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**An Bille um Ghairmeacha Rialáilte (Sláinte agus Cúram  
Sóisialach) (Leasú), 2019**  
**Regulated Professions (Health and Social Care)  
(Amendment) Bill 2019**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE UM GHAIRMEACHA RIALÁILTE (SLÁINTE AGUS  
CÚRAM SÓISIALACH) (LEASÚ), 2019  
REGULATED PROFESSIONS (HEALTH AND SOCIAL CARE)  
(AMENDMENT) BILL 2019**

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**EXPLANATORY MEMORANDUM**

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**Introduction**

The Regulated Professions (Health and Social Care) (Amendment) Bill 2019 amends the five health professional regulatory Acts (the Dentists Act 1985; the Health and Social Care Professionals Act 2005; the Pharmacy Act 2007; the Medical Practitioners Act 2007; and the Nurses and Midwives Act 2011). It also makes minor amendments to the Health Act 1953; the Health Identifiers Act 2014; and the Children and Family Relationships Act 2015.

A number of the amendments to the five health professional regulatory Acts are resulting from the transposition of Directive 2005/36/EC (as amended by Directive 2013/55/EU) on the Recognition of Professional Qualifications, which was agreed under the Irish Presidency of the European Union in 2013, and which provides mechanisms for the recognition of professional qualifications. The modernised Directive was transposed into national law in January 2017 (The European Union (Recognition of Professional Qualifications) Regulations 2017 SI No. 8 of 2017). Other amendments are being made to the health professional regulatory Acts to improve how the Acts operate. These are mainly, though not exclusively, concerned with registration and fitness to practise.

The amendments include:

- amendments to the Medical Practitioners Act and the Dentists Act to separate qualification recognition from registration. Note: the other health professional regulatory Acts already provide for this. Language and fit and proper person tests will be requirements to be met between recognition of qualifications and registration;
- amendments to all five health professional regulatory Acts to provide for an appeal to the Court of the minor sanctions of advice, admonish and a censure in writing;
- amendments to all five health professional regulatory Acts to provide that applicants for registration will have to make a declaration on application, and annually thereafter. This declaration relates to any material matter such as convictions or any sanctions imposed on their practise by any regulatory body (whether inside or outside the State) in relation to the provision of any type of health or social care;
- amendments to all five health professional regulatory Acts to provide for additional grounds of complaint where a person has been

restricted or prohibited from practising one or more kind of health or social care profession in the State or another jurisdiction, and to provide that the regulatory bodies can use information on sanctions imposed in other countries in fitness to practise cases;

- amendments to the fitness to practise provisions in the Medical Practitioners Act 2007 and the Nurses and Midwives Act 2011 to improve the fitness to practise process which has become very lengthy. These amendments should reduce the time it takes to progress fitness to practise cases;
- amendments to all five health professional regulatory Acts to provide that all sanctions will be published.

Amendments are being made to the Health Act 1953 to remove the requirements regarding the composition of interview boards for consultant posts, which should improve the recruitment process. The Health Identifiers Act 2014 and the Children and Family Relationships Act 2015 have minor technical amendments.

## **PART 1**

### **Preliminary and General**

#### **Section 1**

##### **Short title and commencement**

Provides for the short title and that the Act shall come into operation on such day or days as the Minister for Health may appoint by order.

#### **Section 2**

##### **Repeals**

Provides for the repeal of section 27 (*Persons entitled to be registered in register*) and section 30 (*Persons entitled to be registered in Register of Dental Specialists*) of the Dentists Act 1985 as registration of dentists is being replaced by new provisions.

Provides for the repeal of section 49 (*Internship registration in Trainee Specialist Division*) of the Medical Practitioners Act 2007 as new registration provisions for interns are being provided for.

## **PART 2**

### **Amendment of Dentists Act 1985**

#### **Section 3**

##### **Definition**

Defines the Act of 1985 which is the Dentists Act 1985 and used throughout this Part.

#### **Section 4**

##### **Amendment of section 2 of Act of 1985**

Inserts new definitions into the Act. It also provides that nothing in the Act will prejudice performance by the Council from carrying out its functions under the European Union (Recognition of Professional Qualifications) Regulations 2017.

## **Section 5**

### **Amendment of section 13 of Act of 1985**

Inserts a reference to new section 25A (*Rule making power*) into section 13(7)(b) (*Committees of Council*).

## **Section 6**

### **Amendment of section 25 of Act of 1985**

Amends section 25 (*Fees*) to insert two new fees which relate to the recognition of a qualification.

## **Section 7**

### **Council's power to make rules**

Inserts a new section 25A which provides for Council to have a rule making power. This rule making power is limited to:

- (i) elections under section 13(7)(b) regarding representatives of a class of auxiliary worker to the relevant committee;
- (ii) specifying courses of training and examinations for the purposes of recognition of a dental qualification; and
- (iii) setting criteria for resuming practising dentistry.

Draft rules will require the approval of the Minister and will be laid before each House of the Oireachtas.

## **Section 8**

### **Amendment of Act of 1985 – insertion of sections 26A to 26F**

Inserts new sections (26A – 26F) in relation to the recognition of dental qualifications and registration as a dental practitioner.

*Section 26A* provides for a person to apply to have a qualification recognised as a dental practitioner qualification or as a dental specialist qualification.

*Section 26B* provides for the qualifications that are recognised as a dental practitioner qualification. These are the same as the qualifications currently provided for in section 27 of the Act.

*Section 26C* provides for the qualifications that are recognised as a dental specialist qualification. These are the same as the qualifications currently provided for in section 30 of the Act.

*Section 26D* provides for a person to apply to be registered as a dental practitioner. The person will be registered if the person has the correct qualification and has proficiency in English or Irish, is fit to practise, and complies with any rule.

*Section 26E* is similar to section 26D, but it relates to registration as a dental specialist.

*Section 26F* provides for notification of decisions and appeals to the High Court.

## **Section 9**

### **Amendment of section 32 of Act of 1985**

Amends section 32 (*Application by registered dentist to have name removed from register*) to remove the reference to pre-paid post as there is a new provision in section 20 which provides for how notifications will be made.

## **Section 10**

### **Declarations by registered dentists in relation to certain matters in the State or other jurisdictions, etc.**

Inserts a new section 32A to oblige all dentists to annually give the Dental Council details of any proceedings in the State or another jurisdiction which might result in the dentist being restricted or prohibited from working as a dentist or working in one or more kind of health or social care profession, or if the proceeding could result in a conviction. Dentists also need to provide details within 3 months of the case concluding.

## **Section 11**

### **Council may request certain information concerning registered dentists from certain bodies in the State or other jurisdictions**

Inserts a new section 33A to provide that the Council may get information from another health or social care regulatory body in or outside the State in relation to a dentist who has been refused registration; has been suspended; has conditions placed on his/her registration; has a conviction; or in relation to the dentist's qualification or registration.

## **Section 12**

### **Amendment of section 38 of Act of 1985**

Amends section 38 (*Inquiry by Fitness to Practise Committee into conduct of a registered dentist*) to include new grounds of complaint. These new grounds are:

- failure to comply with section 32A (*Declaration*);
- prohibition on providing one or more kind of health or social care in the State or another jurisdiction;
- restriction on providing one or more kind of health or social care in the State or another jurisdiction.

## **Section 13**

### **Amendment of section 39 of Act of 1985**

Amends section 39 (*Erasure or suspension from register for professional misconduct, unfitness to practise or failure to pay retention fee*) to allow for findings on the new grounds of complaint inserted in section 38 (see previous section).

## **Section 14**

### **Amendment of section 40 of Act of 1985**

Amends section 40 (*Attaching of conditions to retention on register*) to allow for conditions to be attached to a dentist's registration where the dentist has been convicted of an indictable offence.

## **Section 15**

### **Amendment of section 41 of Act of 1985**

Amends section 41 (*Powers of Council to advise, admonish, etc.*) to allow for appeals to and confirmation by the High Court where the Council advises or admonishes or censures a dentist following a fitness to practise inquiry.

## **Section 16**

### **Amendment of section 42 of Act of 1985**

Amends section 42 (*Erasure from register of persons convicted of indictable offences*) to provide that in cases where a dentist has been convicted of an indictable offence the Registrar can request information on the dentist's criminal record from the Garda Síochána and the Registrar can

also request a copy of the certificate of conviction from the Registrar/Clerk of the Court which convicted the dentist.

## **Section 17**

### **Amendment of section 47 of Act of 1985**

Amends section 47 (*Notification to Minister of name erased or restored and of suspensions imposed and terminated*) to provide that the Minister is no longer notified of sanctions and that the HSE and any other appropriate persons, including an employer, will be notified.

All sanctions will be notified, including advice, admonish and censure. In relation to sanctions imposed by other states, the Council shall notify the HSE and the employer if it is in the public interest. If the Council believes that the person is registered in another country and that country may not be aware of the sanctions imposed, the Council can notify the relevant body in that country. In relation to sanctions imposed by a third country, the Council can, if it is in the public interest, notify another country where the person is registered.

