



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

# DELEGATION POLICY FRAMEWORK & GOVERNANCE ARRANGEMENTS

Signed by: \_\_\_\_\_

  
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# 1 Introduction

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## 1.1 Purpose

The objective of the system of delegations is to ensure that relevant managers/personnel in the HSE are delegated/sub-delegated appropriate legal authority to carry out statutory functions.

The purpose of this document is to set out an updated framework with supporting policy guidelines that will underpin good governance regarding the system of delegation of statutory functions throughout the Health Service Executive (HSE).

## 1.2 Background

The Directorate is the governing body of the HSE (Section 16C (1) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013) with the legal authority to perform all the functions of the HSE.

The HSE exercises a wide range of statutory functions which may have significant implications both for individuals and for the public generally. The Oireachtas recognised that neither the Directorate nor the Director General could exercise these functions personally and provided for a formal system of delegations under Sections 16 C and 16 H of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013).

Section 16(C) (2) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013) enables the Directorate to delegate to the Director General any of the functions of the HSE. In practice, the Directorate delegates to the Director General all the functions of the HSE, except for the specific functions it reserves to itself. Under Section 16 G of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013), the Director General is responsible for carrying on and managing and

controlling generally the administration and business of the HSE and for the performance of functions delegated to the Director General by the Directorate in accordance with the Directorate's policies.

Under Section 16 H of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013) the Director General can delegate any of the functions delegated by the Directorate to an employee of the HSE specified by name, position or otherwise and can further authorise the sub-delegation of any or all of the delegated functions to or by such employees. However, at all times, the person who has delegated or sub-delegated a function remains responsible for the performance of that function. Any delegated function carried out by an employee has the same force and effect as if it was carried out by the Director General. Delegations and sub-delegations of functions are to be taken to include the delegation or sub-delegation of any duty or power incidental to or connected with that function.

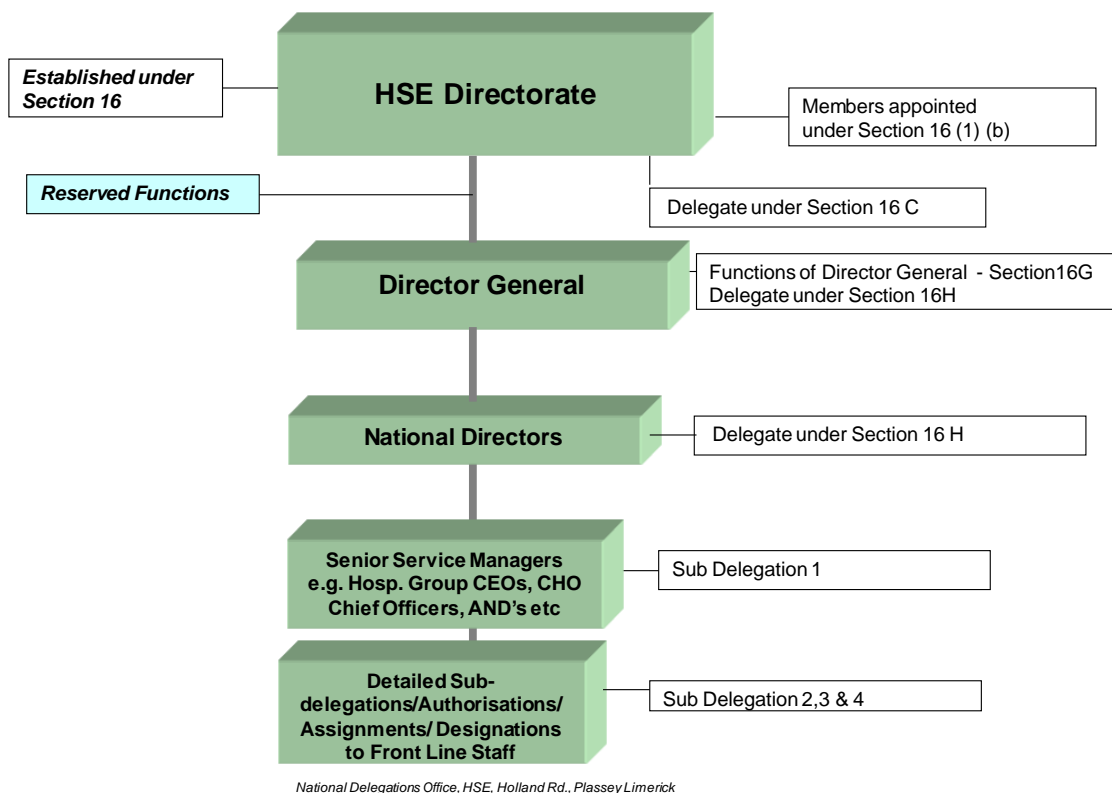
All issues relating to delegations should be referred to the Delegations Office, in particular issues in relation to Section 77 (Section 77 – *Certificate evidence concerning delegation of functions*).

