



Number 25 of 2007

MEDICAL PRACTITIONERS ACT 2007

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Repeals and revocations.

PART 2

CONTINUANCE IN BEING OF COUNCIL AND OBJECT AND FUNCTIONS OF
COUNCIL, ETC.

4. Continuance in being of Council.
5. Seal of Council.
6. Object of Council.
7. Functions of Council.
8. Conferral of additional functions on Council.
9. Ministerial directions to Council.
10. Immunity.
11. Council's power to make rules.
12. Council's power to issue guidelines.

PART 3

STATEMENT OF STRATEGY, BUSINESS PLAN AND ANNUAL REPORT OF
COUNCIL

13. Council to prepare and submit statement of strategy.
14. Publication and implementation of statement of strategy.

15. Council to prepare and forward business plan to Minister.
16. Council to submit annual report to Minister.

PART 4

MEMBERS, COMMITTEES AND STAFF OF COUNCIL

17. Members of Council.
18. Elections.
19. First meeting of Council under this Act.
20. Committees of Council.
21. Expenses of members of Council and committees.
22. Payment of allowances.
23. Removal of members of Council from office.
24. Chief executive officer.
25. Staff of Council.
26. Age limits.
27. Superannuation.
28. Membership of either House of Oireachtas by member of staff of Council.
29. Membership of local authority or European Parliament by member of staff of Council.
30. Disclosure of interests by members of Council or committee.
31. Disclosure of interests by members of staff of Council.

PART 5

ACCOUNTS AND FINANCES OF COUNCIL

32. Accounts of Council.
33. Power of Council to borrow.
34. Acceptance of gifts by Council.
35. Expenses of Council and Minister.
36. Fees that Council may charge.

PART 6

REGISTRATION OF MEDICAL PRACTITIONERS

37. Unregistered medical practitioners shall not practise medicine.

38. Circumstances in which unregistered medical practitioners may practise medicine.
39. Designated titles.
40. Use of designated titles.
41. Offences and penalties.
42. Recovery of fees, etc.
43. Register.
44. Transitional provisions applicable to register.
45. Registration of medical practitioners — general.
46. Medical practitioners to be registered in General Division.
47. Medical practitioners to be registered in Specialist Division.
48. Medical practitioners to be registered in Trainee Specialist Division.
49. Internship registration in Trainee Specialist Division.
50. Visiting EEA practitioners providing services on temporary and occasional basis.
51. Registration of additional qualifications.
52. Application to have registration removed, etc.
53. Conditions attached to first registration.
54. Refusal of registration, etc., and appeal to Court against Council's decision.
55. Correction of register.
56. Publication of register.

PART 7

COMPLAINTS TO PRELIMINARY PROCEEDINGS COMMITTEE CONCERNING REGISTERED MEDICAL PRACTITIONERS

57. Complaints concerning registered medical practitioners.
58. Persons to assist Preliminary Proceedings Committee.
59. Consideration of complaints by Preliminary Proceedings Committee.
60. If immediate suspension of registration is necessary to protect public.
61. No further action or referral of complaint to another body or authority or to professional competence scheme.
62. Resolution of complaints by mediation or other informal means.
63. Referral of complaint to Fitness to Practise Committee.

PART 8

COMPLAINTS REFERRED TO FITNESS TO PRACTISE COMMITTEE

64. Duty to notify registered medical practitioner and complainant or other witnesses of referral to, and hearing by, Fitness to Practise Committee.
65. Conduct of hearing.
66. Powers and protections relating to witnesses and evidence.
67. If registered medical practitioner consents to censure or remedial action, etc.
68. If complaint is withdrawn while it is being considered by Fitness to Practise Committee.
69. Report to Council by Fitness to Practise Committee.
70. Steps to be taken by Council after receiving report.

PART 9

IMPOSITION OF SANCTIONS ON REGISTERED MEDICAL PRACTITIONERS FOLLOWING REPORTS OF FITNESS TO PRACTISE COMMITTEE

71. Duty of Council to decide on appropriate sanction.
72. Provisions supplementary to *section 71*.
73. Duty to notify registered medical practitioner of Council's sanction.
74. Confirmation by Court required before certain decisions become effective.
75. Appeal to Court against Council's decision under *section 71*.
76. Application to Court for confirmation of Council's decision.
77. Evidence relating to appeal under *section 75(1)* or application under *section 76(1)* to Court.
78. Duty to notify registered medical practitioner of compliance with decisions confirmed or given by Court.
79. Removal of registration for failure to pay fee.
80. Restoration, etc., of registration following payment of certain fees.
81. Restoration of registration which has been cancelled.
82. Removal of conditions attached to registration.
83. Appeal to Court against Council's decision under *section 81* or *82*.
84. Notification to Minister, Health Service Executive and employer of certain matters relating to sanctions.
85. Information Council may publish in public interest.

