

Staff Paper 2016

**Governance Framework & Processes of
The Health Sector in Ireland**

Labour Market & Enterprise Policy Division

Niamh Duff

April 2016

** This paper has been prepared by the Labour Market and Enterprise Policy Division of the Department of Public Expenditure & Reform. The views presented in this paper are those of the author alone and do not represent the official views of the Department of Public Expenditure and Reform or the Minister for Public Expenditure and Reform. The paper was prepared in the context of an on-going budget negotiation process and reflects the data available to the author at a given point in time.*

Abstract

Health accounts for 26% of gross voted current spending second only to Social Protection (38%) and ahead of Education (17%).

Part A of this paper outlines the current legislation in place which supports the budget setting, controlling and monitoring process of the Health Service Executive. It will outline the most relevant sections of Health Act 2004 and provide detail on how the HSE Governance Act 2013 and the HSE Financial Matters Acts 2013 aim to provide greater accountability and new governance structures to the health sector.

It discusses the responsibilities of the Accounting Officer and the Director General and the legislative powers of the Minister.

Part B of this paper reviews the legislation specific to the drafting of the HSE's National Service Plan.

Summary

- The Department of Health receives the Voted expenditure for health services and issues it to the HSE by way of grants.
- The Secretary General of the Department of Health (DoH) is the Accounting Officer for health.
- The Accounting Officer has ultimate responsibility for their Voted expenditure.
- The Director General of the HSE has the power to sub-delegate directions from the Directorate to HSE employees.
- The HSE Directorate was introduced to put in place a more direct line of accountability between the HSE and the Minister.
- The Financial Matters Act 2013 brought about the disestablishment of the HSE and set up a new statutory framework for governance.

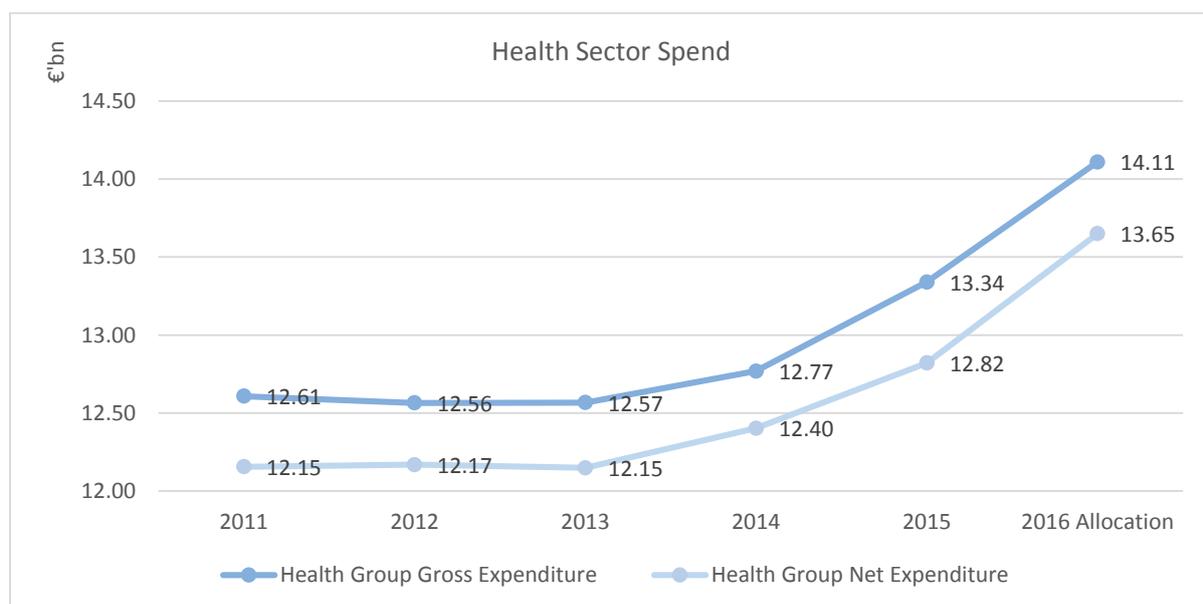


Figure 1 Health Spend 2011 - 2016

Introduction

Each year the Dàil grants an amount of Voted Expenditure for Supply Services. All Voted money has to be accounted for ultimately to Dàil Éireann. The Dàil provides money for Voted services by approving estimates.