## 2 Framework for Delegations within HSE

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### 2.1 Framework for Delegations

In the context of the above, the following diagram broadly illustrates the framework which is considered appropriate to support the implementation of a delegations system across each HSE Region. However a detailed delegation structure has been set out for each Directorate.



This framework supports strong national strategic direction and effective devolved decision making in relation to service delivery through each Division/Function within the HSE's areas of responsibility.

The key delegation schedules are set out as follows:

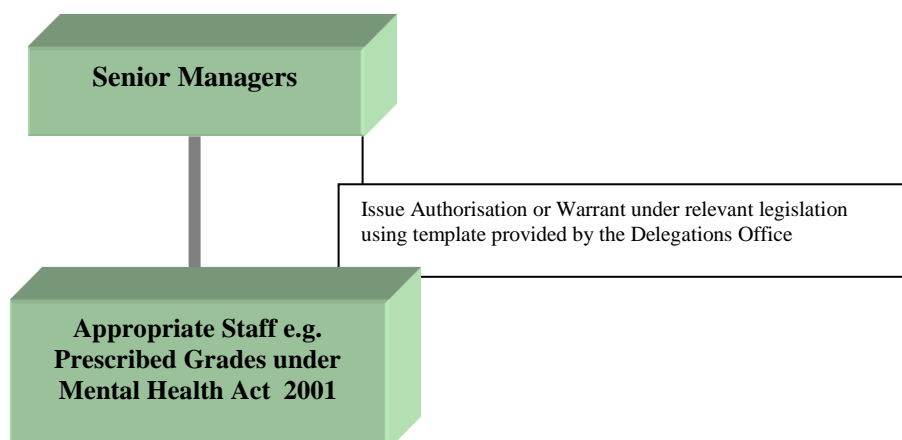
1. Delegation by the Directorate to the Director General;
2. Delegation by the Director General to the National Directors;
3. Sub-delegation by the National Directors to Senior Service Managers e.g. Hospital Group CEOs, CHO Chief Officers, ANDs etc.,
4. Sub-delegation by Senior Service Managers to other appropriate employees in respect of certain specified functions.

The Directorate, in considering the most effective framework in the context of the Health Act 2004, has taken the view that there should only be four sub-delegation levels after the initial delegation by the Director General. However, in exceptional circumstances further levels may be permitted but only after consultation with the National Delegations Office.

## 2.2 Framework for Authorisations/Warrants

Certain legislative functions require that the person performing the function be appointed as an “authorised officer” by the HSE and a ‘warrant of appointment’ may also be required as evidence of the authorisation. Senior Managers have been sub delegated the appropriate authority to issue statutory authorisations/warrants.

The following framework supports the authorisation/warrant process.



### **3 Approach to Delegated Functions**

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Given the complexity and quantum of services, and legislation within the ambit of the HSE, it is important to determine which functions require delegation. In considering the HSE's internal governance structure, a distinction is drawn between the statutory functions (i.e. those provided for in legislation and assigned to the HSE and delegated to the Director General) and the purely operational decisions (i.e. decisions taken and actions carried out on a daily basis by the HSE under the control of the Director General). Where a decision is routine and where a proven course of action is normally taken, then this work will be carried out through a range of policies, processes, procedures and job descriptions, rather than through formal delegation procedures.

#### **Statutory Functions**

It is important that those exercising statutory powers can demonstrate their authority to so do. The HSE's formal structure of delegations and sub-delegations is the appropriate means of achieving this.

