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**AN BILLE SLÁINTE (LEASÚ) 2010  
HEALTH (AMENDMENT) BILL 2010**

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*Mar a tionscnaíodh  
As initiated*

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**ARRANGEMENT OF SECTIONS**

Section

1. Amendment of Health Act 2004.
  2. Short title and collective citation.
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ACTS REFERRED TO

Health Act 2004  
Health Acts 1947 to 2009

2004, No. 42



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**HEALTH (AMENDMENT) BILL 2010**

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# **BILL**

*entitled*

5 AN ACT TO AMEND THE HEALTH ACT 2004 TO PROVIDE,  
IN THE PUBLIC INTEREST, FOR THE FURNISHING BY  
THE HEALTH SERVICE EXECUTIVE OF INFOR-  
MATION AND DOCUMENTS TO THE MINISTER FOR  
10 HEALTH AND CHILDREN AND TO PROVIDE FOR  
MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Health Act 2004 is amended by inserting the following Amendment of  
Part after Part 7: Health Act 2004.

“PART 7A

15 FURNISHING OF INFORMATION AND DOCUMENTS

Definition. 40A.—In this Part ‘document’ means—

- (a) a book, record or other written or printed material,
- (b) a photograph,
- 20 (c) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and
- 25 (d) any audio or video recording.

Duty of Executive to furnish information.

40B.—(1) The Executive shall—

- (a) monitor and keep under review occurrences and developments concerning matters relating to its object and functions, and
- 30 (b) without delay, furnish the Minister with information regarding—

- (i) any such occurrence or development that, in the opinion of the Executive, the Minister is likely to consider significant for the performance of his or her functions (whether under this Act or otherwise), or 5
- (ii) any other occurrence or development that falls within a class of occurrences or developments of public interest or concern that has been specified in writing by the Minister. 10

(2) The Minister may issue guidelines in relation to the furnishing of information under subsection (1) and, if he or she does so, the Executive shall comply with those guidelines. 15

Requirement to furnish information and documents.

40C.—(1) The Minister may, where he or she considers it necessary in the public interest to do so for the performance of his or her functions (whether under this Act or otherwise), require the Executive to furnish him or her with such information or documents as he or she may specify that are in the Executive’s possession or control, and the Executive shall do so within any period that the Minister may specify and, in any event, without delay. 20 25

(2) Nothing contained in an enactment, and no rule of law, which would require obtaining the consent of a person in order for the Executive to furnish the Minister with information or documents under this Part, shall operate to prohibit or render unlawful such furnishing, notwithstanding that no such consent has been obtained. 30

(3) Nothing contained in an enactment, and no rule of law, relating to the non-disclosure or confidentiality of information or documents, shall operate to prohibit the Executive from furnishing the Minister with information or documents under this Part, or render such furnishing unlawful. 35 40

(4) Nothing contained in an enactment, and no rule of law, relating to the hearing of proceedings otherwise than in public shall operate to—

- (a) prohibit the Executive from furnishing the Minister, under this Part, with information or documents prepared in relation to, or given in evidence in, such proceedings, whether the proceedings were brought before or after the commencement of this Part, or 45 50

(b) render such furnishing unlawful.

Minister may share information and documents in certain circumstances.

40D.—(1) Where the Minister has appointed a person to examine or inquire into any matter, and considers that any information or document that has been furnished under section 40B or 40C may be relevant to that examination or inquiry, the Minister may furnish that information or document to the person, and that person may receive that information or document.

(2) Nothing contained in an enactment, and no rule of law, which would require obtaining the consent of another person in order for the Minister to furnish a person referred to in subsection (1) with information or documents under this Part, shall operate to prohibit or render unlawful such furnishing, notwithstanding that no such consent has been obtained.

(3) Nothing contained in an enactment, and no rule of law, relating to the non-disclosure or confidentiality of information or documents, shall operate to prohibit the Minister from furnishing a person referred to in subsection (1) with information or documents under this Part, or render such furnishing unlawful.

(4) Nothing contained in an enactment, and no rule of law, relating to the hearing of proceedings otherwise than in public shall operate to—

(a) prohibit the Minister from furnishing a person referred to in subsection (1), under this Part, with information or documents prepared in relation to, or given in evidence in, such proceedings, whether the proceedings were brought before or after the commencement of this Part, or

(b) render such furnishing unlawful.

Use of information and documents.

40E.—(1) Subject to subsection (2), the Minister may use information and documents furnished under this Part as he or she requires for the performance of his or her functions (whether under this Act or otherwise).

(2) Where information or a document has been furnished under section 40B or 40C, nothing in this Part is to be taken to permit publication, in whole or in part, of the information or document if such publication would not otherwise be lawful.

Saver.

40F.—Nothing in this Part is to be taken to limit any power of the Minister to require information from or issue directions to the Executive (whether under this Act or otherwise), or to affect, except to the extent required by this Part, the functions of the Executive or the Minister.”.

Short title and  
collective citation.

**2.—(1)** This Act may be cited as the Health (Amendment) Act 2010.

(2) The Health Acts 1947 to 2009 and this Act may be cited together as the Health Acts 1947 to 2010.