## **Section 18**

### **Information Council may publish in public interest**

Inserts a new section 47A to provide that the Council shall publish all sanctions imposed by the Council. If it is in the public interest, the Council shall also publish sanctions imposed by other countries. The Council shall also, if it is in the public interest, publish part or all of the fitness to practise proceedings.

## **Section 19**

### **Amendment of section 53 of Act of 1985**

Amends subsection 6 of section 53 (*Creation of classes of auxiliary dental workers*) in relation to how auxiliary dental workers are notified of decisions made by the Council.

## **Section 20**

### **Amendment of section 58 of Act of 1985**

Amends section 58 (*Publication of registers*) to provide for publication of the register on the Council's website.

## **Section 21**

### **Admissibility of certain documents relating to proceedings in the State or other jurisdictions**

Inserts a new section 67A to provide that documents in relation to a dentist being prohibited or restricted in providing one or more kind of health or social care, or having a conviction in the State or another jurisdiction, can be admissible as evidence of the facts stated in the documents.

## **Section 22**

### **Amendment of Act of 1985 – insertion of sections 69 and 70**

Inserts two new sections after section 68.

*Section 69 (Power to specify form of documents)* provides that the Council or the Fitness to Practise Committee can specify the form that a person has to complete and can also specify how the form should be completed.

*Section 70 (Notifications under Act)* provides that notifications to a dentist will be sent by pre-paid post to the address on the register and that it will have been deemed to have been delivered three working days after being sent.

## **PART 3**

### **Amendments of Health and Social Care Professionals Act 2005**

#### **Section 23**

##### **Definition**

Defines the Act of 2005 which is the Health and Social Care Professionals Act 2005 and used throughout this Part.

#### **Section 24**

##### **Amendment of section 3 of Act of 2005**

Inserts new definitions into the Act. It also provides that nothing in the Act will prejudice performance by a registration board from carrying out its functions under the Professional Qualifications Regulations.

#### **Section 25**

##### **Amendment of section 40A of Act of 2005**

Provides that a person seeking registration must declare if they have been refused registration, have been suspended or removed from registration or had conditions imposed in relation to working in one or more than one kind health or social care profession or if the person has a conviction in the State or another jurisdiction.

#### **Section 26**

##### **Declarations by registrants in relation to certain matters in the State or other jurisdictions, etc.**

Inserts a new section 44A to oblige all registrants to give to their relevant registration board details annually of any proceedings in the State or another jurisdiction which might result in the registrant being restricted or prohibited from working in their profession or in one or more kind of health or social care profession, or if the proceedings could result in a conviction. The registrant also needs to provide details within 3 months of the case concluding.

#### **Section 27**

##### **Amendment of section 45 of Act of 2005**

Amends section 45 (*Updating of registrant information and correction of errors*) to include that a registrant must notify the registration board of any material matter (defined in section 24).

#### **Section 28**

##### **Council may request certain information concerning registrant from certain bodies in the State or other jurisdictions**

Inserts a new section 45A to provide that a registration board may get information from another health or social care regulatory body in or outside the State in relation to a registrant who has been refused registration; has been suspended; has conditions placed on his/her registration; has a conviction; or in relation to the registrant's qualification for registration.

#### **Section 29**

##### **Amendment of section 52 of Act of 2005**

Amends section 52 (*Complaints about conduct or competence of registrants*) to include two new grounds of complaint. These new grounds are:

- prohibition on providing one or more kind of health or social care in the State or another jurisdiction; and
- restriction on providing one or more kind of health or social care in the State or another jurisdiction.



This section also provides that the chief executive officer, in relation to a complaint, may request the Garda Síochána to provide information on a registrant's criminal record. The chief executive officer may also request the Registrar of a Court to provide a certificate of conviction.

### **Section 30**

#### **Amendment of section 53 of Act of 2005**

Amends section 53 (*Referral of complaints to preliminary proceedings committee*) to give the powers and protections in section 59 to the Preliminary Proceedings Committee and the Chairperson of that Committee, i.e. the power, rights and privileges that a Court has in relation to the production of records.

### **Sections 31-34**

#### **Amendment of sections 67, 68, 69 and 70 of Act of 2005**

Amends sections 67-70 (*Duty to notify registrant of Council's directions*); (*Confirmation by High Court required before certain directions become effective*); (*Application to High Court for cancellation of Council's direction*); (*Application to High Court for confirmation of Council's direction*) to include that the sanctions of admonishment and censure can be appealed and require confirmation by the High Court.

### **Section 35**

#### **Amendment of section 76 of Act of 2005**

Amends section 76 (*Notification to Minister and employer of certain disciplinary matters*) to provide that the Minister is no longer notified of sanctions and that the HSE and any other appropriate person will be notified. In relation to sanctions imposed by other states, the Council shall notify the HSE and the employer if it is in the public interest. If the Council believes that the person is registered in another country and that country may not be aware of the sanctions imposed, the Council can notify the relevant body in that country. In relation to sanctions imposed by a third country, the Council can, if it is in the public interest, notify another country where the person is registered.

### **Section 36**

#### **Amendment of section 77 of Act of 2005**

Amends section 77 (*Disciplinary information may be published in public interest*) to provide that all sanctions imposed by the Council will be published. Sanctions imposed by other countries may be published if it is in the public interest to do so.

### **Section 37**

#### **Information Council may publish in public interest**

Amends section 78A (*Information Council may publish in public interest*) to provide that the Council does not have to consult with the committee of inquiry in relation to publication of all or part of the proceedings of the committee of inquiry.

### **Section 38**

#### **Notifications under Act**

Amends section 94 (*How registrants, former registrants and applicants are to be notified*) to provide that notifications of decisions will be sent by pre-paid post to the address in the register and shall be deemed to have been delivered on the third working day after it was sent.

## **Section 39**

### **Amendment of Act of 2005 – insertion of sections 98 and 99**

Inserts two new sections, 98 and 99.

*Section 98 (Admissibility of certain documents relating to proceedings in State or other jurisdictions)* provides that documents in relation to a registrant being prohibited or restricted in providing one or more kind of health or social care, or having a conviction in the State or another jurisdiction, can be admissible as evidence of the facts stated in the documents.

*Section 99 (Power to specify form of documents)* provides that the Council, a registration board, the preliminary proceedings committee or a committee of inquiry can specify the forms that a person has to complete and can also specify how the form should be completed.

## **PART 4**

### **Amendment of Pharmacy Act 2007**

## **Section 40**

### **Definition**

Defines the Act of 2007 which is the Pharmacy Act 2007 and used throughout this Part.

## **Section 41**

### **Amendment of section 2 of Act of 2007**

Inserts new definitions into the Act. It also provides that nothing in the Act will prejudice the performance by the Council of its functions under the European Union (Recognition of Professional Qualifications) Regulations 2017.

## **Section 42**

### **Amendment of section 7 of Act of 2007**

Amends section 7 (*Functions of the Society*) to include a number of additional Acts which the Council will supervise to ensure compliance by pharmacists and pharmacy owners.

## **Section 43**

### **Amendment of section 11 of Act of 2007**

Amends section 11 (*Functions of the Council and their delegation*) to provide for the inclusion of rules in relation to qualifications from other states and criteria for resuming practice as a registered pharmacist or commencing practice, when not having practised/obtained qualifications for a period of time.

## **Section 44**

### **Amendment of section 14 of Act of 2007**

Amends section 14 (*Procedure and criteria for registration of pharmacists*) to delete that a person who is an undischarged bankrupt cannot be registered as a pharmacist.

## **Section 45**

### **Amendment of section 16 of Act of 2007**

Amends section 16 (*Qualifications for practice*) to include a qualification from a state other than this State which falls within a ground specified in the rules (see section 43) and is of a standard necessary for practice in this State.

## **Section 46**

### **Amendment of section 19 of Act of 2007**

Amends section 19 (*Inspection of premises of retail pharmacy business for the purposes of section 18*) to clarify that an authorised officer is as defined in section 66 and that the provisions of Part 7, (*Powers of Investigation*), apply.

## **Section 47**

### **Amendment of Act of 2007 – insertion of sections 21B and 21C**

Inserts two new sections 21B and 21C.

*Section 21B (Declarations by registered pharmacists in relation to certain matters in State or other jurisdictions, etc.)* obliges all pharmacists to give to the Council annually details of any proceedings in the State or another jurisdiction which might result in the pharmacist being restricted or prohibited from working as a pharmacist or working in one or more kind of health or social care profession, or if the proceedings could result in a conviction. The registrant also needs to provide details within 3 months of the case concluding.

*Section 21C (Declarations by pharmacy owner)* obliges pharmacy owners to give to the Council annually, details of proceedings concerning a contravention of one of the Acts specified in section 7 (see section 42 which amends section 7) or proceedings which may result in a conviction in the State or another jurisdiction.

## **Section 48**

### **Council may request certain information concerning registered pharmacists from certain bodies in the State or other jurisdictions**

Inserts a new section 23A to provide that Council may get information from another health or social care regulatory body in or outside the State in relation to a pharmacist who has been refused registration; has been suspended; has conditions placed on his/her registration; has a conviction; or in relation to the pharmacist's qualification or registration.

