

[2004.]

Health Act 2004.

[No. 42.]

(6) The Executive shall provide, or arrange for the provision of, such administrative services as may be necessary to enable a panel to perform its functions. Pr.8 S.43

(7) The following allowances and expenses are payable by the Executive:

(a) the travelling and subsistence allowances of panel members in accordance with such scales as may be determined from time to time by the Minister with the consent of the Minister for Finance;

(b) the expenses of a panel.

(8) The Executive may dissolve a panel established under this section.

44.—(1) The Minister may direct the Executive in writing to—

(a) establish an advisory panel for a purpose specified by the Minister, and

(b) appoint one or more than one person specified by the Minister as a member of the panel.

Other advisory panels to be established on Minister's direction.

(2) The Minister may determine the terms of reference of a panel established under this section and may dissolve the panel at any time.

(3) *Subsections (4) to (7) of section 43* apply with the necessary modifications in relation to an advisory panel established under this section.

PART 9

COMPLAINTS

45.—In this Part—

Definitions (*Part 9*).

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

(a) by the Executive, or

(b) by a service provider in connection with the provision of—

(i) a health or personal social service that is the subject of an arrangement under *section 38*, or

(ii) a service in respect of which assistance is given under *section 39*;

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

(a) is a parent, guardian, son, daughter or spouse of the other person, or

(b) is cohabiting with the other person;

“complaints officer” means a person designated—

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(a) by the Executive for the purpose of dealing with complaints made to it in accordance with procedures established under *section 49(1)(a)*, or

(b) by a service provider for the purpose of dealing with complaints made to the service provider in accordance with procedures established under *section 49(1)(a)* or (2);

“complaint” means a complaint made under this Part about any action of the Executive or a service provider that—

(a) it is claimed, does not accord with fair or sound administrative practice, and

(b) adversely affects the person by whom or on whose behalf the complaint is made;

“complainant” means a person who is entitled under *section 46* to make a complaint under this Part on the person’s own behalf or on behalf of another.

Who may make complaints.

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

(a) it is claimed, does not accord with fair and sound administrative practice, and

(b) adversely affects or affected that person.

(2) For the purposes of this Part, an action does not accord with fair and sound administrative practice if it is—

(a) taken without proper authority,

(b) taken on irrelevant grounds,

(c) the result of negligence or carelessness,

(d) based on erroneous or incomplete information,

(e) improperly discriminatory,

(f) based on undesirable administrative practice, or

(g) in any other respect contrary to fair or sound administration.

(3) If a person entitled under this section to make a complaint is unable to do so because of age, illness or disability, the complaint may be made on that person’s behalf by—

(a) a close relative or carer of the person,

(b) any person who, by law or by appointment of a court, has the care of the affairs of that person,

(c) any legal representative of the person,

(d) any other person with the consent of the person, or

(e) any other person who is appointed as prescribed in the regulations. Pt.9 S.46

(4) If a person who would otherwise have been entitled under this section to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative or carer of that person.

47.—(1) A complaint must be made within the specified period or any extension of that period allowed under *subsection (3)*. Time limit for making complaints.

(2) The specified period is 12 months beginning before or after the commencement of this section, but not later than—

- (a) the date of the action giving rise to the complaint, or
- (b) if the person by whom or on whose behalf the complaint is to be made did not become aware of that action until after that date, the date on which he or she becomes aware of it.

(3) A complaints officer may extend the time limit for making a complaint if in the opinion of the complaints officer special circumstances make it appropriate to do so.

48.—(1) A person is not entitled to make a complaint about any of the following matters: Matters excluded from right to complain.

- (a) a matter that is or has been the subject of legal proceedings before a court or tribunal;
- (b) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of either the Executive or a service provider;
- (c) an action taken by the Executive or a service provider solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph (b)*;
- (d) a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;
- (e) a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into or of a contract with an adviser that the Executive proposes to enter into under *section 24*;
- (f) a matter relating to the Social Welfare Acts;
- (g) a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
- (h) a matter that could prejudice an investigation being undertaken by the Garda Síochána;
- (i) a matter that has been brought before any other complaints procedure established under an enactment.

(2) *Subsection (1)(i)* does not prevent a complaints officer from dealing with a complaint that was made to the Ombudsman or the

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Ombudsman for Children and that is referred by him or her to a complaints officer.

(3) In relation to a contract referred to in *subsection (1)(e)* “terms or conditions” includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures.

Complaint and review procedures to be established.

49.—(1) Subject to *subsection (2)* and any regulations under *section 53*, the Executive shall establish procedures for—

- (a) dealing with complaints against the Executive or a service provider, and
- (b) reviewing, at the request of a complainant, any recommendation made by a complaints officer following the investigation of a complaint.

(2) Any service provider may, with the agreement of the Executive, establish procedures, in place of the procedures established under *subsection (1)(a)*, for dealing with complaints against the service provider.

(3) The Executive may agree to a service provider establishing such procedures if satisfied that they will be of a comparable standard to the procedures established by the Executive under *subsection (1)(a)*.

(4) Subject to any regulations under *section 53*, the Executive may assign to another body the Executive’s functions in relation to reviewing, and establishing procedures for reviewing, any recommendation made by a complaints officer.

Refusal to investigate or further investigate complaints.

