and 1985 as amended

(c) “Single Public Service Pension Scheme” means the scheme established under section 9 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012

EXPLANATORY NOTE

As agreed with the Department of Public Expenditure and Reform, the Heads provide that persons eligible for the Single Public Service Pension Scheme (SPSPS) should be on that scheme but that, instead of requiring the TITLE to create a new scheme for everyone one else, should allow persons on the VHSS to remain on that Scheme, and that employees who are not eligible for the SPSPS should adopt the VHSS also (such as Executive employees currently on the HSE scheme).

(1) employees who were serving in hospitals transferring under Head 28 (Crumlin), Head 36 (Temple Street) and Head 44 (Tallaght) and who are members of the Voluntary Hospital Superannuation Scheme (VHSS) will continue as members of the VHSS and employees who

are members of the Single Public Service Pension Scheme (SPSPS) will continue as members of the SPSPS.

(2) employees who were serving in the HSE and who are transferring under Head 52 but who are not members of the VHSS will become members of the VHSS. This is to capture HSE staff who are on the HSE Employee Superannuation Scheme.

(3) employees who are recruited by the TITLE under Head 24 and who either are members or are eligible to become members of the SPSPS as provided for under the Public Service Pensions (Single Scheme) and other Provisions Act 2012 (Single Scheme Act) will either become or continue to be members of the SPSPS. All other new staff will become and be a member of the VHSS. The text has been drafted by the Pensions Side in the Department of Public Expenditure and Reform so as not to restrict Minister for PER's powers under S. 48 of the Single Scheme Act.

(4) As per the Technological Universities Bill, this provision makes clear that changes to the scheme may take place in the future.

(5) Standard provision giving an interpretation of the two schemes. For ease of reading, "relevant superannuation scheme" is used to mean the VHSS which is divided into the Voluntary Hospitals Superannuation Scheme, 1969 introduced by the Minister with effect from the 1st day of January, 1969 and the Voluntary Hospitals (Non- Officers) Superannuation Scheme, 1985 introduced by the Minister with effect from the 1st day of October, 1985". This is an occupational pension scheme.

It is intended that the associated Spouses and Children's Pension Schemes will be an add-on benefit.

In relation to the definition of "pensionable public servant", the definition means a public servant who—

(a) is employed in a pensionable post by a public service body, or

(b) holds a pensionable office or other pensionable position in a public service body;

Public service body is defined as including any body established by or under an enactment, in respect of which a pre-existing public service pension scheme exists or applies or may be made.

PART 5
ACCOUNTABILITY AND STANDARDS

Head 26 Accounts of the [TITLE]

Provides that:

- (1) the [TITLE] shall keep all proper and usual accounts of all money received or expended by it.
- (2) the Board shall, in respect of each financial year, cause to be prepared proper accounts of all income and expenditure and of the property, credits and liabilities of the [TITLE]
- (3) the financial year of the [TITLE] shall be the period of 12 months ending on the 31st day of December in any year, commencing on the commencement of this part
- (4) a statement of accounts of the [TITLE] for each financial year shall, as soon as may be after the end of the financial year, be prepared and the accounts of the [TITLE], approved by the Board, shall be submitted to the Comptroller and Auditor General for audit as soon as practicable and not later than three months after the end of the financial year to which the accounts relate.
- (5) within one month after the Comptroller and Auditor General issues an audit certificate for the accounts of the [TITLE], a copy of the accounts and of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who, within 2 months after their receipt, shall cause copies to be laid before each House of the Oireachtas

EXPLANATORY NOTE

The provisions in this Head set out how the [TITLE] will prepare its financial accounts and the role of the Comptroller and Auditor General in auditing the accounts.

Subhead 1 requires the [TITLE] to keep proper account of all money received – this is a standard provision.

Subhead 2 requires the [TITLE] to prepare financial accounts, and reflects similar provisions in the St James’s Hospital Board (Establishment) Order 1971, as amended by the Health (Miscellaneous Provisions) Act 2007.

Subhead 3 sets the accounting period for the [TITLE]. There is a similar provision in the St James’s Hospital Board (Establishment) Order 1971, as amended by the Health (Miscellaneous Provisions) Act 2007 at article 21(2).

Subhead 4 provides that the accounts shall be prepared and, after approval by the Board, submitted to the Comptroller and Auditor General for audit. A similar provision is included in the St James’s Hospital Board (Establishment) Order 1971, as amended by the Health

(Miscellaneous Provisions) Act 2007 at s 21(2), the Child and Family Agency Act 2013 at section 51(6) and the National Cultural Institutions (National Concert Hall) Act 2015 at section 26(3). The accounts of the St James's Hospital Board are also audited by the Comptroller and Auditor General, in accordance with his role.

Subhead 5 provides for the auditing of the accounts by the Comptroller and Auditor General in accordance with his role and laid before the Oireachtas.

HEAD 27 Annual report of the [TITLE]

Provides that:

(1) not later than 30 April in each year, the [TITLE] shall prepare and adopt an annual report in relation to the performance of the [TITLE]'s functions during the immediately preceding calendar year

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

(3) The Minister shall, within 21 days of receiving the annual report, cause copies of it to be laid before each House of the Oireachtas.

(4) The [TITLE] shall submit to the Minister such information regarding the performance of its functions as the Minister may from time to time require.

EXPLANATORY NOTE:

These are standard provisions setting out the need to prepare an annual report and make it available to the Minister. Similar provisions are included in article 22(1) and 22(2) of the St James's Hospital Board (Establishment) Order as amended.