PART 10

EDUCATION AND TRAINING

86. Duties of Health Service Executive in relation to medical and dental education and training.
87. Functions of Council in relation to Directives of European Union relating to medical education and training.
88. Duties of Council in relation to medical education and training.
89. Training bodies and qualifications for the purposes of the Specialist and Trainee Specialist Divisions.
90. Appeal to Court against Council's decision under *section 88(2)(a)(i)(II) or (ii) or 89(3)(a)(ii) or (b)*.

PART 11

MAINTENANCE OF PROFESSIONAL COMPETENCE

91. Duty of Council in relation to maintenance of professional competence of registered medical practitioners.
92. Appeal to Court against Council's decision under *section 91(4)(a) or (b)*.
93. Duty of Health Service Executive and other employers in relation to the maintenance of professional competence of registered medical practitioners.
94. Duty of registered medical practitioners to maintain professional competence.
95. Confidentiality.

PART 12

DISSOLUTION OF POSTGRADUATE MEDICAL AND DENTAL BOARD

96. Interpretation of *Part 12*.
97. Transfer day and dissolution of Board.
98. Minister may require information from Board.
99. Transfer of staff.
100. Transfer of property and liabilities to Health Service Executive.
101. Preservation of certain contracts and adaptation of references.
102. Pending legal proceedings.
103. Preparation of accounts.

PART 13

MISCELLANEOUS

104. Privilege.
105. Investigation.
106. Council to be licensing authority, etc., under Anatomy Act 1832.
107. Power to specify forms.
108. Construction of references to registered medical practitioner and Medical Council, etc.
109. Persons entitled to sign medical certificates.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

PART 2

STATUTORY INSTRUMENTS REVOKED

SCHEDULE 2

COUNCIL: MEMBERSHIP AND MEETINGS

ACTS REFERRED TO

Anatomy Act 1832	2 & 3 Will. IV c. 75
Carer's Leave Act 2001	2001, No. 19
Companies Act 1990	1990, No. 27
Dentists Act 1985	1985, No. 9
Ethics in Public Office Act 1995	1995, No. 22
European Communities Act 1972	1972, No. 27
European Parliament Elections Act 1997	1997, No. 2
Freedom of Information Acts 1997 and 2003	
Health Acts 1947 to 2007	
Health Act 2004	2004, No. 42
Health Act 2007	2007, No. 23
Health and Social Care Professionals Act 2005	2005, No. 27
Higher Education Authority Act 1971	1971, No. 22
Local Government (Superannuation) Act 1980	1980, No. 8
Local Government Act 2001	2001, No. 37
Medical Practitioners (Amendment) Act 1993	1993, No. 17
Medical Practitioners (Amendment) Act 2000	2000, No. 24
Medical Practitioners (Amendment) Act 2002	2002, No. 17
Medical Practitioners Act 1927	1927, No. 25
Medical Practitioners Act 1978	1978, No. 4
Medical Practitioners Acts 1978 to 2002	
Minimum Notice and Terms of Employment Acts 1973 to 2005	
Nurses Act 1985	1985, No. 18
Organisation of Working Time Act 1997	1997, No. 20
Parental Leave Acts 1998 and 2006	
Pharmacy Acts 1875 to 1977	
Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
Public Service Superannuation (Miscellaneous Provisions) Act 2004	2004, No. 7
Redundancy Payments Acts 1967 to 2003	
Standards in Public Office Act 2001	2001, No. 31
Unfair Dismissals Acts 1977 to 2005	