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

- (a) the person who made the complaint is not entitled under *section 46* to do so either on the person’s own behalf or on behalf of another,
- (b) the complaint is made after the expiry of the period specified in *section 47(2)* or any extension of that period allowed under *section 47(3)*.

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

- (a) is of the opinion that—
 - (i) the complaint does not disclose a ground of complaint provided for in *section 46*,
 - (ii) the subject-matter of the complaint is excluded by *section 48*,
 - (iii) the subject-matter of the complaint is trivial, or
 - (iv) the complaint is vexatious or not made in good faith,
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(b) is satisfied that the complaint has been resolved.

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

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

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

(a) the Executive to make a material amendment to its approved service plan, or

(b) a service provider and the Executive to make a material amendment to an arrangement under *section 38*.

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

(a) amend the recommendation in such manner as makes the amendment to the applicable service plan or arrangement unnecessary, or

(b) reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.

(3) Pending the outcome of a review, the relevant person may suspend the implementation of a recommendation made by a complaints officer if satisfied that, in the interests of fair and sound administration, it is appropriate to do so.

(4) In this section “relevant person” means—

(a) in relation to a complaint dealt with by the Executive in accordance with the procedures established under *section 49(1)*, the chief executive officer, and

(b) in relation to a complaint dealt with in accordance with the procedures established by a service provider under *section 49(2)*, the service provider.

52.—(1) It is a condition of any arrangement under *section 38* with a service provider that the service provider will—

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

(a) adhere to the complaints procedures established by the Executive in accordance with *section 49(1)* and any regulations under *section 53*, or

(b) establish the procedures agreed under *section 49(2)* and adhere to those procedures.

(2) In addition, it is a condition of such arrangement that the service provider will co-operate with the Executive, or with any body to which the Executive assigns its functions under *section 49(4)*, in any review of a recommendation made by a complaints officer following the investigation of a complaint against the service provider.

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(3) The Executive shall exercise any rights or remedies available to it under such arrangement if the service provider concerned does not fulfil any of the applicable conditions specified in *subsections (1) and (2)*.

Minister to make regulations for purposes of this Part.

53.—(1) The Minister may make regulations for the purposes of this Part.

(2) Regulations under this section may, among other things, make provision for the following matters:

- (a) requirements to be complied with by complainants;
- (b) the appointment of persons as complaints officers and the functions of complaints officers;
- (c) the procedure to be followed in investigating complaints;
- (d) the making of recommendations by complaints officers following the investigation of complaints and the nature of the recommendations that, subject to *section 51*, they are authorised to make;
- (e) the implementation of recommendations made by complaints officers;
- (f) the appointment of persons as review officers and the functions of those officers;
- (g) the procedure to be followed in undertaking reviews;
- (h) the making of recommendations by review officers following the review of a complaint and the nature of the recommendations that they are authorised to make;
- (i) the implementation of recommendations made by review officers;
- (j) the assignment by the Executive of the review functions referred to in *section 49(4)* to any other body or person.

Referral of complaints to Ombudsman or Ombudsman for Children.

54.—(1) Nothing in this Part prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint under this Part or with a review under this Part from referring the complaint to the Ombudsman or the Ombudsman for Children.

(2) For the purposes of the Ombudsman Acts 1980 to 1984 and the Ombudsman for Children Act 2002, any action taken by a service provider in relation to a health or personal social service in respect of which the service provider has entered into an arrangement under *section 38* or received assistance under *section 39* is deemed to have been taken by the Executive.

Annual report to include report on complaints and reviews.

55.—(1) The Executive shall submit to the Minister, as part of the Executive's annual report, a general report on the performance of its functions under this Part during the previous year containing such information as the Executive considers appropriate or as the Minister may specify.

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(2) A service provider who has established a complaints procedure by agreement with the Executive shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the complaints received by the service provider during the previous year indicating—

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- (a) the total number of complaints received,
- (b) the nature of the complaints,
- (c) the number of complaints resolved by informal means, and
- (d) the outcome of any investigations into the complaints.

(3) If the Executive assigns its functions under *section 49(4)* to another body, that body shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the reviews conducted by it during the previous year indicating—

- (a) the total number of reviews,
- (b) the nature of the reviews, and
- (c) the outcome of the reviews.

PART 10

DISSOLUTION OF CERTAIN HEALTH BODIES AND THE TRANSFER OF THEIR FUNCTIONS AND EMPLOYEES, ETC., TO THE EXECUTIVE

56.—In this Part “specified body” means—

Definitions
(Part 10).

- (a) the health boards,
- (b) the Eastern Regional Health Authority,
- (c) the Area Health Boards,
- (d) the Hospital Bodies Administrative Bureau,
- (e) the Health Boards Executive,
- (f) the General Medical Services (Payments) Board,
- (g) the Health Service Employers Agency, and
- (h) the Interim Health Service Executive.

57.—(1) Comhairle na nOspidéal is, by this Act, dissolved on the establishment day.

Dissolution of
Comhairle na
nOspidéal and
transfer of its
functions.

(2) The functions that are specified in *section 41(1)(b)(i)* and *(ii)* of the Health Act 1970 and that, immediately before the establishment day, were the functions of Comhairle na nOspidéal are, by this Act, transferred to the Executive on that day.

(3) Despite the repeal of *section 41* of the Health Act 1970 by this Act, subsection *(1)(c)* of that section (duty to consult with colleges) applies to the Executive in relation to the function that is specified in subsection *(1)(b)* of that section and is transferred to the Executive.