PART 6

TRANSFERS OF STAFF, PROPERTY, ASSETS, RIGHTS AND LIABILITIES FROM OUR LADY'S CHILDREN'S HOSPITAL CRUMLIN TO THE [TITLE]

Head 28 Transfer of employees

Provides that

- (1) Every person who immediately before the commencement of this Part is a member of the staff of Crumlin Hospital will on commencement be transferred to and become a member of the staff of the [TITLE]
- (2) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person transferred under this section will not, on the day of transfer, be subject to less beneficial terms and conditions of employment, including those relating to tenure of office, or of remuneration, than those terms of conditions of service or of remuneration to which he or she was subject immediately before the day of transfer.
- (3) The previous service of a person transferred under subhead (1) will be reckonable for the purposes of relevant employment legislation as specified here, subject to any exemptions or exclusions in that legislation. The Acts that will apply are
 - (a) *the Redundancy Payments Acts 1967 to 2014*
 - (b) *the Protection of Employees (Part-Time Work) Act 2001;*
 - (c) *the Protection of Employees (Fixed-Term Work) Act 2003;*
 - (d) *the Organisation of Working Time Act 1997;*
 - (e) *the Terms of Employment (Information) Acts 1994 to 2012;*
 - (f) *the Minimum Notice and Terms of Employment Acts 1973 to 2005;*
 - (g) *the Unfair Dismissals Acts 1977 to 2007;*
 - (h) *the Maternity Protection Acts 1994 and 2004;*
 - (i) *the Parental Leave Acts 1998 and 2006;*
 - (j) *the Adoptive Leave Acts 1995 and 2005;*
 - (k) *the Carer's Leave Act 2001.*

EXPLANATORY NOTE:

- (1) Subhead (1) deals with the transfer of the existing staff of Crumlin Hospital to the [TITLE] as and from the commencement of this Part. This will include but not be limited to consultants, nurses, non-consultant hospital doctors, health and social care professionals, technical, administrative and management staff. These staff will henceforth

be staff members of the [TITLE]. This provision is similar to s 40(1) of the Competition and Consumer Protection Act 2014. There is a similar provision in s 73(1) of the Child and Family Agency Act 2013.

- (2) Subhead (2) provides that the transfer of staff will take place in accordance with their existing pay and conditions. This reflects similar provisions including s 40(1) of the Competition and Consumer Protection Act 2014 and s 73(2) of the Child and Family Agency Act 2013. It is understood that the inclusion of the “save with a collective agreement” is a drafting recommendation, and is a standard provision in all legislation.
- (3) Subhead (3) lists the relevant employment legislation to be taken account of in reckoning previous service for any person transferred. S 40(3) of the Competition and Consumer Protection Act 2014 includes a similar provision.

It is intended that the provision will ensure that any period of service by a person transferring under this section 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 Crumlin Hospital shall be regarded as a period of reckonable service for the purposes of any scheme to which the person will be a member of following transfer to the Children’s Hospital, ie it is not only the person’s service in Crumlin which is reckonable for the purposes of this provision.

HEAD 29 Transfer of assets, rights and liabilities

Provides that on the commencement of this Part

- (1) all the existing assets, rights and liabilities of Crumlin Hospital will be transferred to the [TITLE] including contractual obligations and other commitments, express or implied existing on the day immediately before the commencement of this part
- (2) any rights and liabilities transferred to the [TITLE] may be the subject of proceedings either by the [TITLE] or against it and the [TITLE] is not required to notify any other party to any proceedings that the rights and liabilities have been transferred.

EXPLANATORY NOTE:

Subhead (1) provides that on transfer, any contractual obligations or other binding commitments that are in place for Crumlin Hospital will be transferred to the [TITLE]. This subhead ensures that all such obligations become the obligations of the [TITLE]. The term “rights and liabilities” is intended to refer in general to contractual obligations of Crumlin Hospital and other commitments that may be either express or implied commitments. This provision is similar to s 42(1) of the Competition and Consumer Protection Act 2014. This provision is intended to also refer to pension payments and other superannuation liabilities of Crumlin in respect of its former employees who on the commencement of this part become the liabilities of the [TITLE].

Subhead (2) provides that proceedings may be taken either by the [TITLE] or against it, in the same way as proceedings might have been taken by or against Crumlin Hospital in relation to the rights and liabilities so transferred. There is a similar provision in the Competition and Consumer Protection Act 2014 (s 42(2)) and the Child and Family Agency Act 2013 (s 74(2))

HEAD 30 Liability for loss occurring before the commencement of this part

Provides that

- (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 commencement of this part of any of the functions of Crumlin Hospital shall on and after that day, lie against the [TITLE] and not against Crumlin Hospital.
- (2) Any legal proceedings pending immediately before the commencement of this part to which Crumlin Hospital is a party, shall be continued, with the substitution in the proceedings of the [TITLE] in so far as they so relate, for Crumlin Hospital.
- (3) Where, before the commencement of this part, 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 Crumlin Hospital, be enforceable against the [TITLE] and not Crumlin Hospital.
- (4) Any claim made or proper to be made by Crumlin Hospital in respect of any loss or injury arising from the act or default of any person before the commencement of this part shall be regarded as having been made by or proper to be made by the [TITLE] and may be pursued and sued for by the [TITLE] as if the loss or injury had been suffered by the [TITLE].

EXPLANATORY NOTE:

These provisions are modelled on Section 43 of the Competition and Consumer Protection Act 2014.

HEAD 31 Provisions consequent upon transfer of assets, rights and liabilities to the [TITLE]

- (1) Anything commenced and not completed before the commencement of this part by or under the authority of Crumlin Hospital may be carried on or completed on or after the commencement of this part by the [TITLE].
- (2) Any money, stocks, shares or securities transferred by the provisions in this Part that immediately before the commencement of this part were standing in the name of Crumlin Hospital shall, on the request of the [TITLE], be transferred into its name.

EXPLANATORY NOTE:

Subhead 1 provides for the continuation of actions commenced and not completed before the transfer to be continued after the transfer. It is modelled on s 44(1) of the Competition and Consumer Protection Act. There is a similar provision in s81 of the Child and Family Agency Act 2013.

Subhead 2 provides for the transfer of moneys, stocks, securities etc into the name of the [TITLE] which were in the name of Crumlin Hospital where transferred by this Act. There is a similar provision in s11 of the Dublin Docklands Development Authority (Dissolution) Act 2015

HEAD 32 Transfer of property

Provides that:

- (1) On the commencement of this Part all lands that, immediately before that day, were vested in Crumlin Hospital and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the [TITLE] for all the estate or interest therein that, immediately before the commencement of this Part, were vested in Crumlin Hospital, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed.
- (2) Any property remaining after satisfying the obligations of Crumlin Hospital shall be used for the purposes of the TITLE's functions under Head 7.
- (3) On the commencement of this Part all property (other than land) including choses-in-action that immediately before the commencement of this Part was vested in Crumlin Hospital shall stand vested in the [TITLE] without any assignment
- (4) Every chose-in-action vested in the [TITLE] by virtue of subhead 2 may, on and from commencement of this part, be sued on, recovered or enforced by the [TITLE] in its own name and it shall not be necessary for the [TITLE] or Crumlin Hospital to give notice to any person bound by the chose-in-action of the vesting affected by that subsection.

EXPLANATORY NOTE:

This head provides for the transfer of property, including choses-in-action and land and buildings, to the [TITLE]. This provision is modelled on Section 41 of the Competition and Consumer Protection Act 2014.