Number 25 of 2007

MEDICAL PRACTITIONERS ACT 2007

AN ACT FOR THE PURPOSE OF BETTER PROTECTING AND INFORMING THE PUBLIC IN ITS DEALINGS WITH MEDICAL PRACTITIONERS AND, FOR THAT PURPOSE, TO INTRODUCE MEASURES, IN ADDITION TO MEASURES PROVIDING FOR THE REGISTRATION AND CONTROL OF MEDICAL PRACTITIONERS, TO BETTER ENSURE THE EDUCATION, TRAINING AND COMPETENCE OF MEDICAL PRACTITIONERS, TO AMEND THE MEMBERSHIP AND FUNCTIONS OF THE MEDICAL COUNCIL, TO INVESTIGATE COMPLAINTS AGAINST MEDICAL PRACTITIONERS AND TO INCREASE THE PUBLIC ACCOUNTABILITY OF THE MEDICAL COUNCIL; TO GIVE FURTHER EFFECT TO COUNCIL DIRECTIVE 2005/36/EC; AND, FOR THAT PURPOSE, TO REPEAL AND REPLACE THE MEDICAL PRACTITIONERS ACTS 1978 TO 2002 AND TO PROVIDE FOR RELATED MATTERS.

[7th May, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Medical Practitioners Act 2007. Short title and commencement.

(2) The collective citation “the Health Acts 1947 to 2007” shall include *section 57(9)*.

(3) The Minister for Health and Children may, by order or orders, appoint such day or days on which this Act shall come into operation, and different days may be so appointed for different purposes and different provisions.

2.—In this Act, except where the context otherwise requires— Interpretation.
“Act of 1978” means the Medical Practitioners Act 1978;

“Act of 2002” means the Medical Practitioners (Amendment) Act 2002;

“allegation”, in relation to a complaint, means an allegation—

- (a) arising out of the complaint, and
- (b) which falls within one or more than one of the grounds specified in *section 57(1)*;

“appropriate fee”, in relation to a provision of this Act, means the fee determined under *section 36(1)* that is appropriate for that provision;

“basic medical qualification” means—

- (a) a qualification arising from the satisfactory completion of a programme of basic medical education and training approved under *section 88(2)(a)(i)(I)*,
- (b) a qualification in basic medical training specified in point 5.1.1 of Annex V to Directive 2005/36/EC, or
- (c) a degree, diploma or other qualification recognised under *section 88(7)* to be at least the equivalent of a qualification referred to in *paragraph (a)*;

“business plan” means a business plan prepared pursuant to *section 15(1)*;

“cancel”, in relation to the registration of a medical practitioner, means to delete the practitioner’s name from the register pursuant to a decision referred to in *section 78(3)* to cancel the registration of the practitioner;

“certificate of experience” means a certificate of experience granted to a medical practitioner pursuant to *section 49(2)*;

“certificate of registration” means a certificate referred to in *section 43(5)*;

“chief executive officer” means the chief executive officer of the Council appointed under *section 24(1)*;

“committee” means a committee established under *section 20(1), (2), (3) or (4)*;

“complainant”, in relation to a complaint, means the person (including the Council) who made the complaint;

“complaint” means a complaint under *section 57(1)*;

“conditions” includes terms;

“Council” means Comhairle na nDochtúirí Leighis or the Medical Council established by the Act of 1978 and continued in being by *section 4(1)*;

“Court” means the High Court;

“decision”, in relation to an appeal under *section 54, 75, 83, 90 or 92*, includes part of a decision;

“Dental Council” means An Chomhairle Fiaclóireachta or the Dental Council established by the Dentists Act 1985;

“Directive 2005/36/EC” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications¹;

“Fitness to Practise Committee” means the committee established under *section 20(2)(b)*;

“formal qualification” means—

- (a) a basic medical qualification, and
- (b) a certificate of experience;

“General Division” means that division of the register referred to in *section 43(2)(a)*;

“General Register of Medical Practitioners” means the register established under section 26 of the Act of 1978;

“give” includes send, whether by post or electronic or other means, and cognate words shall be construed accordingly;

“Health Service Executive” means the Health Service Executive established under section 6 of the Health Act 2004;

“Higher Education Authority” means An tÚdarás um Ard-Oideachas established by section 2 of the Higher Education Authority Act 1971;

“inquiry” means an inquiry into a complaint by the Fitness to Practise Committee pursuant to a referral under *section 63*;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“material interest” means material interest as construed in accordance with the Ethics in Public Office Act 1995;

“medical practitioner” means a person who holds a basic medical qualification;

“Member State” means a state other than the State which is a member of the European Union and includes states which are parties to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the protocol done at Brussels on 17 March 1993 and the Swiss Confederation;

“Minister” means the Minister for Health and Children;

“poor professional performance”, in relation to a medical practitioner, means a failure by the practitioner to meet the standards of competence (whether in knowledge and skill or the application of knowledge and skill or both) that can reasonably be expected of medical practitioners practising medicine of the kind practised by the practitioner;