The spending side of the budget is managed through the estimates process. The estimates set out the planned expenditure in each Vote. A more detailed version, the Revised Estimates for Public Services (REV), is published in December. The REV provides detail on output and context of the expenditure, it may also give an indication of the possible impact of the expenditure.

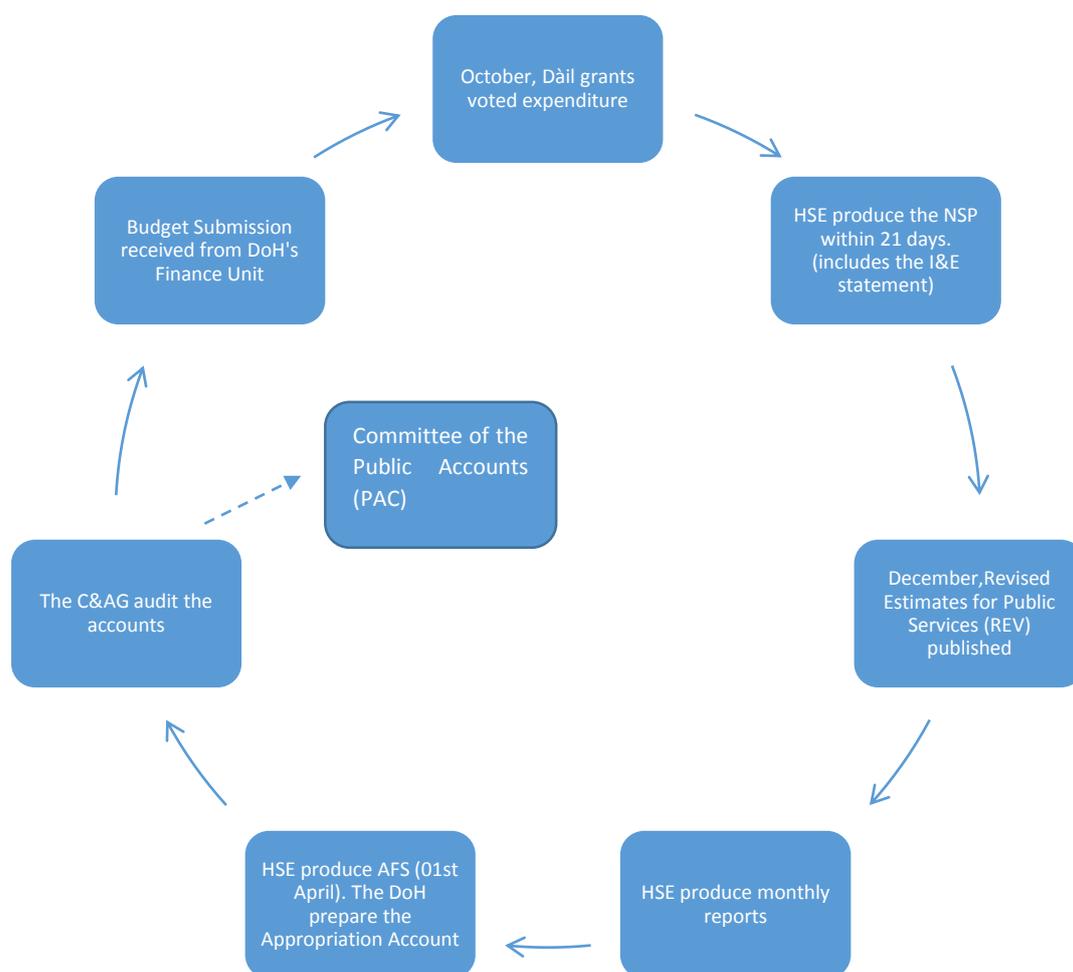


Figure 1.0: Reporting and monitoring of the Health Service Executives public expenditure.