## **Section 49**

### **Amendment of section 34 of Act of 2007**

Amends section 34 (*Disciplinary committees*) to include an additional subsection to clarify that a pharmacy owner includes a reference to a pharmacist who is a director or a shareholder in a retail pharmacy business.

## **Section 50**

### **Amendment of section 35 of Act of 2007**

Amends section 35 (*Complaints about registered pharmacists*) to include two new grounds of complaint. These new grounds are:

- failure to comply with a provision of an Act or a statutory instrument listed in Section 7(1)(e)(ii) (see section 42);
- prohibition on providing one or more kind of health or social care in the State or another jurisdiction; and
- restriction on providing one or more kind of health or social care in the State or another jurisdiction.

This section also provides that the Registrar, in relation to a complaint, may request the Garda Síochána to provide information on a pharmacist's criminal record. The Registrar may also request the Registrar of a Court to provide a certificate of conviction.

## **Section 51**

### **Amendment of section 36 of Act of 2007**

Amends section 36 (*Complaints about registered retail pharmacy businesses*) to amend one of the current grounds of complaint and include new grounds of complaint. The ground of complaint in subsection (1)(b) in relation to offences and misconduct is extended to cover other countries as well as this State. The new grounds are that:

- a pharmacy owner failed to comply with a provision of an Act or statutory instrument listed in section 7(1)(e)(ii) (see section 42);
- a pharmacy owner failed to make a declaration as required under section 21C(a); and
- a pharmacy owner, employee or partner contravened a provision of the Act.

This section also provides that the Registrar, in relation to a complaint, may request the Garda Síochána to provide information on a pharmacy owner's criminal record. The Registrar may also request the Registrar of a Court to provide a certificate of conviction.

## **Section 52**

### **Amendment of section 46 of Act of 2007**

Amends section 46 (*Undertaking and consents*) to clarify that if a pharmacist or a pharmacy owner consents to an undertaking, then the inquiry into the complaint is completed.

## **Section 53**

### **Amendment of section 48 of Act of 2007**

Amends section 48 (*Action by Council on report by disciplinary committee*) to clarify that if a pharmacist or pharmacy owner has given an undertaking, then the measures imposed are those given in the undertaking.

## **Section 54**

### **Amendment of section 49 of Act of 2007**

Amends section 49 (*Notification of imposition of disciplinary sanction*) to provide notification of the right to appeal the sanctions of admonishment or censure. There is no appeal where the pharmacist or pharmacy owner agrees to an undertaking.

## **Section 55**

### **Amendment of section 50 of Act of 2007**

Amends section 50 (*Disciplinary sanction to be confirmed by High Court*) to provide that the sanctions of admonishment or censure have to be confirmed by the High Court. There is no confirmation required where the pharmacist or pharmacy owner agrees to an undertaking.

## **Section 56**

### **Amendment of section 51 of Act of 2007**

Amends section 51 (*High Court's power to cancel, etc., disciplinary sanction*) to provide for appeals in relation to admonishment or censure. This provision is also amended to allow the Court to decide on who will bear the costs of the appeal.

## **Section 57**

### **Amendment of section 52 of Act of 2007**

Amends section 52 (*Confirmation by High Court of disciplinary sanction*) to allow the Court to decide on who will bear the costs of the confirmation.

## **Section 58**

### **Amendment of section 56 of Act of 2007**

Amends section 56 (*Notification of sanctions, etc., to Minister*) to provide that the Minister is no longer notified of sanctions and that the HSE and any other appropriate persons, including an employer, will be notified. All sanctions will be notified, including advice, admonish and censure. If the Council is aware that a pharmacist was sanctioned in another country, it can, if it is in the public interest, notify the HSE and the employer.

If the Council knows that a pharmacist is registered in another country and that country may not be aware of sanctions imposed by the Council, the Council can notify the relevant body in that country. In relation to sanctions imposed by third countries, the Council can, if it is in the public interest, notify another country where the person is registered.

## **Section 59**

### **Amendment of section 57 of Act of 2007**

Amends section 57 (*Public notice of sanctions, etc.*) to provide that all sanctions imposed by the Council will be published. Sanctions imposed by other countries may be published if it is in the public interest to do so. This section also provides that if it is in the public interest, some or all of the transcripts of an inquiry can be published with or without names.

## **Section 60**

### **Amendment of section 63 of Act of 2007**

Amends section 63 (*Prohibition on certain economic relationships between pharmacists or pharmacies and doctors*) to remove the definition of 'partner' as partner is now defined in section 41.

## **Section 61**

### **Amendment of section 66 of Act of 2007**

Amends section 66 (*Definitions*) to amend the definitions in this Part of the Pharmacy Act. The definitions of 'inspect', 'record' and 'this Act' have been removed as they are now defined in section 41. There is a new definition of 'relevant enactment'.

## **Section 62**

### **Amendment of section 67 of Act of 2007**

Amends section 67 (*Powers of entry, search, seizure, etc.*) to allow for provisions to apply to the Act rather than to Part 7. It also provides for the authorised officer to produce a written report.

## **Section 63**

### **Amendment of section 70 of Act of 2007**

Amends section 70 (*Indemnification of authorised officers*) so that this applies to the Act rather than just to Part 7.

## **Section 64**

### **Amendment of Act of 2007 - insertion of sections 77 and 78**

Inserts two new sections, 77 and 78.

Section 77 (*Admissibility of certain documents relating to proceedings in State or other jurisdictions*) provides that documents in relation to a pharmacist being prohibited or restricted in providing one or more kind of health or social care, or having a conviction in the State or another jurisdiction, can be admissible as evidence of the facts stated in the documents.

*Section 78 (Power to specify form of documents)* provides that the Council, the Preliminary Proceedings Committee or a Committee of Inquiry can specify the forms that a person has to complete and can also specify how the form should be completed.

## **PART 5**

### **Amendment of Medical Practitioners Act 2007**

#### **Section 65**

##### **Definition**

Defines the Act of 2007 which is the Medical Practitioners Act 2007 and used throughout this Part.

#### **Section 66**

##### **Amendment of section 2 of Act of 2007**

Amends section 2 (*Interpretation*) to amend a number of the current definitions and to insert new definitions. This section also provides that nothing in the Act will prejudice the performance by the Council of its functions under the European Union (Recognition of Professional Qualifications) Regulations 2017.

#### **Section 67**

##### **Amendment of section 7 of Act of 2007**

Amends section 7 (*Functions of Council*) to include Council functions in relation to interns and adapters (people undergoing a period of adaptation under the Professional Qualifications Directive) and their registers. It also provides for a function in relation to people assisting the Council or a committee.

#### **Section 68**

##### **Amendment of section 8 of Act of 2007**

Amends section 8 (*Conferral of additional functions on Council*) to provide for the inclusion of interns and adapters in subsection (1)(a)(i) which relates to additional functions which the Minister may confer on the Council.

#### **Section 69**

##### **Amendment of section 11 of Act of 2007**

Amends section 11 (*Council's power to make rules*) to include rules in relation to interns and adapters and their registers. It also provides for rules in relation to subcommittees of the Preliminary Proceedings Committee and the Fitness to Practise Committee, the setting of criteria in relation to assessing applications for registration and resuming practice and in relation to knowledge of the English or Irish language necessary to practise medicine. Some references are amended. It also allows for criteria in relation to training and verifying competencies.

#### **Section 70**

##### **Amendment of section 12 of Act of 2007**

Amends section 12 (*Council's power to issue guidelines*) to include interns and adapters.

#### **Section 71**

##### **Amendment of section 17 of Act of 2007**

Amends section 17 (*Members of Council*) to remove the word 'basic' from subsection (1)(a) as this term is no longer being used.

## **Section 72**

### **Amendment of section 20 of Act of 2007**

Amends section 20 (*Committees of Council*) to provide that subcommittees of a committee can perform the functions of the committee. Also, when the term of a member of a committee expires, including a committee considering a complaint, the member could stay on to allow the committee to finish the matter, or the committee could continue without the member, or a new committee with the vacancy filled could consider the matter. Also a Council member whose term expires and who is a member of the Preliminary Proceedings Committee or the Fitness to Practise Committee can continue as a member of the Committee for as long as is required to finish consideration of a complaint. The Council can dissolve a committee but not the Preliminary Proceedings Committee or the Fitness to Practise Committee.

## **Section 73**

### **Amendment of section 23 of Act of 2007**

Amends section 23 (*Removal of members of Council from office*) to replace 'the Minister is satisfied' with 'in the Minister's opinion' when removing a member for preventing or hindering the Council in its work.

## **Section 74**

### **Amendment of section 24 of Act of 2007**

Amends section 24 (*Chief executive officer*) to include that the chief executive officer can investigate complaints. It also provides that if the chief executive officer is absent or the position is vacant, another employee can be designated chief executive officer. The chief executive officer can delegate any of his or her functions to a member of staff and revoke a delegation.

## **Section 75**

### **Amendment of section 36 of Act of 2007**

Amends section 36 (*Fees that Council may charge*) to remove the reference to section 49 (*Intern registration in Trainee Specialist Division*) as this section is being removed and replaced by new Part 5A (section 76) (*Registration of interns*), and to include a reference to new intern registration. It also provides that fees can be charged for recognition of a qualification and for registration for those undergoing a period of adaptation (new Part 5B - section 77) (*Registration of adapters*).