Where the HSE has been vested with discretionary and mandatory powers and there are clear statutory functions to be carried out (e.g. appointment of authorised officers), then formal delegated authority will be given to an employee to carry out a particular function. However, the following should be noted in relation to other statutory functions:-

#### **Statutory Functions of an Administrative Nature**

Statutory functions that only affect the internal administrative operations of the HSE (e.g. the requirement to prepare a service plan or annual report for the HSE) will not be subject to formal delegation and sub-delegation.

### Statutory Functions of a General Compliance Nature

Some legislation contains duties and obligations that may be relevant to the HSE but are of a general 'compliance with laws' nature (e.g. Health and Safety) rather than specific duties or obligations imposed upon the HSE and therefore, will not be subject to formal delegation and sub-delegation. However, each Senior Manager has been delegated the Director General's statutory authority under Section 16 (G)(1) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013), which provides them with overall authority for their own administrative areas in which to carry on, manage and control generally the administration and business of the Executive.

### Contractual Obligations

The HSE in performing some of its statutory functions will enter into contracts. Those contractual functions primarily fall within the remit of Section 16 (G) (1) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013). Certain powers and/or functions specified in those contracts may only be exercised by specific persons or entities for example, the Directorate or the Director General or one of the National Directors or one of the Assistant National Directors and accordingly cannot be delegated. Those powers and/or functions are not individually listed in the formal delegations or sub-delegations that are issued but are incorporated by way of a general reference to functions pursuant to Section 16 (G)(1) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013). (Advice in relation to such matters should be sought from the National Delegations Office)

In accordance with the legislation the HSE uses a number of instruments to ensure authority regarding statutory functions is provided to relevant employees:



- Delegation orders - *used by the HSE Directorate and the Director General,*
- Sub – delegation orders – *used by the relevant National Directors and Senior Service Managers, and*
- Authorisations/Warrant of Appointments – *issued as required under legislation.*

## **4 Legal Provisions and supporting HSE Policy**

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### **4.1 Delegations**

#### Legal Provisions

The following legal provisions underpin any delegation and sub-delegation issued;

- The Health Act 2004 (as amended by the Health Service Executive (Governance) Act, 2013) allows the Director General to delegate any of the functions delegated by the Directorate to an employee of the HSE specified by name or position. The latter is the preferred option especially at the third or fourth level of sub delegation, where many front line staff are involved.
- Any function delegated or sub-delegated must be performed under the general direction and control of the Director General and in compliance with such directions, limitations and guidelines as may be specified by the Director General (in the case of a delegated function) or the employee who sub-delegated the function (in the case of a sub-delegated function).
- A delegation or sub-delegation is to be taken to include the delegation or sub-delegation of any duty or power incidental to or connected with the delegated/sub-delegated function.
- Any act or thing done by an employee of the HSE pursuant to a delegation/sub-delegation has the same force and effect as if done by the Director General.
- The revocation of a delegation by the Directorate or by the Director General does not affect any sub-delegations made pursuant to that delegation unless the Directorate or the Director General so directs.
- A delegation or sub-delegation of a function does not cease to have effect solely because the person who delegated or sub-delegated the function or authorised its sub-delegation no longer holds the position that the person

held when the function was delegated, sub-delegated or authorised to be sub-delegated.

- A person who delegates or sub-delegates a function is not precluded from carrying out that function. Therefore, more than one person may at any given time have the authority to carry out the same function.
- There is nothing to prevent a general delegation of specific powers to a designated group of employees.

#### Policy Decisions regarding Delegations:

The following policy decisions underpin any delegation/sub-delegation

- The Delegation Policy limits sub-delegation to four levels to ensure that statutory functions are not sub-delegated inappropriately. However, in exceptional circumstances a further level of sub-delegation may be required, but this will only be permitted after consultation with the National Delegations Office.
- Delegations/sub-delegations are issued to the post, this allows persons acting in the position to have the delegated authority of the post holder when the post holder is absent.
- Delegations/sub-delegations cannot be backdated as the legal authority to perform a function cannot be granted retrospectively.
- The delegator/sub delegator must give directions as to the conditions attaching to each delegation/sub-delegation.
- Delegated authority shall only be used for approved HSE activities and functions in accordance with applicable laws and regulations, including, all HSE National Policies and Procedures. Where an employee breaches, violates and/or fails to meet their delegated authority i.e. where his/her conduct, attendance or work does not meet the required standards, the matter will be dealt with under the formal disciplinary procedures of the HSE.