The value realised from the transferred property will benefit children's health, hence the reference to Head 7 to show that the TITLE could only use any value realised from the transferred property for the purposes of its functions.

HEAD 33 Preservation of contracts

Provides that every contract, agreement or arrangement to which Crumlin Hospital is a party and which is in force immediately before the commencement of this part

- a) Shall continue in force without any change after the commencement of this Part.
- b) Shall be enforceable by or against the [TITLE]
- c) is to be read and have effect as if the name of the [TITLE] were substituted in the contract, agreement or arrangement for that of Crumlin Hospital.

EXPLANATORY NOTE:

This section preserves contracts, agreements and arrangements in place and adapts references in them to the name of the original contracting party to that of the [TITLE]

There is a similar provision in s 75 of the Child and Family Agency Act 2013 and s 35(1) of the National Cultural Institutions (National Concert Hall) Act 2015.

HEAD 34 Records

Provides that

(1) each record (except a record to which subhead 2 applies) held by Crumlin Hospital immediately before the commencement of this Part shall be transferred to the [TITLE] on commencement of this Part and thereafter shall be the property of the [TITLE] and be deemed to be held by the [TITLE]

(2) each medical record held by Crumlin Hospital immediately before the commencement of this Part shall be transferred to the [TITLE] on commencement of this Part and thereafter shall be the property of the [TITLE] and be deemed to be held by the [TITLE] and the personal information in those records may be processed by the [TITLE] only for purposes compatible with the purposes for which the information was originally obtained.

(3) For the purpose of subhead (2), "medical records" mean records created, used and stored principally for the purposes of patient care and treatment and containing personal data relating to health within the meaning of the General Data Protection Regulation.

EXPLANATORY NOTE:

This provision directly addresses the transfer of medical and other records from Crumlin Hospital to the [TITLE] which will become the data controller in relation to the records transferred, including personal information in the records transferred. There is a similar provision in the National Cultural Institutions (National Concert Hall) Act 2015 (s 37) and s 76 of the Child and Family Agency Act 2013, although in this case a distinction is being drawn between medical records and other records in view of the fact that a hospital is involved and medical records, by definition, contain sensitive personal data within the meaning of data protection law, including the General Data Protection Regulation.

HEAD 35 Saving for certain acts

Provides that nothing in this Act affects the validity of any act done before the commencement of this Part by or under the authority of Crumlin Hospital and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by or on behalf of the [TITLE].

EXPLANATORY NOTE:

This is a standard provision that every act done by Crumlin Hospital will retain its validity as if it were done by the [TITLE]. This is modelled on Section 45 of the Competition and Consumer Protection Act 2014.

PART 7

TRANSFERS OF STAFF, PROPERTY, ASSETS, RIGHTS AND LIABILITIES FROM TEMPLE STREET CHILDREN'S UNIVERSITY HOSPITAL TO THE [TITLE]

HEAD 36 Transfer of employees

Provides that

- 1) Every person who immediately before the commencement of this Part is a member of the staff of Temple Street Hospital will on commencement be transferred to and become a member of the staff of the [TITLE]
- 2) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person transferred under this section will not, on the day of transfer, be subject to less beneficial terms and conditions of employment including those relating to tenure of office, or of remuneration, than those terms of conditions of service or of remuneration to which he or she was subject immediately before the day of transfer
- 3) The previous service of a person transferred under subhead (1) will be reckonable for the purposes of relevant employment legislation as specified here, subject to any exemptions or exclusions in that legislation. The Acts that will apply are

- (a) the Redundancy Payments Acts 1967 to 2014;*
- (b) the Protection of Employees (Part-Time Work) Act 2001;*
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;*
- (d) the Organisation of Working Time Act 1997;*
- (e) the Terms of Employment (Information) Acts 1994 to 2012;*
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;*
- (g) the Unfair Dismissals Acts 1977 to 2007;*
- (h) the Maternity Protection Acts 1994 and 2004;*
- (i) the Parental Leave Acts 1998 and 2006;*
- (j) the Adoptive Leave Acts 1995 and 2005;*
- (k) the Carer's Leave Act 2001.*

EXPLANATORY NOTE:

Subhead (1) transfers the existing staff of Temple Street Hospital to the [TITLE] as and from the commencement of this Part. This will include consultants, nurses, non-consultant hospital doctors, allied health professionals, administrative and management staff. These staff will

henceforth be staff members of the new hospital. This provision is similar to s 40(1) of the Competition and Consumer Protection Act 2014. There is a similar provision in s 73(1) of the Child and Family Agency Act 2013.

Subhead (2) provides that the transfer of staff will take place in accordance with their existing pay and conditions. This reflects similar provisions in other legislation including the Child and Family Agency Act, s 73(2) and s 40(1) of the Competition and Consumer Protection Act 2014.

Subhead (3) sets out the relevant employment legislation that must be taken account of in reckoning previous service for any person transferred. S 40(3) of the Competition and Consumer Protection Act is a similar provision.

HEAD 37 Transfer of assets, rights and liabilities

Provides that on the commencement of this Part

- 1) all the existing assets, rights and liabilities of Temple Street Hospital as is agreed between the Members of the Mater Misericordiae Children's University Hospital Ltd and the Executive shall be transferred to the [TITLE] including contractual obligations and other commitments, express or implied that existed on the day immediately before the commencement of this part
- 2) any rights and liabilities transferred to the [TITLE] may be the subject of proceedings either by the [TITLE] or against it and the [TITLE] is not required to notify any other party to any proceedings that the rights and liabilities have been transferred.

EXPLANATORY NOTE:

- 1) Subhead 1 provides that on the commencement of this Part, any contractual obligations or other binding commitments that are in place for Temple Street Hospital and agreed between the Mater and the Executive will be transferred to the Hospital. This section ensures that all such obligations become the obligations of the Hospital. The term "rights and liabilities" is meant to refer in general to contractual obligations of Temple Street Hospital and other commitments that may be either express or implied commitments. This is intended to cover the pension payments and other superannuation liabilities of Temple Street in relation to its former employees, similarly to Crumlin Hospital. This provision is similar to s 42(1) of the Competition and Consumer Protection Act 2014.
- 2) Subhead 2 ensures that proceedings may be taken either by the Hospital or against the Hospital, in the same way as proceedings might have been taken by Temple Street Hospital or against Temple Street Hospital in relation to the rights and liabilities so transferred. There is a similar provision in the Competition and Consumer Protection Act 2014 (s 42(2) and the Child and Family Agency Act (s 74(2)).