## **Section 76**

### **Registration of interns**

Provides for a new Part 5A in relation to interns. Interns will no longer be registered in the Trainee Specialist Division of the register of medical practitioners, but instead, interns will be registered on a new register of interns. This is because a person needs to have completed his/her intern year before he/she is qualified as a medical practitioner.

A number of new sections are being inserted in this new Part.

*Section 36A (Definitions)* provides for the definitions for this Part.

*Section 36B (Register of interns)* provides for the new register of interns which will have the names of interns and other appropriate information and it can be in paper or electronic form. A certificate of registration will be provided. If conditions have been attached to registration, it will state the conditions. The intern should display the certificate in their workplace if practicable.



They should include their registration number on prescriptions, records etc. The current provision in relation to interns on the Trainee Specialist Division will cease, and there is also a provision for the phasing out of interns currently registered in the Trainee Specialist Division after five years.

*Section 36C (Application for recognition of qualification)* provides for a person to apply to have their qualification recognised as an intern qualification.

*Section 36D (Requirements to be met for recognition of qualification)* sets out the requirements for recognition of qualification to be an intern, i.e. a person who holds a medical degree approved by the Medical Council which has been completed mainly in Ireland or a person who is studying for a medical qualification in another EU state and who, if the person completed the intern year, that EU state would recognise the person's qualification under the EU Professional Qualifications Directive.

*Section 36E (Application for registration)* provides for a person to apply for registration. To be registered, a person must have the correct qualification, have an intern post, have a knowledge of English or Irish necessary to practise medicine, and be a fit and proper person.

*Section 36F (Provisions supplementary to sections 36B and 36E)* provides that an intern is considered to be a medical practitioner for the purpose of other legislation. This is to allow interns to prescribe drugs, order x-rays etc. It also provides that the Council will grant the intern a certificate of experience when he/she has successfully completed the internship which has been approved. The Council approves intern training places and makes rules in relation to training sites.

*Section 36G (Conditions attached to registration)* provides that, in the interest of public safety, the Council can impose conditions on registration if a person applying for intern registration has a disability that impairs their ability to practise medicine; has had conditions attached to their registration; has had registration suspended or refused by a regulatory body in the State or another jurisdiction in relation to the practise of one or more kind of health or social care profession; or has a conviction. If the person does not agree to the conditions, then the Council may refuse to register the person.

If an intern develops a medical disability that impairs their ability to practise medicine, the intern must notify the Council within 30 days, or later if impracticable to notify in 30 days. The Council can impose conditions in the interest of public safety. If the intern does not agree to the conditions, the Council can still attach the conditions.

*Section 36H (Appeal to Court against certain decisions of Council)* provides that a person can appeal to the Court a decision to refuse recognition of a qualification; refuse registration; refuse a certificate of experience; or attach conditions. The Court can confirm the decision, or cancel the decision and replace it with another decision, which can be to recognise the qualification; register the person with or without conditions; remove or replace conditions; require Council to issue a certificate of experience; require Council to reconsider a decision, or give directions to the Council.

*Section 36I (Correction of register)* provides that the Council will correct clerical errors, remove registrations obtained by fraud, enter changes which come to the attention of Council, and remove registration of interns who have died. Interns must inform the Council within 30 days if another health and social care regulator in or outside the State has attached conditions; suspended or refused registration; or if they have a conviction.



*Section 36J (Publication of register)* provides that the Council shall publish the intern register, but need not make available home addresses, home telephone numbers or email addresses.

## **Section 77**

### **Registration of adapters**

Inserts a new Part 5B (*Registration of adapters*). Adapters are people who have been assessed under the The European Union (Recognition of Professional Qualification) Regulations 2017 and are required to undergo a period of adaptation.

(The provisions in this Part are similar to the provisions regarding interns (Part 5A)).

*Section 36K (Interpretation – Part 5B)* provides for the definitions for this Part. It includes a definition of ‘relevant person’ who is a person seeking recognition of their qualification under the European Union (Recognition of Professional Qualifications) Regulations 2017 and who is required to undergo a period of adaptation.

*Section 36L (Register of adapters)* provides for the Council to establish a register of adapters, which will have the names of adapters and it can be in paper or electronic form. A certificate of registration will be provided. If conditions have been attached to registration, it will state the conditions. The adapter should display the certificate in the workplace if practicable. They should include their registration number on prescriptions, records etc. After the period of adaptation, the entry will be removed from the register.

*Section 36M (Application for registration)* provides for a relevant person to apply for registration. To be registered, a person must have knowledge of English or Irish necessary to practise medicine, be a fit and proper person, and comply with any relevant rules made.

*Section 36N (Provisions supplementary to sections 36L and 36M)* provides that an adapter is considered to be a medical practitioner for the purpose of other legislation. This is to allow adapters to prescribe drugs, order x-rays etc.

It also provides that the Council will grant the adapter a certificate of adaptation when he/she has successfully completed the period of adaptation. The Council can remove the adapter’s name from the register if the adapter applies; if the adapter is no longer practising medicine as an adapter; or if the adapter has not satisfactorily completed the training.

*Section 36O (Conditions attached to registration)* provides that in the interest of public safety, the Council can impose conditions on registration if a relevant person applying for registration as an adapter has a disability that impairs their ability to practise medicine; has had conditions attached to their registration, or has had their registration suspended or refused by a regulatory body in the State or outside; or has a conviction, in relation to the practise of any health and social care profession. If the person does not agree to the conditions, then the Council may refuse to register the person.

If an adapter develops a medical disability that impairs their ability to practise medicine, the adapter must notify the Council within 30 days, or later if impracticable to notify in 30 days. The Council can impose conditions in the interest of public safety. If the adapter does not agree to the conditions, the Council can still attach the conditions.

*Section 36P (Appeal to the Court against certain decisions of Council)* provides that a person can appeal to the Court a decision to refuse to register a relevant person in the register of adapters, refuse to give a certificate of adaptation, or to attach conditions to the registration. The Court can

confirm the decision, cancel the decision and replace with another decision, which can be to register the person with or without conditions, remove or replace conditions, require Council to issue a certificate of adaptation, or require Council to reconsider a decision or give directions to the Council.

*Section 36Q (Correction of register)* provides that the Council will correct clerical errors, remove registrations obtained by fraud, enter changes which come to the attention of Council, and remove registration of adapters who have died. Adapters must inform the Council within 30 days if another health and social care regulator in or outside the State has attached conditions; suspended or refused registration, or if they have a conviction.

*Section 36R (Publication of register)* provides that the Council shall publish the register of adapters, but need not make available home addresses, home telephone numbers or email addresses.

## **Section 78**

### **Prohibition against practise of medicine by persons other than registered medical practitioners, etc.**

Replaces the current section 37 (*Unregistered medical practitioners shall not practise medicine*) to include a reference to interns and adapters – only medical practitioners, interns and adapters can practise medicine. Only registered medical practitioners can advertise services as medical practitioners.

## **Section 79**

### **Circumstances in which persons may practise medicine**

Inserts a new section 36B to provide that a person can give first-aid to another person. Also, it provides for the Council to issue a permit for up to 30 days to a medical practitioner from another state coming to this State for humanitarian purposes, or who is a specialist and is providing treatment for teaching/training, or is accompanying a sports team.

## **Section 80**

### **Amendment of section 41 of Act of 2007**

Amends section 41 (*Offences and penalties*) to provide for the new section 37 and in subsection (4) to include false declarations in relation to intern registration and adapter registration.

## **Section 81**

### **Amendment to section 42 of Act of 2007**

Amends section 42 (*Recovery of fees, etc.*) to include a reference to new section 38B (see section 79 – *Circumstances in which persons may practise medicine*).

## **Section 82**

### **Amendment of section 43 of Act of 2007**

Amends section 43 (*Register*) to remove a reference to intern registration and a minor drafting amendment to subsection 8.

## **Section 83**

### **Amendment of Act of 2007 - insertion of sections 44A to 44C**

Inserts 3 new sections in relation to recognition of qualification.

*Section 44A (Application for recognition of qualification)* provides that a person can apply to have their qualification recognised as a general qualification (for registration in the General Division of the register) or a specialist qualification (for registration in the Specialist Division of the register).

*Section 44B (Requirements to be met for recognition of qualification as general qualification).* A person's qualification is recognised as a qualification for the General Division of the register if the person has an Irish formal qualification which is an Irish medical degree and a certificate of experience, or the person has a medical qualification from another state and passes an examination set by the Medical Council, or has a qualification which rules made by the Medical Council provide for an exemption to a person with that qualification from the examination, or the person has a qualification recognised under the European Union (Recognition of Professional Qualifications) Regulations 2017. These are similar to the provisions currently in section 46 except the equivalence of the certificate of experience is no longer a route to registration.