- Management must ensure that officers selected to hold delegations/sub-delegations have the relevant information required and support for the level of responsibility delegated/sub-delegated.
- The National Delegations Office is responsible for the issuing of all delegations/sub-delegations and for the safe retention of all original signed delegations/sub-delegations. These formal delegations are evidence of the delegation and sub-delegation of statutory functions.
- In order to provide clarity as to matters covered by a delegation to a National Director, the National Delegations Office maintains a version controlled “Areas of Responsibility” document which provides a detailed description of each National Director’s areas of responsibility. This document is updated, as required, and is signed by the Director General
- Frontline grades of staff who carry out specific statutory functions are sub-delegated the authority to do so by way of a service specific sub-delegation. A copy of the signed sub-delegation is posted on the HSE website as evidence of the delegation and sub-delegation of statutory functions. Line Managers are responsible for ensuring that relevant employees are informed when a new sub-delegation is posted on the website.
- If a copy of a delegation or sub-delegation is required, for whatever reason, as evidence of a person’s delegated authority it will be sent out as a certified copy by the National Delegations Office.
- There may be circumstances where the Court or the opposing party insist that a certificate pursuant to Section 77(1) and/or Section 77 (2) of the Health Act 2004 (as inserted by Section 7 of the Health Service Executive (Governance) Act 2013) be produced. In those cases the certificate will be prepared by the National Delegations Office and sent for signature by the appropriate person.
- Section 77 (1) Certificates must be signed by the 2 appointed Directors (in relation to a delegation to the Director General) and the appropriate National Director in relation to any sub-delegations. In this context all

- requests for Section 77 Certificates must be sent to the National Delegations Office and only after the Delegations Office is satisfied that the Court and the opposing party will not accept a certified copy of the original delegation will they proceed to produce a Certificate.
- When a delagee is absent from his/her post then the appointment of a person acting on his/her behalf should be set out and recorded on file in order to give legal effect of the delegation/sub-delegation to that person.
  - HSE agreed templates issued by the Delegations Office should only be used to sub-delegate functions to employees.
  - Legal advice in relation to delegation matters must be sought from and co-ordinated by the Delegations Office with the HSE legal advisors.

## **4.2 Authorisations/Warrants**

Certain legislative functions require a person to hold a warrant of his/her authority. A warrant is a written document authorising an individual person to carry out specified functions and must be produced as evidence of the individuals appointment if so requested.

The following policy decisions should be noted in relation to authorisations/warrants:

- Warrants must only be issued as required under the various legislative provisions;
- Authorisations under a warrant of authority shall only be used for approved HSE activities and functions in accordance with applicable laws and regulations, including, all HSE National Policies and Procedures;
- A register of warrants issued must be maintained in each local Office designated by the Delegations Office to do so,
- A scanned copy of the signed warrants should be retained by the local office. If a warrant is lost/stolen the scanned copy may be required as proof of authorisation in subsequent legal proceedings;