HEAD 38 Liability for loss occurring before the commencement of this Part

Provides that

(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 commencement of this part of any of the functions of Temple Street Hospital shall on and after that day, lie against the [TITLE] and not against Temple Street Hospital.

(2) Any legal proceedings pending immediately before the commencement of this part to which Temple Street Hospital is a party, shall be continued, with the substitution in the proceedings of the [TITLE] in so far as they so relate, for Temple Street Hospital.

(3) Where, before the commencement of this part, 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 Temple Street Hospital, be enforceable against the [TITLE] and not Temple Street Hospital.

(4) Any claim made or proper to be made by Temple Street Hospital in respect of any loss or injury arising from the act or default of any person before the commencement of this part shall be regarded as having been made by or proper to be made by the [TITLE] and may be pursued and sued for by the [TITLE] as if the loss or injury had been suffered by the [TITLE].

EXPLANATORY NOTE:

These provisions are modelled on Section 43 of the Competition and Consumer Protection Act 2014.

HEAD 39 Provisions consequent upon transfer of assets, rights and liabilities to the [TITLE]

- (1) Anything commenced and not completed before the commencement of this part by or under the authority of Temple Street Hospital may be carried on or completed on or after the commencement of this part by the [TITLE].
- (2) Any money, stocks, shares or securities transferred by the provisions in this Part that immediately before the commencement of this part were standing in the name of Temple Street Hospital shall, on the request of the [TITLE], be transferred into its name.

EXPLANATORY NOTE:

Subhead 1 provides for the continuation of actions commenced and not completed before the transfer to be continued after the transfer. It is modelled on s 44(1) of the Competition and Consumer Protection Act. There is a similar provision in s 81 of the Child and Family Agency Act.

Subhead 2 provides for the transfer of moneys, stocks, securities etc into the name of the [TITLE] which were in the name of Temple Street Hospital where transferred by this Act.

HEAD 40 Transfer of property

Provides that:

- 1) On commencement of this Part all property (including choses-in-action) as is agreed between the Members of the Mater Misericordiae Children's University Hospital Ltd and the Executive, that immediately before the commencement of this Part was the property of Temple Street Hospital is transferred to and vested in the [TITLE] without any assignment.
- 2) Every chose-in-action vested in the Hospital by virtue of subhead 1 may, as and from commencement of this part, be sued on, recovered or enforced by the [TITLE] in its own name and it shall not be necessary for the [TITLE] or Temple Street Hospital to give notice to any person bound by the chose-in-action of the vesting affected by that subsection.

EXPLANATORY NOTE:

This head provides for the transfer of property, including choses-in-action, other than land and buildings, to the Hospital on commencement of this Part.

HEAD 41 Preservation of contracts

Provides that every contract or agreement to which Temple Street Hospital is a party and which is in force immediately before the commencement of this Part

- a) Shall continue in force without any change after the commencement of this Part
- b) Shall be enforceable by or against the [TITLE]
- c) is to be read and have effect as if the name of the [TITLE] were substituted in the contract, agreement or arrangement for that of Temple Street Hospital.

EXPLANATORY NOTE:

This section preserves contracts, agreements and arrangements in place and adapts references in them to the name of the original contracting party to that of the [TITLE] to which they are transferred. There is a similar provision in s 75 of the Child and Family Agency Act 2013 and in s 35(1) of the National Cultural Institutions (National Concert Hall) Act 2015.

HEAD 42 Records, including medical records

Provides that

(1) each record (except a record to which subhead 2 applies) held by Temple Street Hospital immediately before the commencement of this Part shall be transferred to the [TITLE] on commencement of this Part and thereafter shall be the property of the [TITLE] and be deemed to be held by the [TITLE]

(2) each medical record held by Temple Street Hospital immediately before the commencement of this Part shall be transferred to the [TITLE] on commencement of this Part and thereafter shall be the property of the [TITLE] and be deemed to be held by the [TITLE] and the personal information in those records may be processed by the [TITLE] only for purposes compatible with the purposes for which the information was originally obtained.

(3) For the purpose of subhead (2), "medical records" mean records created, used and stored principally for the purposes of patient care and treatment and containing personal data relating to health within the meaning of the General Data Protection Regulation.

EXPLANATORY NOTE:

This provision directly addresses the transfer of medical and other records, and provides a clear and certain basis for the transfer of the records from Temple Street Hospital to the [TITLE] which will become the data controller in relation to the records transferred, including personal information in the records transferred. There is a similar provision in the National Cultural Institutions (National Concert Hall) Act 2015 (s 37) and s 76 of the Child and Family Agency Act 2013, although in this case a distinction is being drawn between medical records and other records in view of the fact that a hospital is involved and medical records, by definition, contain sensitive personal data within the meaning of data protection law, including the General Data Protection Regulation.

HEAD 43 Saving for certain acts

Provides that nothing in this act affects the validity of any act done before the commencement of this part by or under the authority of Temple Street Hospital and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by or on behalf of the [TITLE].

EXPLANATORY NOTE:

This is a standard provision that every act done by Temple Street Hospital will retain its validity as if it were done by the [TITLE]. This is modelled on Section 45 of the Competition and Consumer Protection Act 2014.

PART 8

TRANSFERS OF CERTAIN STAFF, ASSETS , RIGHTS AND LIABILITIES FROM THE ADELAIDE AND MEATH HOSPITAL, DUBLIN, INCORPORATING THE NATIONAL CHILDREN'S HOSPITAL TO THE [TITLE]

HEAD 44 Transfer of employees

Provides that:

- (1) Such persons as are designated by the Minister, following agreement between Tallaght Hospital and the Executive and who, immediately before the commencement of this part, were employees of Tallaght Hospital, shall on such day or days as may be specified for the purpose by the Minister be transferred to and become members of the staff of the [TITLE].
- (2) Except in accordance with a collective agreement negotiated with a recognised trade union or association of employees, a person transferred under this section will not, on the day of transfer, be subject to less beneficial terms and conditions of employment including those relating to tenure of office, or of remuneration, than those terms of conditions of service or of remuneration to which he or she was subject immediately before the day of transfer.
- (3) The previous service of a person transferred will be reckonable for the purposes of relevant employment legislation as specified here, subject to any exemptions or exclusions in that legislation. The Acts that will apply are