*Section 44C (Requirements to be met for recognition of qualification as specialist qualification).* A person's qualification is recognised as a specialist qualification if the person has satisfactorily completed specialist training in the State; the person has completed specialist training and has sufficient experience to a standard that satisfies the Medical Council; or the person has a specialist qualification recognised under the European Union (Recognition of Professional Qualifications) Regulations 2017. The medical specialty must be one which the Council recognises (similar to provisions currently in section 47 of the Act).

#### **Section 84**

##### **Application for registration (other than in Supervised Division)**

Replaces the current section 45 (*Registration of medical practitioners – general*). A person can apply to be registered in a division of the register other than the Supervised Division. A person must have a minimum level of indemnity (unless it is not required); a general or specialist qualification; knowledge of the English or Irish language necessary to practise medicine; be a fit and proper person; and meet any other rules that apply to that person. A person can only be registered in one division of the register unless the person is a specialist who is training in another medical specialty.

Indemnity requirement applies to renewal of registration also.

#### **Section 85**

##### **Medical Practitioners to be registered in General Division**

Replaces the current section 46 (*Medical practitioners to be registered in General Division*). A medical practitioner (other than a visiting EEA practitioner) who meets all the requirements in the previous section, will be registered in the General Division if not able to be registered in the Specialist Division or the Trainee Specialist Division.

#### **Section 86**

##### **Medical practitioners to be registered in Specialist Division**

Replaces the current section 47 (*Medical practitioners to be registered in Specialist Division*). A medical practitioner (other than a visiting EEA practitioner) who meets all the requirements of section 45 and who has a specialist qualification will be registered in the Specialist Division.

#### **Section 87**

##### **Medical practitioners to be registered in Trainee Specialist Division**

Replaces the current section 48 (*Medical practitioners to be registered in Trainee Specialist Division*). A medical practitioner is registered in the Trainee Specialist Division if the medical practitioner meets the requirements of section 45; has a general or specialist qualification; and has a training post which has been approved by the Council for medical specialist training.

This new provision removes the requirement to have the equivalence of a certificate of experience for registration in the Trainee Specialist Division.

A medical practitioner in the Trainee Specialist Division who is no longer in a trainee specialist post is removed from the Trainee Specialist Division and is registered in the General Division.

## **Section 88**

### **Application for and registration of medical practitioners in Supervised Division**

Replaces the current section 50A (*Registration of medical practitioners in Supervised Division*). A medical practitioner who applies to be registered in the Supervised Division will be registered in that division if they meet the criteria set in rules and are not registered for more than two years, or three years if approved by the HSE. They also need to be working in a post approved by the Council as a supervised post and the post must be a publically funded post or funded by a third country which is sponsoring the person. The medical practitioner also has to have adequate knowledge of English or Irish and be a fit and proper person. Posts are only approved by the Council where adequate arrangements are in place for the supervision of the medical practitioner.

A medical practitioner in the Supervised Division can only practise medicine in the supervised post and will be removed from the register when no longer in an approved supervised post.

## **Section 89**

### **Amendment of section 52 of Act of 2007**

*Section 52 (Application to have registration removed, etc.)* provides for a medical practitioner to apply to have their registration removed. Currently a medical practitioner cannot be removed from the register if there is a complaint against the medical practitioner which has not been dealt with or finalised. This amendment allows registration to be removed if it is in the public interest. If the medical practitioner seeks to be restored to the register, the Council does not have to restore registration if the Council is satisfied that the medical practitioner is not a fit and proper person.

## **Section 90**

### **Conditions attached to registration**

Replaces section 53 (*Conditions attached to first registration*). Currently conditions can be attached to registration where a person has a relevant medical disability, i.e. which impairs their ability to practise medicine. This section adds that conditions can be attached where any material matter has occurred, i.e. if they have been refused registration; have been suspended or removed from registration; had conditions imposed in relation to working in one or more kind of health or social care profession; or if the person has a conviction in the State or another jurisdiction. It also provides that if a medical practitioner develops a medical disability that impairs their ability to practise medicine, the medical practitioner must notify the Council within 30 days, or later if impracticable to notify in 30 days. The Council can impose conditions in the interest of public safety. If the medical practitioner does not agree to the conditions, or does not respond within 30 days then a complaint can be made in relation to that medical practitioner.

## **Section 91**

### **Appeal to Court against certain decisions of Council**

Replaces the current section 54 (*Refusal of registration, etc., and appeal to Court against Council's decision*). This section provides for Council decisions to be appealed to the High Court. These are decisions to refuse to recognise a qualification as a general or specialist qualification; to refuse to register a person; to register in a division other than the division applied for; or to refuse to restore registration. The person has 3 months to appeal a decision and the Court can either confirm the decision; cancel the decision and replace with another decision; recognise the qualifications; register or restore registration with or without conditions in the division the Court considers appropriate; remove or replace conditions; or require Council to reconsider a decision or give the Council directions. The Court can direct how costs of the appeal are to be borne.

## **Section 92**

### **Declarations by registered medical practitioners, etc. in relation to certain matters in State or other jurisdictions, etc.**

Inserts a new section 54A to oblige a medical practitioner, intern or adapter to give the Council annually, details of any proceedings in the State or another jurisdiction which might result in the person being restricted or prohibited from working as a medical practitioner or working in one or more kind of health or social care profession, or if the proceeding could result in a conviction. They also need to provide details within 3 months of the case concluding.

## **Section 93**

### **Amendment of section 55 of Act of 2007**

Provides for an amendment to section 55 (*Correction of register*) to provide for the deleting of subsection (7) which defines 'material matter'. Material matter is now defined in section 2 (*Interpretation*) (section 66).

## **Section 94**

### **Council may request certain information concerning medical practitioners, etc., from certain bodies in State or other jurisdictions**

Inserts a new section 55A which provides that the Council may get information from another health or social care regulatory body in or outside the State in relation to a medical practitioner, intern or adapter who has been refused registration; has been suspended; has conditions placed on his/her registration; has a conviction; or in relation to the registrant's qualification for registration.

## **Section 95**

### **Application of Parts 7, 8 and 9 to interns**

Provides that Parts 7, 8 and 9 which relate to complaints and fitness to practise, also apply to interns.

## **Section 96**

### **Amendment of section 57 of Act of 2007**

Amends section 57 (*Complaints concerning registered medical practitioners*). Currently complaints are made to the Preliminary Proceedings Committee. This section provides that complaints are made to the chief executive officer. It also inserts two new grounds of complaint. These new grounds are:

- prohibition on providing one or more kind of health or social care in the State or another jurisdiction; and

- restriction on providing health or social care in the State or another jurisdiction.

This section also provides that the chief executive officer, in relation to a complaint, may request the Garda Síochána to provide information on a medical practitioner's criminal record. The chief executive officer may also request the Registrar of a Court to provide a certificate of conviction.

The chief executive officer need not proceed with a complaint where he/she is satisfied that the complaint was not made in good faith or the complaint is frivolous or vexatious. The chief executive officer can tell other parties to the complaint of decisions made. The section also provides that a complaint made before this section was commenced will be dealt with under the old provision.

## **Section 97**

### **Amendment of section 58 of Act of 2007**

*Section 58 (Persons to assist Preliminary Proceedings Committee)* is amended to provide for authorised officers to be appointed by the chief executive officer to investigate complaints and to assist the chief executive officer and the Preliminary Proceedings Committee in relation to complaints. The chief executive officer will specify the functions of authorised officers. The current functions of persons assisting committees (now authorised officers) is amended to include investigating complaints; reporting to the chief executive officer rather than to the Preliminary Proceedings Committee; to request persons to provide the chief executive officer rather than the Preliminary Proceedings Committee with statements; and to include the chief executive officer in relation to providing advice and assistance in paragraph (f). Authorised officers will be provided with a warrant which will specify the officer's functions.

## **Section 98**

### **Investigation of complaints**

Inserts a new section 58A. Some of the provisions currently in section 59 (*Consideration of complaints by Preliminary Proceedings Committee*) are moved to this new section. In this new section, the chief executive officer will, following receipt of a complaint, have the complaint investigated and will appoint an authorised officer to investigate the complaint. The authorised officer will investigate the complaint and prepare a report for the chief executive officer.

The authorised officer may require the complainant to verify or provide more information regarding a complaint. The chief executive officer may refuse to consider a complaint if the complainant does not verify or provide more information as requested. The medical practitioner, who is the subject of the complaint, will be notified of the complaint by the authorised officer who can require the medical practitioner to provide information. The medical practitioner may provide the authorised officer with any information that needs to be considered by the Preliminary Proceedings Committee or the Fitness to Practise Committee.

If a complaint is withdrawn, the chief executive officer can decide on whether to proceed or that no further action is to be taken. The chief executive officer can compel the production of records, and can get medical records of a patient.



## **Section 99**

### **Amendment of section 59 of Act of 2007**

*Section 59 (Consideration of complaints by Preliminary Proceedings Committee)* is amended to provide for the investigation and report by the chief executive officer. It deletes the functions of the Preliminary Proceedings committee in relation to investigating complaints. Instead the Committee will consider the investigation report and any other information from the chief executive officer. If the Committee needs more information it shall advise the chief executive officer of that and the chief executive officer will seek the information or further investigate and give it to the Committee. If a complaint is withdrawn while being considered by the Committee, the Council's agreement is no longer required in relation to the Committee's decision to proceed or not.