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**EXPLANATORY MEMORANDUM**

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***Background***

The legal difficulties which emerged with the Health Service Executive providing case files to the Independent Review Group on Child Deaths established by the Minister for Children provided the immediate context for this legislation. However, this legislation will cover the entire remit of the Executive. This is in order to ensure that similar issues cannot arise in providing information or documents to the Minister for Health and Children or to persons conducting reviews etc on behalf of the Minister in any area of health and personal social services covered by the Executive (for example, care of the elderly).

***Purpose of Bill***

The purpose of the Bill is to strengthen the legislative base for the provision of information by the Health Service Executive to the Minister for Health and Children so as to enhance the Minister's ability to fulfil his or her role and functions (including political accountability to the Oireachtas) and to create a "safe channel of communication" for sensitive information between the HSE and the Minister. It does this in the following ways. First, it places a duty on the Executive to provide information on its own initiative and without delay to the Minister (see section 40B below). Second, it gives the Minister power to require (in the public interest) detailed information and documents from the Executive free of legal prohibition (section 40C) and to use such information and documents as necessary for the performance of his or her functions (section 40E). Third, it also allows persons appointed by the Minister to undertake reviews etc to similarly use such information and documents (section 40D).

***Provisions***

The Bill contains two sections: *Section 1* is the substantive provision and *Section 2* sets out the Short Title and Collective Citation. *Section 1* of the Bill inserts a new Part — **Part 7A: Furnishing of Information and Documents** — into the Health Act 2004. This explains the numbering of the provisions in the Bill: that is, they are sections 40A to 40F of the Health Act 2004.

Section 40A (**Definition**) provides a wide-ranging definition of “document” so as to ensure that it is comprehensive for the purposes of the Bill.

The intention of section 40B (**Duty of Executive to furnish information**) is to ensure that the Minister is appropriately briefed by the HSE on all matters that he or she needs to be aware of in a timely and appropriate manner. Subsection (1) requires the Executive to monitor and keep under review occurrences and developments concerning matters relating to its object and functions. It must inform the Minister, without delay, of any occurrence or development that, in the opinion of the Executive, the Minister is likely to consider significant for the performance of his or her functions. In addition, it must similarly inform the Minister of any other occurrence or development that falls within a class of occurrences or developments of public interest or concern that has been specified in writing by the Minister.

Under subsection (2), there is provision for the issue of Guidelines by the Minister which will allow him or her to structure the way information is provided under this section.

The objective of section 40C (**Requirement to furnish information and documents**) is to require the Executive to provide information or documents to the Minister and to ensure that this can be done as quickly as possible and without legal difficulties. Subsection (1) provides that the Minister can, where he or she considers it necessary, in the public interest, for the performance of his or her functions, require the Executive to provide him or her, with any information or documents in its possession or control that he or she specifies.

This must be complied with by the Executive within the period specified by the Minister when requiring the information (and, in any event, without delay). The section lifts the existing legal prohibitions which may prevent the provision of the information and documents concerned in areas such as consent requirements, non-disclosure or confidentiality provisions and *in camera* rules. The requirement to satisfy the public interest test is a further safeguard. Amongst other things, this provision will create a “safe channel of communication” for sensitive information to pass from the HSE to the Minister.

While sections 40B and 40C are independent of each other, it may well be that following on from information provided under section 40B by the Executive the Minister may consider it appropriate or necessary to require further information or documents under section 40C. This could arise, for example, where the HSE provides information on a matter under section 40B but indicates that it is constrained in providing further details (for example, sensitive personal information) due to privacy issues. In such a scenario, the Minister could exercise his or her powers under section 40C to ensure that full details were made available to him or her.

The purpose of section 40D (**Minister may share information and documents in certain circumstances**) is to ensure that where the Minister has appointed a person or persons to examine or inquire into a matter and he or she considers the information or documents received under section 40B or 40C are relevant to the examination or inquiry that he or she can release that material to the persons concerned. This will enable them to use the information and documents to prepare a report for the Minister. Subsections (2) to

(4) mirror the corresponding subsections in section 40C as appropriate.

Subsection (1) of section 40E (**Use of information and documents**) provides that, subject to subsection (2), the Minister may use information and documents provided under the Bill as he or she requires for the performance of his or her functions. Subsection (2) addresses the issue of publication of such information and documents and makes clear that the current legal position is unchanged: namely, that nothing in the Bill permits publication, in whole or in part, of information or documents received if such publication would not otherwise be lawful. The objective here is to have a proportionate response so as to correctly balance the public interest and respect the individual's legal and Constitutional rights, including the right to privacy.

Section 40F (**Saver**) makes it clear that nothing in the Bill (a) limits or otherwise restricts the power of the Minister under the Health Act 2004 or any other enactment to issue directions to or require information from the Executive or (b) affects, except to the extent required by the Bill, the functions of the Executive or the Minister.

There is no commencement provision as it is intended that the Bill should come into law immediately on being signed by the President.

*An Roinn Sláinte agus Leanaí,  
Meitheamh 2010.*