“practice of medicine” includes practice of surgery and other disciplines of medicine;

“practise medicine” means to engage in the practice of medicine;

“Preliminary Proceedings Committee” means the committee established under *section 20(2)(a)*;

¹ OJ L255, 30.9.2005, p. 22

“professional competence scheme” means a scheme established under *section 91(2)*;

“published in the prescribed manner”, in relation to any document or information (howsoever described), means the document or information, as the case may be—

- (a) is published on a relevant Internet website, and
- (b) is available for inspection, at the offices of the Council and at all reasonable times, by members of the public;

“register” means the register of medical practitioners established under *section 43(1)*;

“registered”, in relation to a medical practitioner, means registered under *section 46, 47, 48, 49 or 50*;

“registered dentist” means a person whose name is entered in the Register of Dentists established under the Dentists Act 1985;

“registered medical practitioner” means a medical practitioner whose name is entered in the register;

“register establishment day” means the date specified in the notice referred to in *section 44(3)* published in *Iris Oifigiúil* as the date on which the register comes into operation;

“Register of Medical Specialists” means the register established under section 30 of the Act of 1978;

“relevant conditions”, in relation to a registered medical practitioner, means any conditions attached to the registration of the practitioner pursuant to—

- (a) *section 53(3)*,
- (b) a decision confirmed or given under *section 54(4)*,
- (c) a decision referred to in *section 78(1)*,
- (d) *section 81(3)*, or
- (e) a decision confirmed or given under *section 83(3)*;

“relevant Internet website” means an Internet website of the Council (including part of such a website)—

- (a) to which access is readily available by members of the public, and
- (b) where anything published on the website is readily available for inspection by members of the public;

“relevant medical disability”, in relation to a medical practitioner, means a physical or mental disability of the practitioner (including addiction to alcohol or drugs) which may impair the practitioner’s ability to practise medicine or a particular aspect thereof;

“remove”, in relation to the registration of a medical practitioner, means to delete the practitioner’s name from the register pursuant to *section 52(2) or (6), 55(1) or 79(1)*;

“restore”, in relation to the registration of a medical practitioner, means to re-enter the practitioner’s name in the register pursuant to

section 52(5), 80 or 81(2) or a decision confirmed or given under section 54(4) or 83(3);

“*section 20(2) committee*” means a committee established under *section 20(2)(a) or (b)*;

“*Specialist Division*” means that division of the register referred to in *section 43(2)(b)*;

“*statement of strategy*” means a statement of strategy prepared pursuant to *section 13(1)*;

“*third country*” means a state other than the State or a Member State;

“*Trainee Specialist Division*” means that division of the register referred to in *section 43(2)(c)*;

“*unregistered medical practitioner*” means a medical practitioner who is not registered;

“*visiting EEA practitioner*” means a medical practitioner who falls within *section 50(1)*;

“*Visiting EEA Practitioners Division*” means that division of the register referred to in *section 43(2)(d)*.

3.—(1) The Acts specified in *Part 1 of Schedule 1* are repealed. Repeals and revocations.

(2) The statutory instruments specified in *Part 2 of Schedule 1* are revoked.

PART 2

CONTINUANCE IN BEING OF COUNCIL AND OBJECT AND FUNCTIONS OF COUNCIL, ETC.

4.—(1) Notwithstanding the repeal of the Act of 1978 by *section 3—* Continuance in being of Council.

(a) the body known as *Comhairle na nDochtúirí Leighis*, or in the English language as the Medical Council, established by *section 6* of that Act shall continue in being, and

(b) subject to *subsections (5) and (6)*, anything commenced but not completed by that body, or the committee established under *section 13(2)(b)* of the Act of 1978, before the commencement of *section 3* may be carried on and completed by the Council (with its membership as constituted under this Act) or that committee (with its membership as constituted under *section 13* of the Act of 1978 but irrespective of whether a member of that committee became such a member before, on or after that commencement), as the case requires, after such commencement as if—

(i) the Acts specified in *Part 1 of Schedule 1* had not been repealed, and

(ii) the statutory instruments specified in *Part 2 of Schedule 1* had not been revoked.

(2) The Council is a body corporate with perpetual succession and an official seal and with power—

- (a) to sue and be sued in its corporate name, and
- (b) with the consent of the Minister and the Minister for Finance, to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The Council may, subject to the provisions of this Act, regulate its own procedure.