## **Section 100**

### **Undertakings and consents**

Inserts a new section 59A to provide for undertakings and consents at preliminary proceedings committee stage. This is similar to the provisions in section 67 (*If registered medical practitioner consents to censure or remedial action, etc.*) which provides for undertakings and consents at fitness to practise stage. The Preliminary Proceedings Committee can request the medical practitioner not to repeat the conduct; to be referred to a professional competence scheme; to undergo medical treatment; or to consent to being censured by the Council. If the medical practitioner agrees, then the investigation into the complaint is considered completed and the complaint is not referred to the Fitness to Practise Committee. If the medical practitioner refuses the request then the Preliminary Proceedings Committee proceeds as if the request was not made.

## **Section 101**

### **Amendment of section 61 of Act of 2007**

Amends section 61 (*No further action or referral of complaint to another body or authority or to professional competence scheme*) to split subsection (1)(b) into two. The new (b) provides that the complaint should be referred to another body and the new (ba) clarifies that it is the medical practitioner, the subject of the complaint, who is referred to a professional competence scheme.

## **Section 102**

### **Amendment of section 63 of Act of 2007**

Amends section 63 (*Referral of complaint to Fitness to Practise Committee*) to include a consequential amendment in relation to undertakings/consents given at preliminary proceedings stage (new section 59A), as section 63 does not apply where a medical practitioner has given an undertaking. It also provides that all relevant material is passed to the Fitness to Practise Committee.

## **Section 103**

### **Fitness to Practise Committee may order that certain information not be published**

Inserts a new section 65A to provide that the Fitness to Practise Committee may order that some or all of the information regarding a hearing should not be published. Information can be disclosed if it does not identify anyone. A person is guilty of an offence if they contravene this.

## **Section 104**

### **Amendment of section 67 of Act of 2007**

Amends section 67 (*If registered medical practitioner consents to censure or remedial action, etc.*) to clarify that if a medical practitioner gives an undertaking or consents to a request, the inquiry shall be considered completed.

## **Section 105**

### **Amendment of section 68 of Act of 2007**

Amends section 68 (*If complaint is withdrawn while it is being considered by Fitness to Practise Committee*) to remove the requirement for the Council's agreement to the Committee's decision to either continue or not with a complaint when a complaint is withdrawn.

## **Section 106**

### **Amendment of section 69 of Act of 2007**

Amends section 69 (*Report to Council by Fitness to Practise Committee*) to expand what is specified in the report to include if the allegation is proved on the grounds other than the grounds on which the complaint was made, and also to clarify that if undertaking/consent is given, to include the measures in that undertaking/consent.

## **Section 107**

### **Steps to be taken by Council after receiving report**

Replaces the current section 70 (*Steps to be taken by Council after receiving report*) to include if the report followed an undertaking or consent given to the Fitness to Practise Committee, then the Council shall comply with section 71(2) (new section 109) in that the measures are those contained in the report.

## **Section 108**

### **Measures to be taken by Council after receiving report referred to in section 59A(2)(c)**

Inserts a new section 70B to provide that if an undertaking/consent was given to the Preliminary Proceedings Committee, the measures taken by the Council are those contained in the report from the Preliminary Proceedings Committee.

## **Section 109**

### **Duty of Council to decide on appropriate measures to be taken**

Replaces the current section 71 (*Duty of Council to decide on appropriate sanction*) to include a new subsection to provide that if an undertaking/consent was given to the Fitness to Practise Committee, the measures taken by the Council are those contained in the report from the Fitness to Practise Committee.

## **Section 110**

### **Amendment of section 71A of Act of 2007**

Amends section 71A (*Duty of Council to decide on appropriate sanction in certain cases (Supervised Division)*) to insert a new subsection (2) to provide that if an undertaking/consent was given to the Fitness to Practise Committee, the measures taken by the Council are those contained in the report from the Fitness to Practise Committee.



## **Section 111**

### **Amendment of section 72 of Act of 2007**

Makes a technical amendment to section 72 (*Provisions supplementary to section 71*) to replace the term 'unfit to continue to practise medicine' with the term 'not a fit and proper person to practise medicine'.

## **Section 112**

### **Amendment of section 73 of Act of 2007**

Amends section 73 (*Duty to notify registered medical practitioner of Council's sanction*) to include that a medical practitioner who had a sanction of advice, admonish or a censure in writing imposed is notified of their right to appeal. Sanctions which are part of an undertaking/consent agreed by the medical practitioner cannot be appealed.

## **Section 113**

### **Amendment of section 74 of Act of 2007**

Amends section 74 (*Confirmation by Court required before certain decisions become effective*) to include that confirmation by the Court is required for the minor sanctions of advice, admonishment or censure in writing. Sanctions which are part of an undertaking/consent agreed by the medical practitioner do not require confirmation by the Court.

## **Section 114**

### **Amendment of section 75 of Act of 2007**

Amends section 75 (*Appeal to Court against Council's decision under section 71*) to include the right of appeal of minor sanctions of advice, admonishment or censure in writing. Sanctions which are part of an undertaking/consent agreed by the medical practitioner cannot be appealed.

## **Section 115**

### **Amendment of section 76 of Act of 2007**

Amends section 76 (*Application to Court for confirmation of Council's decision*) to include confirmation by the Court of the minor sanctions of advice, admonishment or a censure in writing other than sanctions which are part of an undertaking/consent agreed by the medical practitioner. It also provides for the Court to direct who bears the cost of the confirmation.

## **Section 116**

### **Amendment of section 84 of Act of 2007**

Amends section 84 (*Notification to Minister, Health Service Executive and employer of certain matters relating to sanctions*) to remove the requirement to notify the Minister of sanctions. It also includes that the HSE will be notified of the minor sanctions of advice, admonishment or a censure in writing. In relation to sanctions imposed by other states, the Council shall notify the HSE and the employer if it is in the public interest. If the Council believes that the person is registered in another country and that country may not be aware of the sanctions imposed, the Council can notify the relevant body in that country. In relation to sanctions imposed by a third country, the Council can, if it is in the public interest, notify another country where the person is registered.

## **Section 117**

### **Amendment of section 85 of Act of 2007**

Amends section 85 (*Information Council may publish in public interest*) to provide that all sanctions imposed by the Council will be published. In relation to measures imposed by other countries, these are published if it is in the public interest. In relation to publication of the transcript, the requirement to consult with the Fitness to Practise Committee is removed.

## **Section 118**

### **Amendment of section 86 of Act of 2007**

Amends section 86 (*Duties of Health Service Executive in relation to medical and dental education and training*) in subsection (2) to reflect that the term 'basic medical qualification' is deleted from the Bill. Subsection (3) and (6) are amended so that these provisions are not limited to specialists and will include all medical and dental education and training.

## **Section 119**

### **Amendment of section 88 of Act of 2007**

Amends section 88 (*Duties of Council in relation to medical education and training*) to reflect that the term 'basic medical qualification' is deleted and replaced with new definitions – 'approved medical degree' and 'Irish formal qualification'.

## **Section 120**

### **Amendment of section 94 of Act of 2007**

Amends section 94 (*Duty of registered medical practitioners to maintain professional competence*) to include a reference to an undertaking given to the Preliminary Proceedings Committee (new section 59A).

## **Section 121**

### **Amendment of section 104 of Act of 2007**

Amends section 104 (*Privilege*) to extend the privilege to the proceedings, reports and communications of the chief executive officer under the Parts of the Act relating to complaints and fitness to practise.

## **Section 122**

### **Amendment of section 105 of Act of 2007**

Amends section 105 (*Investigation*) to replace the Council with the chief executive officer, so that it will be the chief executive officer who will investigate cases in relation to a person who is not registered but is practising medicine, or who claims to be a registered medical practitioner.

## **Section 123**

### **Amendment of Act of 2007 – insertion of sections 105A and 105B**

This section inserts two new sections:

*Section 105A (Admissibility of certain documents relating to proceedings in the State or other jurisdictions).* This section provides that in any proceedings under this Act, evidence of proceedings in relation to a registrant being prohibited or restricted in providing one or more kind of health or social care, or having been convicted in the State or another jurisdiction, can be admissible as evidence of the facts stated in the documents.

*Section 105B (Prosecution of summary proceedings).* This section provides that the Council may prosecute summary offences under this Act.

## **Section 124**

### **Amendment of section 107 of Act of 2007**

Amends section 107 (*Power to specify forms*) to insert a new subsection 2A to provide that there can be a requirement for a form or document to be verified.

Subsection 4 is amended to include 'material matter'. Material matter is defined in section 66 and includes if a person has been refused registration, has been suspended or removed from registration or has conditions

imposed in relation to working in any health or social care profession, or if the person has a conviction in the State or another jurisdiction.

A new subsection 4A provides for similar provisions for interns, and a new subsection 4B provides for similar provisions for adapters.