- (a) the Redundancy Payments Acts 1967 to 2014;*
- (b) the Protection of Employees (Part-Time Work) Act 2001;*
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;*
- (d) the Organisation of Working Time Act 1997;*
- (e) the Terms of Employment (Information) Acts 1994 to 2012;*
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;*
- (g) the Unfair Dismissals Acts 1977 to 2007;*
- (h) the Maternity Protection Acts 1994 and 2004;*
- (i) the Parental Leave Acts 1998 and 2006;*
- (j) the Adoptive Leave Acts 1995 and 2005;*
- (k) the Carer's Leave Act 2001.*

EXPLANATORY NOTE:

- 1) Subhead 1 transfers certain designated staff of the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital to the [TITLE] as and from the commencement of this Part. The staff who will be so designated are those who are involved in the provision of paediatric services, including paediatric consultants, nurses, non-consultant hospital doctors, allied health professionals, technical, administrative and management staff. These staff will henceforth be staff members of the [TITLE]. Tallaght Hospital provides both adult and paediatric services, formed from the amalgamation of three separate hospitals, the Adelaide and Meath Hospitals, which were adult hospitals, and the National Children's Hospital. While it is intended that only the staff who are associated with the paediatric service are to transfer to the new entity, it is recognised that it may be helpful to allow certain persons who work in both the adult and in the paediatric services of the hospital to be designated for the purposes of this section. Provision is therefore made for such persons to be designated. Identification of these staff would be done in consultation between Tallaght Hospital and the HSE. There is a similar provision in the Child and Family Agency Act, section 83.

Given the practical difficulties that will arise in, before commencement day, identifying and designating all persons to transfer, this provision is intended to also allow the post-establishment transfer to the [TITLE] of a person who is designated on or after the commencement of this part to become a member of the [TITLE] However, it is clear that such a person must have been an employee of Tallaght Hospital before the commencement of this part. The transfer of staff on different days is similar to that in s83(1) of the Child and Family Agency Act 2013

Some individuals will be identified for transfer to the new hospital. However, the CHG has also identified the requirement to transfer headcount or resources from Tallaght Hospital to the new hospital – the Executive is to examine how that might be done, but this is a purely administrative matter and does not require legislative provision.

- 2) Subhead 2 provides that the transfer of staff will take place in accordance with their existing pay and conditions. This is in accordance with previous transfers of staff from one agency to another.
- 3) Subhead 3 sets out the relevant employment legislation that must be taken account of in reckoning previous service for any person transferred, this list was included in 2010 legislation.

HEAD 45 Transfer of assets, rights and liabilities

Provides that

- (1) all the assets, rights and liabilities of Tallaght Hospital as are agreed between Tallaght Hospital and the Executive, with the consent of the Minister, as being associated with the National Children's Hospital and appropriate for transfer to the [TITLE] shall be transferred to the [TITLE] including contractual obligations and other commitments, express or implied.
- (2) each right and liability transferred under this section may be the subject of proceedings either by the [TITLE] or against it and the TITLE is not required to notify any other party to any proceedings that the rights and liabilities have been transferred

EXPLANATORY NOTE:

Subhead 1 ensures that *following* commencement of this Part, any contractual obligations or other binding commitments that are associated with the paediatric service of the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital, may be transferred to the TITLE, without having to be first identified and agreed before the commencement of this part, in recognition of the practical difficulties which are likely to arise in identifying all such rights and liabilities *before* the commencement of this part. This section ensures that all such obligations become the obligations of the TITLE. Providing for these rights and liabilities to be agreed provides a mechanism for identifying those rights and liabilities that are to be transferred separate to those which will be retained by Tallaght Hospital. The term "rights and liabilities" is meant to refer in general to contractual obligations and other commitments that may be either express or implied commitments. In this case, transfer of liabilities will not include the pension payments and other superannuation liabilities of Tallaght Hospital in respect of its former employees – these liabilities will remain with Tallaght Hospital.

Subhead 2 will ensure that proceedings may be taken either by the TITLE or against the TITLE, in the same way as proceedings might have been taken by the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital or against the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital at Tallaght, in relation to the rights and liabilities so transferred. There is a similar provision in the Competition and Consumer Protection Act 2014 (s 42(2)) and the Child and Family Agency Act 2013 (s74(2)).

Where assets, rights and liabilities are transferred, it is advisable that persons affected by such transfer would be notified. This will be done on an administrative basis, but it is not proposed to attach a schedule of same to this Act or to require the making of a statutory instrument.

HEAD 46 Liability for loss occurring before the commencement of this Part

Provides that

(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 commencement of this part of any of the functions relating to the National Children's Hospital, as are agreed by the Executive Tallaght Hospital, with the consent of the Minister, as relating to the National Children's Hospital shall on and after that day, lie against the TITLE and not against Tallaght Hospital.

(2) Any legal proceedings pending immediately before the commencement of this part to which Tallaght Hospital is a party, shall be continued, with the substitution in the proceedings of the TITLE in so far as they so relate, for Tallaght Hospital.

(3) Where, before the commencement of this part, 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 Tallaght Hospital, be enforceable against the TITLE in so far as they so relate and not Tallaght Hospital.

(4) Any claim made or proper to be made by Tallaght Hospital in respect of any loss or injury arising from the act or default of any person before the commencement of this part, which are agreed between the Executive and that hospital as relating to paediatric services, shall be regarded as having been made by or proper to be made by the TITLE and may be pursued and sued for by the TITLE as if the loss or injury had been suffered by the TITLE.

EXPLANATORY NOTE:

These provisions are modelled on Section 43 of the Competition and Consumer Protection Act 2014.

Similarly to Heads 44 and 45, it is intended that this provision should also allow for the post-establishment agreement by the Executive and Tallaght Hospital, with the consent of the Minister, of a loss or injury.

HEAD 47 Provisions consequent upon transfer of assets, rights and liabilities to the TITLE

- 1) Anything commenced and not completed before the commencement of this part by or under the authority of Tallaght Hospital and transferred under this part may be carried on or completed on or after the commencement of this part by the [TITLE].
- 2) Any money, stocks, shares or securities transferred by the provisions in this Part that immediately before the commencement of this part were standing in the name of Tallaght Hospital shall, on the request of the [TITLE], be transferred into its name.

EXPLANATORY NOTE:

Subhead 1 provides for the continuation of actions commenced and not completed before the transfer to be continued after the transfer. It is modelled on s 44(1) of the Competition and Consumer Protection Act. There is a similar provision in s 81 of the Child and Family Agency Act.