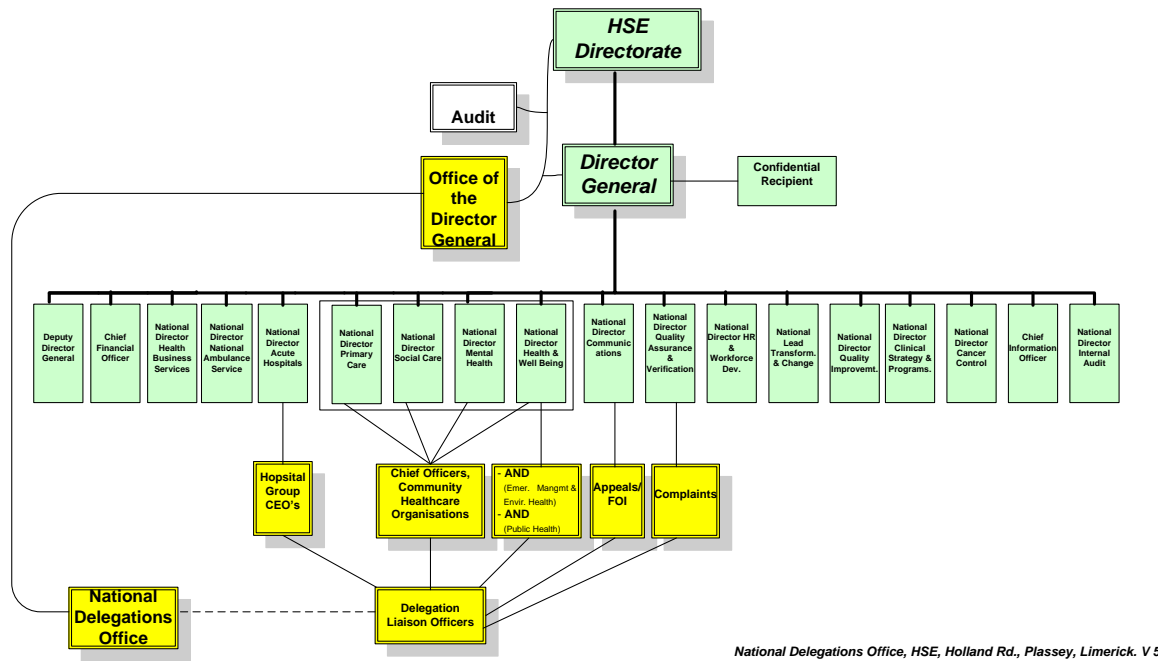
- HSE agreed templates, issued by the Delegations Office, should only be used to issue a warrant;
- Management must ensure that officers selected to hold authority under a warrant order have the relevant information required and support for such a warrant holder;
- An employee acting in a position cannot use a warrant issued to the existing post holder. A new warrant to the acting post holder must be issued for the period of acting, regardless of duration.

## **5 Governance of Delegations and Warrants**

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The following diagram sets out the governance arrangements to oversee the Delegation Framework and approach set out in the previous sections.

## HSE – Overall Governance of Delegations & Warrants



The following describes the governance roles as set out in the above diagram

### Director General's Office

- Oversee delegation matters on behalf of the Director General;
- Ensure sign off by Director General of Framework document;
- Ensure sign off by Director General of delegations to all National Directors;
- Ensure timely request to National Delegations Office of any new delegations required.

### National Director

- Perform the duties delegated by the Director General;
- Sub-delegate to the Hospital Group CEOs/ CHO Chief Officers/ANDs etc in accordance with HSE policy;
- Ensure timely request to National Delegations Office of any new delegations required.
- Ensure continuity of authority during periods of absence.

### Hospital Group CEO/ CHO Chief Officer/AND

- Perform the duties sub delegated by the National Director;
- Sub-delegate functions to Senior Managers in accordance with HSE Policy;
- Issue warrants in accordance with HSE policy;
- Nominate a senior manager to liaise with the National Delegations Office as required;
- Ensure continuity of authority during periods of absence.

### Local Senior Manager

- Perform their delegated duties in line with HSE policy and procedures;
- Sub-delegate functions in accordance with HSE policy;
- Issue warrants/authorisations in accordance with HSE policy;
- Oversee the implementation of the delegation schedules for his/her service area;
- Ensure continuity of authority during periods of absence.

### Delegations Office

- Development of overall Delegation Framework and associated Frameworks for all Directorates;
- Management of TUSLA’s delegation system under a “Memorandum of Understanding” between the HSE and TUSLA;
- Reviewing new legislation in respect of delegation/sub-delegation requirements;
- Advising service managers on delegation issues;
- Deciding on all issues relating to Section 77 Certificates;
- Issuing of Section 77 Certificates for court proceeding as required;
- Developing templates for delegations/sub-delegations and warrants;
- Issuing delegations/warrants as required;



- Maintaining a National Delegations Register of all delegation/sub-delegations;
- Ensuring a register of all warrants of appointments is in place in each local area;
- Holding all original signed delegations/sub-delegations in a secure environment e.g. secure server, fireproof cabinet etc.;
- Maintaining a version controlled “Areas of Responsibility” document which will provide the detail of matters covered by a delegation to a National Director.
- Liaising with governance groups/reference groups regarding changes to legislation which may have delegation requirements, and seeking legal advice where necessary;

#### Liaison Officers

- Support the Hospital Group CEO/ CHO Chief Officer in the implementation of the Delegation Framework and associated sub-delegation schedules and warrants;
- Manage the Register of Warrants as required within their areas of responsibility;
- Monitor and act on changes in staffing which impact on sub-delegations/warrants;
- Correspond with the Delegations Office on all issues to include queries / concerns and changes in key personnel.