The Accounting Officer¹

After the end of the year a Department in receipt of a Vote prepares an Appropriation Account. The Appropriation Account is a record of their receipts and expenditure. The Appropriation Account must be signed

¹ Public Financial Procedures

by the Accounting Officer. The Accounting Officer having ultimate responsibility must present the accounts to the C&AG for audit before 1 April each year. The Accounting Officer may be called before the PAC to provide evidence or other information in relation to the audited accounts.

The role of Accounting Officer is appointed to the person who can discharge responsibility for the money Voted to their Department or Office. It's their responsibility to ensure the regularity and propriety of all transactions contained within the Appropriation Account. Unlike the Director General of the Executive the Accounting Officer cannot delegate their responsibility to subordinate officers.

It is the Accounting Officer that is responsible for obtaining Department of Public Expenditure and Reform (DPER) sanction for expenditure. Unsanctioned expenditure is liable to C&AG reporting and examination by the PAC.

The Executive provides health services to Ireland mainly by way grants² received from the Department of Health. The HSE's other income is in the form of statutory charges, superannuation contributions and other miscellaneous income.

The Secretary General of the DoH is the Accounting Officer for health.

² Financial Matters Act s.11

Part A Irish Health Sector Legislation

Section 1 Health Act 2004

The current Health Service Executive (HSE) structure was created to reform the previous Health Boards structure. The HSE was established under the Health Act in 2004 and officially came into operation in 2005. The following provisions are at the core of its accountability and governance.

Health Act 2004	
Section 7	The objective of the Executive is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public
Section 10	The Minister ³ may issue specific written directions to the Executive concerning the submission of; <ul style="list-style-type: none">- Reports on any matter- Any information relating to the performance of the Executive.
Section 29	(The Executive) must submit to the Minister for approval a corporate plan for the 3 year period; <ul style="list-style-type: none">- within 6 months of the appointment of a new Minister- at the end of a 3 year period since the last corp. plan- the plan must contain a) key objectives of the HSE, b) the strategies to obtain them, c) how achievement will be measured and d) details on the uses of the Executives resources. The plan must have regard to Government policies and objectives.
Section 31 Section 31 (3)(b)	The Executive must prepare a service plan for the financial year. A service plan must be prepared in the form and manner in accordance with any directions issued by the Minister and must indicate any capital plans proposed by the Executive
Section 31 (12)	The Executive shall submit to the Minister with the service plan a statement of its estimate of the income and expenditure relating to the plan and that estimate must be consistent with the Vote of the Executive as published by the Government in the Estimates for Supply Services.
Section 33	The Executive shall manage health and personal social services indicated in an approved service plan so as to ensure that the services are delivered in accordance with the plan.
Section 37	The Executive shall not later than the 30 th April prepare an annual report.

³ Minister for Health

As the reform agenda progressed a paper outlining health sector policy was agreed. *Future Health – A strategic Framework for the Reform of the Health Sector 2011 – 2015* was published. It was published on the basis that the current service was “unfair to patients; it often fails to meet their needs fast enough; and it does not deliver value for money”.⁴ The health sector was also under pressure to reform in light of upcoming demographic and budgetary pressures

Future Health was constructed on four pillars i) Health and Wellbeing ii) Service Reform iii) Structural Reform and iv) Financial Reform. Principal to the framework were the abolition of the HSE in favour of single- tier health service supported by Universal Health Insurance (UHI), increased GP Care, improved quality and safety and a focus on keeping people healthy rather than just treating the disease.

In response to the Programme for Government’s *Future Health* Strategy new legislation was enacted to lay the first steps of the reform. These were the HSE Governance Act 2013 and the HSE Financial Matters Act 2013.

⁴ Source; Future Health Explanatory Note, http://health.gov.ie/wp-content/uploads/2014/03/Future_Health_Explanatory_Note.pdf

Section 2 HSE Governance Act 2013

Abolition of the Board and implementation of new governance structure.

The HSE Governance Act 2013 provided for the replacement of the Board/CEO structure of the HSE with a Directorate/Director General structure. The purpose of this legislation was threefold;

- To make the HSE more directly accountable to the Minister for Health
- Help prepare the service delivery and funding systems for the next phase of health reform.
- Facilitate greater integration of national support functions.