Subhead 2 provides for the transfer of moneys, stocks, securities etc into the name of the [TITLE] which were in the name of Tallaght Hospital where transferred by this Act. This will not be clear until the due diligence process is completed.

HEAD 48 Transfer of property

Provides that:

(1) On the commencement of this Part, all property (including choses-in-action) as is agreed between Tallaght Hospital and the Executive, with the consent of the Minister, which was immediately before the commencement of this Part vested in the National Children's Hospital National Children's Hospital is transferred to and vested in the [TITLE] without any assignment.

(2) Every chose-in-action vested in the Children's Hospital by virtue of Subhead 1 may as and from commencement of this Part be sued on, recovered or enforced by the Hospital in its own name and it shall not be necessary for the Hospital or Tallaght Hospital to notify any other party about the transfer of the choses-in-action

EXPLANATORY NOTE:

This head provides for the transfer of property, including choses-in-action, to the Hospital on commencement of this Part. The property to be transferred is that agreed between that hospital and the HSE, having regard to the need to transfer those elements associated with the National Children's Hospital at Tallaght Hospital.

HEAD 49 Preservation of contracts

Provides that contracts or agreements to which Tallaght Hospital is a party and which are transferred to the [TITLE] by any of the provisions in this part

- a) Shall continue in force without any change after the transfer to the [TITLE]
- b) Shall be enforceable against the [TITLE]
- c) Are to be read and have effect as if the name of the [TITLE] were substituted in the contract, agreement or arrangement for that of Tallaght Hospital.

EXPLANATORY NOTE:

This section preserves contracts, agreements and arrangements in place and adapts references in them to the name of the original contracting party to that of the [TITLE] to which they are transferred. There is a similar provision in s75 of the Child and Family Agency Act 2013.

Parties affected will be notified on an administrative basis, as per Head 45.

HEAD 50 Records, including medical records

Provides that

(1) each record (except a record to which subhead 2 applies) held by Tallaght Hospital before the transfer, agreed between that hospital and the Executive, shall on or after commencement of this Part stand transferred to the [TITLE] and, on or after the transfer, should be the property of the [TITLE] and be deemed to be held by the [TITLE].

(2) each medical record held by Tallaght Hospital immediately before the commencement of this Part, agreed between Tallaght Hospital and the Executive, shall on or after commencement of this Part stand transferred to the [TITLE] and on or after the transfer shall be the property of the [TITLE] and be deemed to be held by the [TITLE] and the personal information in those records may be processed by the [TITLE] only for purposes compatible with the purposes for which the information was originally obtained.

(3) For the purpose of subhead (2), "medical records" mean records created, used and stored principally for the purposes of patient care and treatment and containing personal data relating to health within the meaning of the General Data Protection Regulation.

EXPLANATORY NOTE:

This provision directly addresses the transfer of medical and other records, and provides a clear and certain basis for the transfer of the records from Tallaght Hospital to the [TITLE], and which will become the data controller in relation to the records transferred, including personal information in the records transferred. There is a similar provision in the National Cultural Institutions (National Concert Hall) Act 2015 (s 37) and s 76 of the Child and Family Agency Act 2013, although in this case a distinction is being drawn between medical records and other records in view of the fact that a hospital is involved and medical records, by definition, contain sensitive personal data within the meaning of data protection law, including the General Data Protection Regulation.

It is required that this provision would also apply to records held by Tallaght Hospital, which relate to the paediatric services at the hospital or which are agreed as being relevant to the [TITLE], prior to the commencement of this part, but which were agreed following the commencement of this part as being appropriate for transfer to the [TITLE]. This is in recognition of the fact that it is possible that the due diligence process may not be complete before the establishment of the new body.

HEAD 51 Saving for certain acts

Provides that nothing in this Act affects the validity of any act done before the commencement of this Part by or under the authority of the Adelaide and Meath Hospital Dublin incorporating the National Children's Hospital, and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by the [TITLE].

EXPLANATORY NOTE:

This is a standard provision that every act done by Tallaght Hospital will retain its validity following the agreed transfers to the [TITLE]. The provision is relevant only in relation to some acts of Tallaght hospital, ie those connected with the transfer to the [TITLE]. The above provision is expressed comprehensively in order to ensure that all relevant acts are captured.

PART 9

Transfer of employees and assets of the Executive

HEAD 52 Transfer of employees

Provides that

- (1) Certain persons who immediately before the commencement of this Part were members of the staff of the Executive, and who are designated by the Minister for Health, with the agreement of the Executive to become members of the staff of the [TITLE], will on commencement become members of the staff of the [TITLE]
- (2) Other than in accordance with a collective agreement negotiated with any recognised trade union or staff association, a member of staff who is transferred to the [TITLE] under subhead (1) will not, on the day of transfer, be subject to less beneficial terms and conditions of service including those relating to tenure of office, or of remuneration, than those terms and conditions of service or of remuneration to which he or she was subject immediately before the day of transfer.
- (3) Any superannuation benefit awarded to or in respect of a person referred to in subsection (1), and the terms relating to those benefits, shall be no less favourable than those applicable to or in respect of that person immediately before the commencement of this part.
- (4) The previous service of a person transferred will be reckonable for the purposes of relevant employment legislation as specified here, subject to any exemptions or exclusions in that legislation. The Acts that will apply are

- (a) the Redundancy Payments Acts 1967 to 2014;*
- (b) the Protection of Employees (Part-Time Work) Act 2001;*
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;*
- (d) the Organisation of Working Time Act 1997;*
- (e) the Terms of Employment (Information) Acts 1994 and 2012;*
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;*
- (g) the Unfair Dismissals Acts 1977 to 2007;*
- (h) the Maternity Protection Acts 1994 and 2004;*
- (i) the Parental Leave Acts 1998 and 2006;*
- (j) the Adoptive Leave Acts 1995 and 2005;*
- (k) the Carer's Leave Act 2001.*

EXPLANATORY NOTE:

- 1) Subhead 1 provides for the transfer of certain designated staff of the Executive to the [TITLE]. This is related to the transfer of specific number of staff who are part of the Group management team of the Children's Hospital Group. There is a similar provision in the Child and Family Agency Act, section 83.

- 2) Subhead 2 provides that the transfer of staff will take place in accordance with their existing pay and conditions. This is in accordance with previous transfers of staff from one agency to another.
- 3) Subhead 3 covers superannuation provisions for staff of the HSE who are in the HSE superannuation scheme. On transfer, they will be required to change to the relevant superannuation scheme as provided for in Head 25.
- 4) Subhead 3 sets out the relevant employment legislation that must be taken account of in reckoning previous service for any person transferred.