## **Section 125**

### **Notifications under Act**

Inserts a new section 110 to provide for how people are notified of decisions etc. Notifications will be made by pre-paid post and will be deemed to be delivered 3 working days after the notification was sent. If a person is or was registered, the notification will be posted to the address on the register. Otherwise it will be posted to the address on the application.

## **PART 6**

### **Amendment of Nurses and Midwives Act 2011**

## **Section 126**

### **Definition**

Defines the Act of 2011 which is the Nurses and Midwives Act 2011, and used throughout this Part.

## **Section 127**

### **Amendment of section 2 of Act of 2011**

Amends section 2 (*Interpretation*) to amend a number of the current definitions and to insert new definitions. This section also provides that nothing in the Act will prejudice the performance by the Board of its functions under the European Union (Recognition of Professional Qualifications) Regulations 2017.

## **Section 128**

### **Amendment of section 13 of Act of 2011**

Amends section 13 (*Board's power to make rules*). Subsection (2)(h) is amended to include the Preliminary Proceedings Committee and sub-committees and to insert a new paragraph (ha) in relation to recognition of a qualification. It also inserts a new section 3A to provide for rules to allow the Preliminary Proceedings Committee or the Fitness to Practise Committee to establish sub-committees.

## **Section 129**

### **Amendment of section 24 of Act of 2011**

Amends section 24 (*Committees of Board*). Subsection (5) is amended to include a reference to new section 57A where consent is given at preliminary proceedings stage. A new subsection 11A is included to provide that for complaints after the commencement date, there is no requirement for one nurse and one midwife to sit on the Preliminary Proceedings Committee and the Fitness to Practise Committee. A new subsection 20 is included to provide for subcommittees of the Preliminary Proceedings Committee and the Fitness to Practise Committee.

## **Section 130**

### **Amendment of section 28 of Act of 2011**

Amends section 28 (*Chief executive officer*) to include that the chief executive officer can investigate complaints. It also provides that if the chief executive officer is absent or the position is vacant, another employee can be designated chief executive officer. The chief executive officer can

delegate any of his or her functions to a member of staff and revoke a delegation.

### **Section 131**

#### **Amendment of section 38 of Act of 2011**

Amends section 38 (*Fees that Board may charge*) to include a fee for recognition of a qualification.

### **Section 132**

#### **Amendment of section 44 of Act of 2011**

Amends section 44 (*Offences and penalties*). Subsection (4) is amended to include false declarations under new section 52B (*Declarations by registered nurses, etc., in relation to certain matters in State or other jurisdictions, etc.*) which relates to declarations regarding prohibitions/restrictions on practice.

### **Section 133**

#### **Amendment of section 48 of Act of 2011**

Amends section 48 (*Registration – general*) to include a reference to all of section 52 (currently only refers to section 52(4)) and to include a reference to new section 52A (*Appeal to Court against certain decisions of Board – candidates*).

### **Section 134**

#### **Amendment of section 50 of Act of 2011**

Amends section 50 (*Application to have registration removed, etc.*) to provide for a nurse or midwife to apply to have their registration removed. Currently a nurse or midwife cannot be removed from the register if there is a complaint against the nurse or midwife which has not been finalised. This amendment allows registration to be removed if it is in the public interest. If the nurse or midwife seeks to be restored to the register, the Board does not have to restore registration if it is satisfied that the nurse or midwife is not a fit and proper person.

### **Section 135**

#### **Conditions attached to registration**

Replaces section 51 (*Conditions attached to registration*). Currently conditions can be attached to registration where a person has a relevant medical disability, i.e. which impairs their ability to practise nursing or midwifery or if the nurse or midwife develops a medical disability.

This section adds that conditions can be attached where any material matter has occurred, i.e. if they have been refused registration; have been suspended or removed from registration; had conditions imposed in relation to working in any health or social care profession; or if the person has a conviction in the State or another jurisdiction. (Material matter is defined in section 127).

### **Section 136**

#### **Board may refuse to register on ground that nurse, etc., is not fit and proper person to practise nursing, etc.**

Inserts a new section 51A. This section rewords section 52 (*Refusal of registration, etc., and appeal to Court against Board's decision*) to replace the term 'unfitness to practise' and 'unfit' with 'not a fit and proper person'.

### **Section 137**

#### **Appeal to Court against certain decisions of Board – nurses and midwives**

Replaces the current section 52 (*Refusal of registration, etc., and appeal to Court against Board's decision*). This section provides for Board decisions to be appealed to the High Court. These are decisions to refuse to recognise a qualification; to refuse to register a person; to register in a division other than the division applied for; to attach conditions to the registration; or to refuse to restore registration. The person has three months to appeal a decision and the Court can either confirm the decision; cancel the decision and replace with another decision; recognise the qualifications; register or restore registration with or without conditions in the division the Court considers appropriate; remove or replace conditions; or require the Board to reconsider a decision or give the Board directions. The Court can direct how costs of the appeal are to be borne.

### **Section 138**

#### **Appeal to Court against certain decisions of Board – candidates**

A new section 52A is inserted (similar to new section 52) to provide for an appeal by candidates of Board decisions regarding a decision to refuse to register or restore registration.

### **Section 139**

#### **Declarations by registered nurses, etc. in relation to certain matters in the State or other jurisdictions, etc.**

Inserts a new section 52B to oblige a nurse or midwife to give the Board annually details of any proceedings in the State or another jurisdiction which might result in the person being restricted or prohibited from working as a nurse or midwife or working in one or more kind of health or social care profession, or if the proceeding could result in a conviction. They also need to provide details within 3 months of the case concluding.

### **Section 140**

#### **Amendment of section 53 of Act of 2011**

Amends section 53 (*Correction of registers*) to delete subsection (7) which defines 'material matter'. Material matter is defined in section 127 (*Amendment of section 2 of Act of 2011*).

### **Section 141**

#### **Board may request certain information concerning registered nurses, etc., from certain bodies in the State or other jurisdictions**

Inserts a new section 53A which provides that the Board may get information from another health or social care regulatory body in or outside the State in relation to a nurse or midwife who has been refused registration; has been suspended; has had conditions placed on his/her registration; or has a conviction; or may get information relating to the registrant's qualification for registration.

### **Section 142**

#### **Amendment of section 55 of Act of 2011**

Amends section 55 (*Complaints concerning registered nurses and registered midwives*). Currently complaints are made to the Preliminary Proceedings Committee. This section provides that complaints are made to the chief executive officer. It also inserts two new grounds of complaint. These new grounds are:

- prohibition on providing one or more kind of health or social care in the State or another jurisdiction; and

- restriction on providing one or more kind of health or social care in the State or another jurisdiction.

This section also provides that the chief executive officer, in relation to a complaint, may request the Garda Síochána to provide information on a nurse or midwife's criminal record. The chief executive officer may also request the Registrar of a Court to provide a certificate of conviction.

The chief executive officer need not proceed with a complaint where he/she is satisfied that the complaint was not made in good faith or the complaint is frivolous or vexatious. The chief executive officer can tell other parties to the complaint of decisions made. The section also provides that where a complaint was made before this section was commenced, the complaint will be dealt with under the old provision.

### **Section 143**

#### **Amendment of section 56 of Act of 2011**

Amends section 56 (*Persons to assist Preliminary Proceedings Committee*) to provide for authorised officers to be appointed by the chief executive officer to investigate complaints and to assist the chief executive officer and the Preliminary Proceedings Committee in relation to complaints. The chief executive officer will specify the functions of authorised officers.

The current functions of persons assisting committees (now authorised officers) is amended to include investigating complaints, reporting to the chief executive officer rather than to the Preliminary Proceedings Committee; to request persons to provide the chief executive officer rather than the Preliminary Proceedings Committee with statements; and to include the chief executive officer in relation to advice and assistance in paragraph (f). Authorised officers will be provided with a warrant which will specify the officer's functions.

### **Section 144**

#### **Investigation of complaints**

Inserts a new section 56A. Some of the provisions currently in section 57 (*Consideration of complaints by Preliminary Proceedings Committee*) are moved to this new section. In this new section, the chief executive officer will, following receipt of a complaint, have the complaint investigated and will appoint an authorised officer to investigate the complaint. The authorised officer will investigate the complaint and prepare a report for the chief executive officer.

The authorised officer may require the complainant to verify or provide more information regarding a complaint. The chief executive officer may refuse to consider a complaint if the complainant does not verify or provide more information as requested. The nurse or midwife, who is the subject of the complaint, will be notified of the complaint by the authorised officer, who can require the nurse or midwife to provide information. The nurse or midwife may provide the authorised officer with any information that needs to be considered by the Preliminary Proceedings Committee or Fitness to Practise Committee.

If a complaint is withdrawn, the chief executive officer can decide whether to proceed or that no further action is to be taken. The chief executive officer can compel the production of records, and can get medical records of a patient.

## **Section 145**

### **Amendment of section 57 of Act of 2011**

Amends section 57 (*Consideration of complaints by Preliminary Proceedings Committee*) to provide for the investigation and report by the chief executive officer. It deletes the functions of the Preliminary Proceedings Committee in relation to investigating complaints. Instead the Committee will consider the investigation report and any other information from the chief executive officer. If the Committee needs more information it shall advise the chief executive officer of that and the chief executive officer will seek the information or further investigate and give it to the Committee. If a complaint is withdrawn while being considered by the Committee, the Board's agreement is no longer required in relation to the Committee's decision to proceed or not.