The Directorate structure was viewed as an interim measure responsible for strengthening the line of accountability between the HSE and the Minister during this transitional phase of health sector reform. The legislation would also strengthen the provisions for Ministerial policy directions and priority settings.

Section 10 of the Health Act 2004 allows the Minister to give specific directions to the HSE regarding the submission of reports and information on the performance of their functions. The HSE Governance Act amended section 10 to bolster the power of the Minister;

*To give **direction to the HSE on how to implement Government policies** and objectives. The Minister can evoke this power if it is believed that the HSE is not having sufficient regard to the Government policies and objectives in performing their functions.*

*To **determine priorities for the health sector**. The HSE is obligated to incorporate these priorities in the preparation of the Service Plan.*

*And subject to certain criteria, the Minister may, in consultation with the Minister for Children and Youth Affairs, **establish performance targets for the HSE***

The Directorate is the governing authority with the ultimate responsibility to carry out the HSE's functions on behalf of the HSE. The Directorate can have a minimum of 3 and maximum number of 7 members including the Director General. As per the HSE's website there are currently 9 positions in the HSE Directorate including the Director General. The position of Deputy Director General is vacant.

It is the Director General's duty to report on the performance of the HSE to the Minister. This is facilitated through the Secretary General of the Dept. of Health. The Director General has the power, under Section 16H, to sub-delegate directions from the Directorate to HSE employees.

As highlighted in the explanatory note to the legislation;

A key objective of the new HSE governance arrangements is to facilitate a system whereby authority to make operational decisions is delegated as close as possible to the point of service delivery

Finally Section 33 which covers the implementation of the plan was amended. The HSE Governance Act introduced provisions allowing the Minister to direct the HSE to take specified measures in relation to the implementation of the plan. This section will be amended further in Financial Matters Act, outlined below.

Section 3 HSE Financial Matters Act 2013

Disestablishment of the HSE Vote

Up to 2014 the HSE had its own Vote and was separate from the Department of Health. The enactment of this legislation had various implications;

- To disestablish the HSE Vote in accordance with commitments contained in the Programme for Government
- To put in place a new statutory framework to govern the HSE's expenditure
- To provide for the Minister to set a net determination (net budget) for the HSE

The Act came into effect on 01 January 2015. As a result of the Act the Secretary General of the DoH resumed the role of Accounting Officer. Every Accounting Officer is accountable for the money voted to them from the time that money is issued from the Exchequer until it is issued to an organisation over which s/he does not exercise direct control. The extent of the Accounting Officer's responsibilities is wide including producing the Appropriation Account for the Vote.

Under the Public Financial Procedures a Vote which includes grants must be satisfied that the accounting system and organisational arrangements of the grantee are adequate to ensure the proper administration of that money.

The legislation reinforced the accountability between the Executive and the Minister. The following sets out some of the amended sections;

Section 30A enables the **Minister to set the Net Determination** for the Executive it also gives the Minister the power to adjust the Net Determination in the course of the year

Section 33 requires the HSE to **manage health services in line with the Net Determination**. If health expenditure exceeds the amount determined by the Minister **the Executive shall incur the deficit as a first charge** in the following financial year.

Section 34A and 34B bestows two new conditions on the Director General, firstly **the Director General has the statutory responsibility to ensure the HSE operates within budget** and it obliges the Director General to notify the Minister if it looks likely that the HSE will breach its budgets. The second condition states that the **Director General shall be accountable to the PAC** in respect of the HSE's annual financial statements.

Section 40I states that the remit of the **Audit Committee** includes an obligation to **ensure that the Executive is complying with the implementation of the Service Plan in accordance with the Net Determination**.

