



**AN BILLE SLÁINTE (FORMHAOIRSIÚ PARLAIMINTEACH AR
IONSTRAIMÍ ÁIRITHE A BHAINNEANN LE COVID-19), 2021
HEALTH (PARLIAMENTARY OVERSIGHT OF CERTAIN
INSTRUMENTS RELATING TO COVID-19) BILL 2021**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to provide for a greater level of parliamentary oversight of ministerial regulations made under section 31A (regulations for preventing, limiting, minimising or slowing spread of Covid-19), and orders made under section 31B (affected areas orders relating to Covid-19), of the Health Act 1947. The Bill proposes in general to provide for time limits within which such an order or regulations have to be confirmed by resolution of each House of the Oireachtas so that they can continue to have effect. Otherwise they are annulled but without prejudice to anything previously done under them. The Bill also enables either House of the Oireachtas by resolution to annul such an order or regulations before that time limit expires, again without prejudice to anything previously done under them.

Background

From the beginning of the Covid-19 pandemic, the Government has introduced different regulations under the Health Act 1947. These have largely been to give effect to restrictions imposed upon society to protect our healthcare service and save lives.

These are unprecedented restrictions on peoples' liberties, and it is only right and proper that Parliament is given a greater role in scrutinising these restrictions. The Bill aims to do that, as rather than requiring parliament to pass a motion annulling the regulations, they will be presumed annulled unless both Houses pass a motion affirming them.

This would require the executive to give parliament time to scrutinise and affirm any regulations or orders made. Accordingly, the balance of the separation of powers between parliament and the executive will be properly restored, from a position where it can be compromised by the dominance of a government with a large majority.

Provisions of the Bill

Section 1 is a standard form provision and provides a definition used in the Bill.

Section 2 restricts the application of section 5 (Regulations) of the Health Act 1947 by amending that section so as to provide that it does not apply to regulations to which proposed section 31E (Parliamentary Oversight) of that Act would relate (*see section 3* of the Bill).

Section 3 inserts a new section 31E into the Health Act 1947.

Subsection (1) of proposed section 31E defines a “relevant statutory instrument” for the purposes of that section as regulations made under section 31A, or an order made under section 31B, of the Health Act 1947.

Subsection (2) of proposed section 31E consists of two paragraphs:

- paragraph (a) enables either House of the Oireachtas by resolution to annul a relevant statutory instrument. This mirrors to some extent the wording of section 5 of the Health Act 1947, but differs in two respects:
 - paragraph (a) relates to both regulations and orders within the definition of “relevant statutory instruments” whereas section 5 is limited to regulations (*see also* explanatory note above to *section 2* of the Bill), and
 - the annulment time limit in section 5 of within 21 days on which the House concerned has sat is not relevant here as a shorter time limit is provided for by paragraph (b) for the passing of a resolution confirming the relevant statutory instrument.
- paragraph (b) provides that a relevant statutory instrument will stand annulled when the appropriate time limit set out in paragraph (b) has expired unless before that happens a resolution confirming the instrument has been passed by each House of the Oireachtas. Accordingly, in the absence of such a resolution by each House, the instrument will stand annulled. The time limits provided for are whichever of the following is the shortest:
 - within 14 days on which the House concerned has sat after the instrument was laid before it by the Minister for Health;
 - within 21 days after the instrument was made by that Minister.

In respect of either House, this means that unless that House has sat for 14 days after the instrument was laid before it and has done so within 21 days after the instrument was made, then the time limit for that House to pass the resolution would be within 21 days after the instrument was made by the Minister for Health.

In summary, for a relevant statutory instrument to be annulled requires, within the appropriate time limits—

- a resolution by either House of the Oireachtas annulling the instrument, or
- a resolution not to have been passed by each of the House of the Oireachtas confirming the instrument.

Subsection (3) of proposed section 31E provides that in calculating time limits under subsection (2) for a relevant statutory instrument, no regard shall be had to any subsequent instrument made by the Minister that amends the first-mentioned instrument.

Subsection (4) of proposed section 31E provides that subsection (2) (b) of that section does not apply in any circumstances where the relevant statutory instrument has ceased to have effect, for any of the reasons set out in that subsection (4), before the time limit provided for by that subsection (2)(b) would have expired.

Section 4

These are standard form provisions dealing with the short title and collective citation.

*Pa Daly TD, David Cullinane TD.,
Eanáir, 2021.*

Wt. —. 145. 1/21. Essentra. (86328). Gr. 30-15.