(4) *Schedule 2* applies to the Council.

(5) A person who—

- (a) immediately before the commencement of *section 3*, was a member of the Council and of the committee referred to in *subsection (1)(b)*, and
- (b) on that commencement, ceases to be a member of the Council but remains a member of that committee,

shall, for so long as the person continues to be a member of that committee, and for the purposes of *subsection (1)(b)*, be deemed to satisfy the requirements of *section 13* of the Act of 1978 relating to the membership of that committee.

(6) Where pursuant to *subsection (1)(b)* the Council may take any relevant action in respect of the registration of a medical practitioner, then the Council may take the equivalent action under this Act and—

- (a) in the case of equivalent action falling within *paragraph (a)* of the definition of “equivalent action”, *section 81* shall apply to the equivalent action accordingly,
- (b) in the case of equivalent action falling within *paragraph (c)* of the definition of “equivalent action”—
 - (i) *paragraph (c)* of the definition of “relevant conditions” in *section 2* shall be construed to include the equivalent action accordingly, and
 - (ii) *sections 43(6)* and *82* shall apply to the equivalent action accordingly.

(7) In *subsection (6)*—

“equivalent action”, in relation to the registration of a medical practitioner, means—

- (a) in the case of *paragraph (a)* of the definition of “relevant action”, the cancellation of the registration pursuant to a decision referred to in *section 78(3)*,
- (b) in the case of *paragraph (b)* of the definition of “relevant action”, the suspension of the registration pursuant to a decision referred to in *section 78(3)*,

- (c) in the case of *paragraph (c)* of the definition of “relevant action”, the attachment of conditions to the registration pursuant to a decision referred to in *section 78(1)*;

“relevant action”, in relation to the registration of a medical practitioner, means any action under Part V of the Act of 1978 pursuant to which the Council may—

- (a) erase the practitioner’s name from the General Register of Medical Practitioners or the Register of Medical Specialists,
- (b) give effect to a decision of the Council that during a period of specified duration the registration of the practitioner’s name in a register referred to in *paragraph (a)* shall not have effect, or
- (c) attach conditions to the retention of the practitioner’s name in a register referred to in *paragraph (a)*.

5.—(1) The seal of the Council shall be authenticated by— Seal of Council.

- (a) the signature of the President of the Council or another member of the Council authorised by the Council to act in that behalf, and
- (b) the signature of a member of the staff of the Council authorised by the Council to act in that behalf.

(2) Judicial notice shall be taken of the seal of the Council and, accordingly, every document—

- (a) purporting to be an instrument made by the Council, and
- (b) purporting to be sealed with the seal of the Council authenticated in accordance with *subsection (1)*,

shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is proved.

6.—The object of the Council is to protect the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence among registered medical practitioners. Object of Council.

7.—(1) The Council shall—

Functions of Council.

- (a) do all things necessary and reasonable to further its object, and
- (b) perform its functions in the public interest.

(2) Without prejudice to the generality of *subsection (1)*, the Council shall—

- (a) establish and maintain the register,
- (b) establish procedures and criteria for registration including the issue of certificates of registration and renewal of registration,

- (c) approve programmes of education and further education necessary for the purposes of registration and continued registration,
- (d) keep the programmes referred to in *paragraph (c)* under review,
- (e) specify the standards required for the purposes of the maintenance of the professional competence of registered medical practitioners,
- (f) keep the standards referred to in *paragraph (e)* under review,
- (g) act as the competent authority for the purposes of—
 - (i) the mutual recognition of medical qualifications awarded in or recognised by Member States,
 - (ii) all matters referred to in Directive 2005/36/EC which relate to the role of a competent authority for the purposes of the recognition of professional qualifications of medical practitioners,
- (h) enter into agreements, with bodies in third countries that are duly authorised to perform functions in third countries that correspond to the functions of the Council, in relation to—
 - (i) the recognition by the Council, for the purposes of registration, of degrees, diplomas and other qualifications relating to the practice of medicine awarded in third countries,
 - (ii) the recognition by such bodies, for the purposes of authorisation to practise medicine in third countries, of degrees, diplomas and other qualifications relating to the practice of medicine awarded in the State,
- (i) specify standards of practice for registered medical practitioners, including the establishment, publication, maintenance and review of appropriate guidance on all matters related to professional conduct and ethics for registered medical practitioners,
- (j) establish committees to inquire into complaints,
- (k) make decisions and give directions under *Part 9* relating to the imposition of sanctions on registered medical practitioners,
- (l) advise the public on all matters of general interest relating to the functions of the Council, its area of expertise and other matters of interest to the public relating to the practice of medicine and medical practitioners, including public advertisement of the object, functions and contact details of the Council from time to time, and
- (m) perform any other function conferred on it by any other provision of this Act or of any other enactment.