HEAD 53 Transfer of assets, rights and liabilities

Provides that:

(1) All assets, rights and liabilities of the Executive subsisting immediately before the commencement of this part and arising by virtue of any contract or commitment (expressed or implied) entered by the Executive in relation to the [TITLE] as is designated by the Executive and agreed by the Minister shall on that day stand transferred to the [TITLE].

(2) Every asset, right and liability transferred by subsection (1) to the [TITLE] may, on and after the commencement of this part, be sued on, recovered or enforced by or against the [TITLE] in its own name, and it shall not be necessary for the [TITLE], or the Executive, to give notice to the person whose right or liability is transferred by that subsection of such transfer.

EXPLANATORY NOTE

(1) Subhead 1 provides for the transfer to the [TITLE] of assets, rights and liabilities which are relevant to the TITLE and are designated by the Executive and agreed by the Minister. Assets will include computers and other hardware.

(2) Subhead 2 will ensure that proceedings may be taken either by or against the [TITLE], in the same way as proceedings might have been taken by or against the Executive in relation to rights and liabilities so transferred. There is a similar provision in the Competition and Consumer Protection Act 2014 (s42(2)) and s74(2) of the Child and Family Agency Act 2013.

HEAD 54 Liability for loss occurring before the commencement of this part

Provides that

(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 commencement of this part of any of the functions of the Executive as designated by the Executive with the consent of the Minister as pertaining to matters relevant to the TITLE, shall after that day lie against the [TITLE] and not against the Executive.

(2) Any legal proceedings pending immediately before the commencement of this part to which the Executive is a party and which is pertaining to the [TITLE] shall be continued, with the substitution in the proceedings of the [TITLE] for the Executive.

(3) Where, before the commencement of this part, agreement has been reached between the parties concerned in settlement of a claim to which subhead (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 the Executive, be enforceable against the [TITLE] in so far as they so relate and not the Executive.

(4) Any claim made or proper to be made by the Executive in respect of any loss or injury arising from the act or default of any person before the commencement of this part, which are designated by the Executive as relating to matters relevant to the TITLE, shall be regarded as having been made by or proper to be made by the and may be pursued and sued for by the [TITLE] as if the loss or injury had been suffered by the [TITLE].

EXPLANATORY NOTE:

These provisions are modelled on Section 43 of the Competition and Consumer Protection Act 2014.

It is intended that this provision should also allow for the post-establishment agreement by the Executive of a loss or injury pertaining to work relevant to the Children's Hospital Group.

HEAD 55 Transfer of property

Provides that:

(1) On the commencement of this Part, all property other than land and buildings (including choses-in-action) as is designated by the Executive, with the consent of the Minister, which was immediately before the commencement of this Part vested in the Executive is transferred to and vested in the [TITLE] without any assignment.

(2) Every chose-in-action vested in the [TITLE] by virtue of Subhead 1 may as and from commencement of this Part be sued on, recovered or enforced by the TITLE in its own name and it shall not be necessary for the TITLE or the Executive to notify any other party about the transfer of choses-in action.

EXPLANATORY NOTE:

This head provides for the transfer of property, including choses-in-action, to the [TITLE] on commencement of this Part. The property to be transferred is that agreed between the Group and the HSE, having regard to the need to transfer those elements associated with services relevant to the [TITLE].

HEAD 56 Preservation of contracts

Provides that contracts or agreements to which the Executive is a party and which are transferred to the [TITLE] by any of the provisions in this part

- a) Shall continue in force without any change after the transfer to the [TITLE]
- b) Shall be enforceable against the [TITLE]
- c) Are to be read and have effect as if the name of the [TITLE] were substituted in the contract, agreement or arrangement for that of the Executive.

EXPLANATORY NOTE:

This section preserves contracts, agreements and arrangements in place and adapts references in them to the name of the original contracting party to that of the [TITLE] to which they are transferred. There is a similar provision in s 75 of the Child and Family Agency Act 2013.

HEAD 57 Records

Provides that each record held by the Executive before the transfer, identified by the Executive as pertaining to matters relevant to the [TITLE], should on or after commencement of this Part stand transferred to the [TITLE] and, on or after the transfer, should be the property of the [TITLE] and be deemed to be held by the [TITLE].

EXPLANATORY NOTE:

This head is required in order to ensure that records, including employee records, relating to the provision of paediatric services held by the Children's Hospital Group/HSE are transferred to the [TITLE]. This provision directly addresses the transfer of medical, if any, and other records and provides a clear and certain legal basis for the transfer of the relevant records from the Children's Hospital Group/Executive to the [TITLE] which will become the data controller in relation to the records transferred.

It is required that this provision would also apply to records held by the Children's Hospital Group/Executive, prior to the commencement of this part, but which were agreed following the commencement of this part as being appropriate for transfer to the [TITLE].

HEAD 58 Saving for certain acts

Provides that nothing in this Act affects the validity of any act done before the commencement of this Part by or under the authority of Executive, and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by or on behalf of the [TITLE]

EXPLANATORY NOTE:

This is a standard provision that every act done by the Executive will retain its validity following the agreed transfers to the [TITLE]. The provision is relevant only in relation to some acts of the Executive, ie those connected with the transfer to the [TITLE]. The above provision is expressed comprehensively in order to ensure that all relevant acts are captured.

Part 10

AMENDMENTS TO THE NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD (ESTABLISHMENT ORDER) 2007

HEAD 59 Definition for purposes of Part

In this part, “Development Board” means the National Paediatric Hospital Development Board.

EXPLANATORY NOTE:

SI 246 of 2007, establishing the National Paediatric Hospital Development Board, was made on 23 May 2007 by the then Minister for Health and Children under sections 3 and 6 of the Health (Corporate Bodies) Act 1961. The SI was subsequently confirmed under section 5 of the Health (Miscellaneous Provisions) Act 2007 (No 42 of 2007) which was commenced on 21 December 2007. Consequently, any amendment or revocation to the SI has to be by primary legislation.