The Audit Committee

The composition of the audit committee in 2015⁵ was as follows:

Mr. Peter Cross (Chairman) – Managing Director of Trasná Corporate Finance (and a Fellow of Chartered Accountants Ireland)

Dr. Gerardine Doyle – Senior lecturer in accounting and taxation at University College Dublin (and a Fellow of Chartered Accountants Ireland). Prof. Patricia Barker was appointed to the Committee to replace Dr. Doyle on the 9th February 2016 Financial Governance 101

Mr. Joe Mooney – former Principal Officer of the Department of Finance

Mr. John Hynes – former Secretary General at the Department of Social and Family Affairs

Mr. David Smith – Principal Officer at the Department of Health

Mr. Stephen McGovern – Head of CRH Europe Compliance and Ethics (and a Fellow of Chartered Accountants Ireland)

Dr. Sheelah Ryan – public health physician, former CEO of HSE West/WHB

Ms. Laverne McGuinness – Deputy Director General of the HSE (and a Fellow of the Institute of Certified Public Accountants). Ms. Anne O'Connor was appointed to the Committee to replace Ms. McGuinness on the 12th January 2016.

Apart from the obligation outlined above the remit of the audit committee includes reviewing and questioning the actions and judgement of HSE management in relation to Executives accounts. These include the Appropriation Account, their annual financial statements and any other related set of financial statements⁶.

The review must occur before the accounts are presented to the DG and the C&AG.

The Audit Committee's responsibilities in relation to the Appropriation Account is unclear as the obligation to produce an Appropriation Account lies with the Department in receipt of Voted Expenditure. Since 2015 the DoH is accountable for the Appropriation Account.

⁵ HSE 2015 Annual Report, <http://www.hse.ie/eng/services/publications/corporate/annualrpt15.pdf>

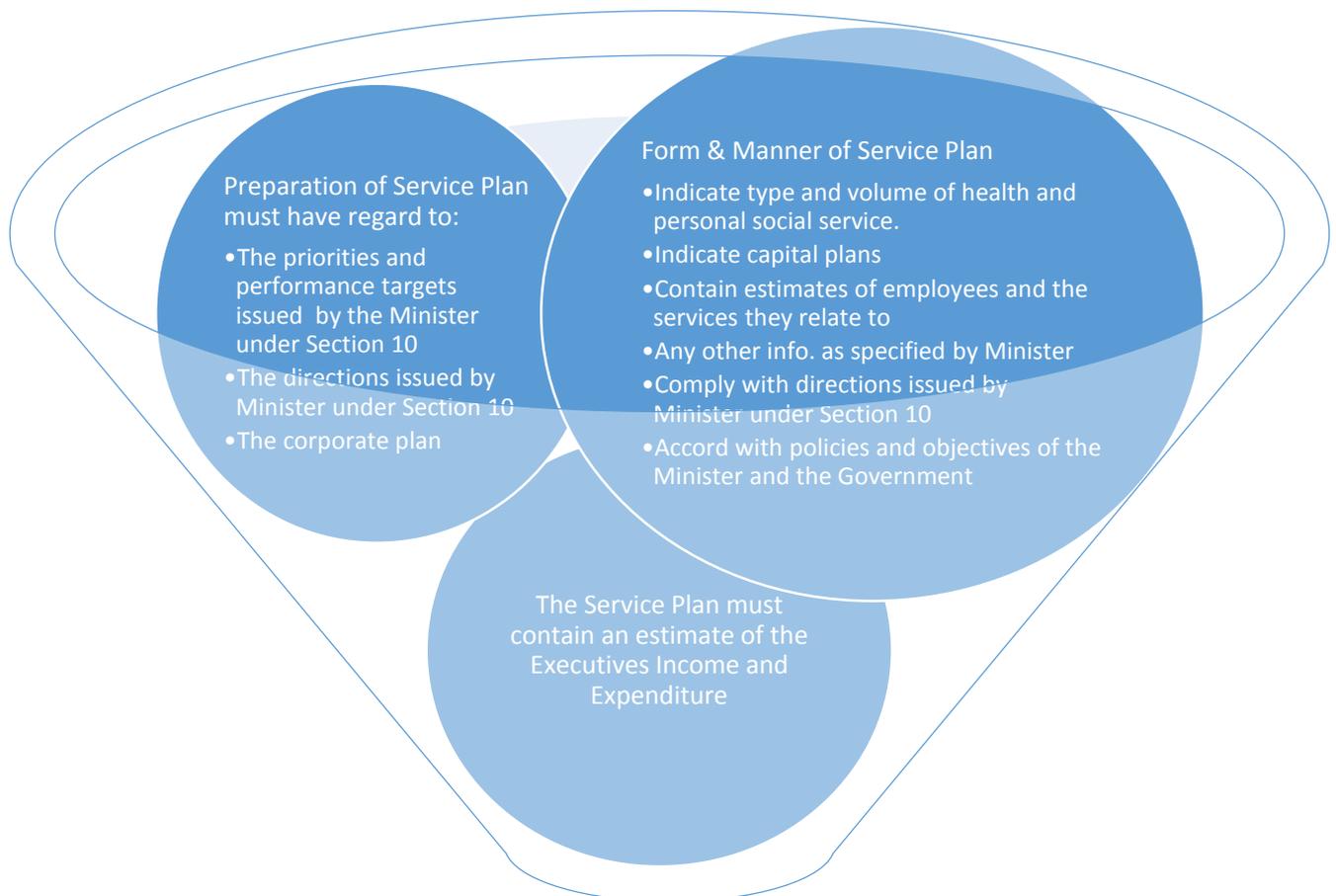
⁶ HSE Code of Governance, <http://www.hse.ie/eng/about/Who/directoratemembers/codeofgovernance/auditcommitteecharter.pdf>