(3) Without prejudice to the generality of *subsection (2)(i)*, the Council's function under that subsection shall include standards of

practice relating to advertising by registered medical practitioners, or classes of registered medical practitioners, and, in connection therewith, the disclosure of appropriate information relating to the fees to be charged for the medical services the subject of such advertising.

(4) The Council shall, in performing its functions, have regard to—

- (a) functions performed by other bodies that are similar or ancillary to the functions that the Council performs,
- (b) the need to co-operate with and co-ordinate its activities with those of other public authorities or bodies (in particular, the Health Service Executive) if the performance of their functions affects or could affect the health of the public,
- (c) the need to promote efficiencies in the delivery of specialist training and intern training through the development of standard practices,
- (d) the policies and objectives of the Government or any Minister of the Government to the extent that those policies and objectives may affect or relate to the functions of the Council,
- (e) the resources, wherever originating, that are available to it for the purpose of performing its functions, and
- (f) the need to secure the most beneficial, effective and efficient use of those resources.

(5) The Council has power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions.

(6) The Minister, or a person authorised by the Minister to give a notice under this subsection, may by notice in writing given to the Council require the Council to provide the Minister or that person, as the case may be, with such information in relation to the performance of the Council's functions as is specified in the notice and within the period specified in the notice (being a period reasonable in the circumstances).

(7) The Council shall comply with a notice given to it under *subsection (6)* except to the extent that it is prohibited from doing so by another provision of this Act.

(8) Nothing in this section shall be construed as restricting the power of any Minister of the Government to make regulations under section 3 of the European Communities Act 1972.

8.—(1) The Minister may by order—

- (a) confer on the Council such additional functions connected with—
 - (i) registered medical practitioners, their education and training and the practice of medicine by medical practitioners, or

Conferral of additional functions on Council.

- (ii) the implementation of any directive or regulation of the European Union concerning the practice of medicine, medical practitioners who practise medicine and the recognition of qualifications of medical practitioners exercising their right to freedom of movement within the European Union,

as the Minister thinks fit, and

- (b) make such provisions as the Minister considers necessary or expedient in relation to matters ancillary to or arising out of the conferral of additional functions on the Council.

(2) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House has sat after that order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(3) Nothing in this section shall be construed as restricting the power of any Minister of the Government to make regulations under section 3 of the European Communities Act 1972.

Ministerial directions to Council.

9.—(1) The Minister may give general policy directions in writing to the Council in relation to the performance by the Council of its functions except any such functions—

- (a) relating to the professional conduct and ethics of registered medical practitioners, or
- (b) under any of *Parts 7, 8 and 9*.

(2) Nothing in directions given under *subsection (1)* is to be construed to prevent the Council from, or to limit the Council in, performing its functions.

Immunity.

10.—(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in any civil proceedings for any act done or default made in the performance or purported performance of any function under this Act.

(2) The persons to whom *subsection (1)* applies are—

- (a) the members and former members of the Council,
- (b) the members and former members of any committee,
- (c) the chief executive officer and any former chief executive officer,
- (d) the staff and former staff of the Council, and
- (e) the persons appointed or formerly appointed under *section 58(1)* to assist the Preliminary Proceedings Committee.

Council's power to make rules.

11.—(1) Subject to *subsections (3), (4) and (5)*, the Council—

- (a) may make rules for the purposes of the better operation of any provision of this Act, or
- (b) at the request in writing of the Minister and in accordance with the request, shall make rules for the purposes of the better operation of any provision of this Act.