HEAD 60 Membership of the Development Board

Article 9, Membership of the Development Board, is amended by:

1. The substitution of the current text in article 9(2) with text to provide that the ordinary members of the Development Board should be appointed from among persons who, in the opinion of the Minister, have experience and expertise in relation to matters connected with the functions of the Board such as would enable such a person to make a substantial contribution to the performance by the Board of its functions
2. The deletion in article 9(6) of “and where such member was appointed on the nomination of a body referred to in article 9(2) the appointment shall be made on the nomination of that body,”
3. To provide that the amendments set out in subheads 1 and 2 shall be without prejudice to any appointments made prior to the commencement of this provision for the remainder of their term

EXPLANATORY NOTE:

Subhead 1 provides an amendment to the basis for Board appointments in SI 246 of 2007, “The National Paediatric Hospital Development Board (Establishment) Order 2007”. The Establishment Order provides for 13 Board members, to be appointed on various nominations or by the Minister. As of January 2017, there are 12 Board members in place.

Previously, the Board membership included strong clinical, patient and general management expertise including representatives of the three children’s hospitals. This was reflective of the previous Board’s broader remit on operational planning and philanthropy.

The primary role of the NPHDB is the capital project, and appointments to the Board have reflected the range of expertise the Board required to effectively carry out the function of planning, designing, building and equipping the hospital. The Board members have expertise in architecture, planning, construction, engineering, legal and procurement, finance and clinical and ICT. The amendment in subhead a) provides for any future Board appointments to be made on the basis of these competencies. The subhead also makes provision more generally for appointment in relation to any other competency that may be deemed by the Minister to be relevant for the Board’s function. This aims to avoid the risk of inadvertently omitting a competency that may later be required.

Subhead 2 - Article 9(6) has to be amended as a consequence of the amendment of article 9(2).

Subhead 3 makes clear that the current Board members will remain in place when the legislation is enacted. OPC might advise as to whether this provision is required.

HEAD 61 Amendment to functions of the Development Board

To provide that:

1. Article 5(1) of SI 246 of 2007 is amended by the deletion of paragraphs (b), (c) and (d).
2. The insertion of Article 5(1)(dd) to provide:

“to plan, design, build, furnish and equip a maternity hospital on a shared campus with the hospital in accordance with a brief approved by the Executive with the prior consent of the Minister, and subject to any subsequent variations to this brief as may be determined by the Executive in consultation with the Board, and with the prior consent of the Minister;
3. The Minister may by Order confer on the Development Board such additional functions connected with the functions for the time being of the Development Board as the Minister determines, subject to such conditions (if any) as may be specified in the Order.
4. An Order under this section may contain such incidental, supplemental and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

EXPLANATORY NOTE:

(1) These articles relate to functions of the Development Board which are not appropriate to the Development Board – either now, or when the hospital is built. These are:

“(b) in consultation with the relevant hospitals, prepare plans for the transfer of services from the relevant hospitals to the hospital;

(c) in consultation with the relevant hospitals, prepare a human resource strategy for the transfer to the hospital;

(d) explore the possibility of securing philanthropic contributions to meet all or part of the capital cost of developing the hospital and foster the philanthropic interests that already exist in relation to the provision of paediatric services;”

No action is in train in relation to these functions which would require a transitional provision.

The SI refers to “relevant hospitals” as being the three existing children’s hospitals. Functions of the Development Board require it to work with the “relevant hospitals”. However, when it is established, the Development Board will be working with the new entity, rather than the “relevant hospitals” as described in the SI. Consideration is to be given as to whether a provision is needed to provide that “references to “relevant hospitals” shall be taken to refer to the [TITLE]”.

(2) Government policy is to achieve tri-location of adult, paediatric and maternity services on the St James's campus. When the Board was originally established, consideration had been given to including in its functions the development of tri-located maternity services. However, it was decided that the functions of the Board should at that stage include only the Children's Hospital. At the time it would have been anticipated that the Establishment Order could be amended in due course to accommodate the maternity services.

This subhead provides that the SI is amended to include a provision to extend the Board's functions to include the development of the tri-located maternity hospital by providing that it shall be on the same campus as the "hospital" (which in the SI is taken to mean the paediatric hospital). This would entail the development of a maternity hospital in accordance with a brief to be approved by the HSE with the consent of the Minister.

This would not exclude the possibility that another body (the HSE) might undertake this project if the Board's functions were not so extended. At this stage, it is preferable to retain the option for either the HSE or the Development Board to undertake this project. A final decision on the most effective way to deliver the maternity hospital project will need to be made at the time when the project is ready for commencement.

(3) This provision allows for other connected functions to be conferred on the Development Board. This is similar to provisions in other legislation including section 11 *Irish Human Rights and Equality Commission Act 2014*, section 12 *State Airports (Shannon Group) Act 2014*.

(4) This is a standard provision, modelled on s12 of the *State Airports (Shannon Group) Act 2014*, and s11 of the *Irish Human Rights and Equality Commission Act 2014*.

Head 62 Dissolution of the National Paediatric Hospital Development Board

- (1) The Minister shall, by order, appoint a day to be the dissolution day for the purposes of this section.
- (2) The Development Board and any committee established by the Board shall stand dissolved on and from the dissolution day.
- (3) All rights and liabilities of the dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by the Development Board before the dissolution day shall on that day stand transferred to the Executive.
- (4) Every lease entered into by the Development Board in relation to land or other property and in force immediately before the dissolution day, shall continue in force as if granted by the Executive.
- (5) Any legal proceedings pending immediately before the dissolution day to which the Development Board is a party, shall be continued, with the substitution in the proceedings of the Executive for the Development Board.
- (6) The Executive shall submit the final accounts of the Development Board to the Comptroller and Auditor General for audit not later than 3 months after the dissolution day.
- (7) The National Paediatric Hospital Development Board (Establishment Order), 2007 is revoked.

EXPLANATORY NOTE:

Subheads (1) and (2) - The Development Board was established by Order (SI 246 of 2007), which provided a power for the Minister to it was possible also to dissolve the Board by Order. However, since the SI was confirmed by section 5 of the Health Act 2007, primary legislation is now required to dissolve the Board. This provision allows the Minister to dissolve the Board on a dissolution day to be appointed by Order. This type of provision is included in other legislation including the County Enterprise Boards (Dissolution) Act 2014.

Subhead 3 allows for the transfer of rights and liabilities to the Executive on dissolution day.

Subhead 4 allows for the continuation of leases, licences and permissions held by the NPHDB to another entity (e.g. the HSE),

Subhead 5 allows for the continuation of any proceedings to be in the name of the Executive. Subhead 6 allows for the preparation of accounts and submission to the C and AG and for the preparation of final accounts and final annual reports.

- (7) The SI establishing the Board is revoked - this tidies up the Statute Book.