Part B Legislation Specific to the National Service Plan

Section 4 The National Service Plan (NSP)

The Service Plan is produced by the HSE annually it contains detailed information on the allocation of the Net Determination between different care programmes and outlines the Executives Accountability Framework. Apart from the specifics outlined below, the NSP shows how the Executive plans to achieve its priorities in any given year. It reflects their purpose, ambition, priorities and opportunities⁷.

The Plan is subject to various legislative conditions which have evolved in line with the changing structure of the Executive, some of the conditions are outlined below;



Approved National Service Plan

Section 33 as amended, which deals with the implementation of the approved service plan states;

- that the HSE shall manage health and personal social services indicated in an approved service plan so as to ensure that the services are delivered in accordance with the plan.
- The expenditure must not exceed the Net Determination, and;
- the Minister may direct the HSE to take specified measures in relation to the implementation of the plan.

⁷ HSE National Service Plan 2007.

Conclusion

It is evident that work has been done through legislation in an attempt to strengthen the legislation supporting the governance and accountability of the health sector in order to control the vast sums of money allocated to it annually.

It is also evident there are a commensurate number of intertwined control measures outside of legislation. These include the Public Financial Procedures, the HSE's Code of Governance and their Performance Accountability Framework which includes the Escalation Framework, the Executives National Financial Framework and applicable accounting standards.

The Department of Health have their own Customer Charter and Statement of Strategy and the health sector is vulnerable to policy changes through the Programme for Partnership Government.

Below the layers of legislation and policy decisions are numerous agencies and bodies. Some of these agencies, for example Section 38 Voluntary Hospitals, have their own Boards and governance structures quite independent from the HSE's.

The legal framework sets out a hierarchy, the finance unit of the Department of Health submits its bid, which receives DPER sanction and Dàil approval. On receipt of the Net Determination the HSE have 21 days to produce and agree their NSP. The service plan must be consistent with the Net Determination.

The Secretary General is in charge of health sector spend and is accountable to the PAC. The Director General, through the Directorate of the HSE is responsible for the expenditure and performance of the Executive. The DG reports to Minister for Health on the Executive's performance through the Secretary General of health.

Section 33, as amended of the Health Act requires the HSE to manage health services in line with the Net Determination. There is a further specific onus on the Director General to manage health services in accordance with the Net Determination. The Audit Committee is also obliged to ensure that the Executive is complying with the implementation of the Plan in line with the Net Determination. The Executive's need of supplementary of €600m in 2015 (€680 2014) indicates that the HSE is unable to manage its expenditure within its limits.

Formally the legislation does require services to be on budget. If the expenditure is likely to breach the budget various actions need to be taken by the Director General. These include reporting any likely breach and the cause of such breach to the Minister. The Director General is obliged to bring expenditure under control and to carry out any further directions issued by the Minister.

Finally The Minister has the power to engage with the Executive if it thought that Government policies and objectives are not receiving sufficient attention from the HSE. The Minister also has the power to set priorities and establish performance targets.