## **Section 146**

### **Undertakings and consents**

Inserts a new section 57A. Currently the Act provides for undertakings and consents at Fitness to Practise stage (section 65). This section inserts a similar provision at Preliminary Proceedings Committee stage. The Preliminary Proceedings Committee can request the nurse or midwife not to repeat the conduct; to demonstrate her or his competencies; to take such steps as may be specified by the Board which could include taking a course of education or training or gaining clinical experience; to undergo medical treatment; or to consent to being censured by the Board. If the nurse or midwife agrees, then the investigation into the complaint is considered completed and the complaint is not referred to the Fitness to Practise Committee. If the nurse or midwife refuses the request, then the Preliminary Proceedings Committee proceeds as if the request was not made.

## **Section 147**

### **Amendment of section 59 of Act of 2011**

Amends section 59 (*No further action, or referral of complaint to another body or authority, etc.*). Subsection (1)(b) is amended to remove the option of referral to a professional competence scheme.

Subsection (2)(b) is amended to refer the complaint rather than the complainant to another body and subsection 2(d) clarifies that it is the nurse or midwife, the subject of the complaint, who is referred to a professional competence scheme.

## **Section 148**

### **Amendment of section 61 of Act of 2011**

Amends section 61 (*Referral of complaint to Fitness to Practise Committee*) to include a consequential amendment in relation to undertakings/consents given at preliminary proceedings stage (new section 57A) as section 61 does not apply where a nurse or midwife has given an undertaking. It also provides that all relevant material is passed to the Fitness to Practise Committee.

## **Section 149**

### **Fitness to Practise Committee may order that certain information not be published**

Inserts a new section 63A to provide that the Fitness to Practise Committee may order that some or all of the information regarding a hearing should not be published. Information can be disclosed if it does not identify anyone. A person is guilty of an offence if they contravene this.



## **Section 150**

### **Amendment of section 65 of Act of 2011**

Amends section 65 (*If registered nurse or registered midwife consents to censure or remedial action, etc.*) to remove the requirement for the Board's agreement for the Fitness to Practise Committee to request an undertaking or consent.

## **Section 151**

### **Amendment of section 66 of Act of 2011**

Amends section 66 (*If complaint withdrawn during consideration by Fitness to Practise Committee*) to remove the requirement for the Board's agreement to the Committee's decision to either continue or not with a complaint when a complaint is withdrawn.

## **Section 152**

### **Measures to be taken by Board after receiving report referred to in section 57A(2)(c)**

Inserts a new section 68A to provide that if an undertaking/consent was given to the Preliminary Proceedings Committee, the measures taken by the Board are those contained in the report from the Preliminary Proceedings Committee.

## **Section 153**

### **Amendment of section 70 of Act of 2011**

Amends section 70 (*Provisions supplementary to section 69*). Subsection (2)(a) is amended to replace 'unfit to continue to practise nursing or midwifery' with 'not a fit and proper person to practise nursing or midwifery'.

## **Section 154**

### **Amendment of section 71 of Act of 2011**

Amends section 71 (*Duty to notify registered nurse or midwife of Board's sanction*) to include that a nurse/midwife who had a sanction of advice, admonish or a censure in writing imposed is notified of their right to appeal. Sanctions which are part of an undertaking/consent agreed by the nurse/midwife cannot be appealed.

## **Section 155**

### **Amendment of section 72 of Act of 2011**

Amends section 72 (*Confirmation by Court required before certain decisions become effective*) to include that confirmation by the Court is required for the minor sanctions of advice, admonishment or censure in writing. Sanctions which are part of an undertaking/consent agreed by the nurse or midwife do not require confirmation by the Court.

## **Section 156**

### **Amendment of section 73 of Act of 2011**

Amends section 73 (*Appeal to Court against Board's decision under section 69*) to include the right of appeal of minor sanctions of advice, admonishment or a censure in writing. Sanctions which are part of an undertaking/consent agreed by the nurse or midwife cannot be appealed.



## **Section 157**

### **Amendment of section 74 of Act of 2011**

Amends section 74 (*Application to Court for confirmation of Board's decision*) to include confirmation by the Court of the minor sanctions of advice, admonishment or a censure in writing (other than sanctions which are part of an undertaking/consent agreed by the nurse or midwife). It also provides for the Court to direct who bears the cost of the confirmation.

## **Section 158**

### **Amendment of section 77 of Act of 2011**

Amends section 77 (*Removal of registration for failure to pay fee*) to include a new subsection (1A) which provides that the Board's powers include the exercise of this power by the Board under section 39 of the Nurses Act 1985 and that other provisions in this Act will be construed accordingly.

## **Section 159**

### **Amendment of section 82 of Act of 2011**

Amends section 82 (*Notification to Minister, Health Service Executive and employer of certain matters relating to sanctions*) to remove that the Minister is notified of sanctions. It includes that the HSE will be notified of the minor sanctions of advice, admonishment or a censure in writing. In relation to sanctions imposed by other states, the Board shall notify the HSE and the employer if it is in the public interest. If the Board believes that the person is registered in another country and that country may not be aware of the sanctions imposed, the Board can notify the relevant body in that country. In relation to sanctions imposed by a third country, the Board can, if it is in the public interest, notify another country where the person is registered.

## **Section 160**

### **Amendment of section 83 of Act of 2011**

Amends section 83 (*Information Board may publish in public interest*) to provide that all sanctions imposed by the Board are published. Currently the sanction of advice and admonishment are not published and the other sanctions are only published if in the public interest. In relation to measures imposed by other countries, these are published if it is in the public interest. In relation to publication of the transcript, the requirement to consult with the Fitness to Practise Committee is removed.

## **Section 161**

### **Amendment of section 87 of Act of 2011**

Amends section 87 (*Duty of registered nurses and registered midwives to maintain professional competence*). Subsection (4) is amended to include a reference to undertaking/consent given to the Preliminary Proceedings Committee.

## **Section 162**

### **Amendment of section 102 of Act of 2011**

Amends section 102 (*Privilege*) to insert a new subsection 1A which extends privilege to the proceedings reports and communications of the chief executive officer under the Parts of the Act relating to complaints and fitness to practise.

### **Section 163**

#### **Amendment of section 103 of Act of 2011**

Amends section 103 (*Investigation*) to replace the Board with the chief executive officer so that it will be the chief executive officer who will investigate cases in relation to a person who is not registered as a nurse or midwife but who claims to be or who is practising nursing or midwifery in contravention of this Act.

### **Section 164**

#### **Admissibility of certain documents relating to proceedings in other jurisdictions**

Inserts a new section 103A to provide that in any proceedings under this Act, evidence of proceedings in relation to a registrant being prohibited or restricted from providing one or more kind of health or social care, or having been convicted in the State or another jurisdiction, can be admissible as evidence of the facts stated in the documents.

### **Section 165**

#### **Amendment of section 105 of Act of 2011**

Amends section 105 (*Power to specify forms*) to insert a new subsection 2A to provide that there can be a requirement for a form or document to be verified. Subsection 4 is amended to include 'material matter'. Material matter is defined in section 127 and includes if a person has been refused registration, has been suspended or removed from registration; has conditions imposed in relation to working in any health or social care profession; or if the person has a conviction in the State or another jurisdiction.

### **Section 166**

#### **Notifications under Act**

Inserts a new section 106A to provide for how people are notified of decisions etc. Notifications will be made by pre-paid post and will be deemed to be delivered 3 working days after notification was sent. If a person is or was registered, the notification will be posted to the address on the register. Otherwise it will be posted to the address on the application.

## **PART 7**

### **Miscellaneous Amendments**

### **Section 167**

#### **Amendment of section 62 of Health Act 1953**

Amends section 62 of the Health Act 1953 (*Facilities for teaching of clinical medicine or conduct of medical research*). Subsection (1)(b)(ii) is being deleted. It relates to the composition of boards for the appointment of staff in teaching hospitals whose duties involve teaching clinical medicine or the conduct of medical research.

### **Section 168**

#### **Amendment of section 35 of Health Identifiers Act 2014**

*Section 35* of the Health Identifiers Act 2014 amends the Dentists Act 1985 to insert an additional option in relation to findings for the Fitness to Practise Committee. As this provision is not yet commenced, a technical amendment is required to insert the words 'to be' before 'guilty of a failure to comply with regulations referred to in subsection (1)(c)(ii)', to ensure that when this provision of the Health Identifiers Act is commenced, the corrected amendment will be made to the Dentists Act.

## **Section 169**

### **Amendment of Children and Family Relationships Act 2015**

Amends section 4 (*Interpretation (Parts 2 and 3)*) to include a definition for registered midwife.

*Section 25 (Performance of DAHR procedure)*. Amends subsection (1)(b) to include registered midwife, which means that registered midwives can perform a DAHR (donor assisted human reproduction) procedure. Currently only registered medical practitioners and registered nurses can perform these procedures.

*An Roinn Sláinte,  
Feabhra, 2019.*