(2) Without prejudice to the generality of *subsection (1)*, the Council may make rules under this section in relation to—

- (a) the establishment, membership, functions and procedures of committees,
- (b) the form and manner in which the register and its divisions are to be maintained,
- (c) the details relating to medical practitioners that, in addition to their names, are to be entered in the register or their certificates of registration or both,
- (d) the manner in which appropriate fees are to be paid and the time limits for payment of appropriate fees for the retention of registration,
- (e) the receiving and recording of evidence by *section 20(2)* committees,
- (f) the receiving of submissions by *section 20(2)* committees,
- (g) the establishment, membership, functions and procedures of subcommittees of committees including, in the case of the Fitness to Practise Committee, subcommittees inquiring, on behalf of that Committee, into different grounds founding a complaint,
- (h) the setting of criteria for assessing applications for registration in the Specialist Division,
- (i) the specification of examinations for the purposes of *subparagraph (i)* of *section 46(b)*,
- (j) the specification of grounds for the purposes of *subparagraph (ii)* of *section 46(b)*,
- (k) the grounds on which *subparagraph (iv)* of *section 46(b)* shall not apply to a medical practitioner due to the unfeasibility of a document referred to in that subparagraph being produced in respect of that practitioner,
- (l) the grounds on which *paragraph (c)* of *section 48(2)* or *(3)* shall not apply to a medical practitioner due to the unfeasibility of a document referred to in that paragraph being produced in respect of that practitioner,
- (m) the specification of examinations for the purpose of *subparagraph (i)* of *section 48(3)(a)*,
- (n) the specification of grounds for the purposes of *subparagraph (ii)* of *section 48(3)(a)*,
- (o) the specification of examinations for the purposes of *subparagraph (i)* of *section 48(4)(a)*,

- (p) the specification of grounds for the purposes of *subparagraph (ii)* of *section 48(4)(a)*,
 - (q) the specification of requirements for the purposes of *paragraph (c)* of *section 48(4)*,
 - (r) the specification of—
 - (i) a period or periods,
 - (ii) a hospital, health institution, clinic, general medical practice, or other health service setting,
 for the purposes of *subsection (3)* of *section 49*,
 - (s) the setting of criteria that the Council shall consider under *section 81* for the restoration of a medical practitioner's registration,
 - (t) the setting of criteria for the purposes of *section 88(2)(a)*,
 - (u) the setting of criteria for the purposes of *section 88(3)(a)* or *(4)(a)*,
 - (v) the setting of criteria, in relation to each medical specialty recognised under *section 89(1)*, for the purposes of *section 89(3)*,
 - (w) the setting of criteria for the purposes of *section 91(4)*,
 - (x) any professional competence scheme,
 - (y) any other matter relating to the Council's functions.
- (3) Without prejudice to the generality of *subsection (2)(e)* and *(f)*, rules made under this section may specify—
- (a) the form in which and the means by which evidence or submissions may be received by *section 20(2)* committees, and
 - (b) the conditions subject to which evidence or submissions may be received by *section 20(2)* committees by means of a live video link, a video recording, a sound recording or any other mode of transmission.
- (4) Without prejudice to the generality of *subsection (2)(x)*, rules made under this section may specify—
- (a) categories of registered medical practitioners to which a professional competence scheme applies,
 - (b) definitions and descriptions of categories or ranges of activities which fall within a professional competence scheme,
 - (c) obligations to be placed on medical practitioners or categories of medical practitioners specified under *paragraph (a)* by virtue of a professional competence scheme,
 - (d) procedures to be followed by the Council and by registered medical practitioners for the purposes of a professional competence scheme (including, in the case of

the Council, procedures to be followed for the purposes of the operation, administration and supervision of the professional competence scheme).

(5) The Council shall ensure that—

- (a) a draft of any rule (including a rule revoking or amending any other rule) that it proposes to make under this section is published in the prescribed manner,
- (b) with the draft is published an invitation to members of the public, any organisation and any other body to comment on the draft before a date specified by the Council in the invitation, being a date reasonable in the circumstances, and
- (c) without prejudice to the generality of *paragraph (b)*, a copy of the draft of the rule is given to—
 - (i) the Minister,
 - (ii) the Health Service Executive, and
 - (iii) if the draft relates to a competence scheme, the Minister for Finance,

not later than the date on which the Council complies with *paragraph (a)* in respect of that draft.

(6) Subject to *subsection (7)*, the Council, after considering any comments on a draft of a rule published pursuant to *subsection (5)(a)* received before the date specified in the invitation referred to in *subsection (5)(b)* which relates to the draft, may—

- (a) make the rule in the form of the draft as published or with such changes as the Council determines, or
- (b) decide not to make the rule.

(7) The Council shall not make rules under this section relating to a professional competence scheme except with the consent of the Minister and the Minister for Finance.

(8) The Council shall ensure that, as soon as is practicable after a rule is made under this section, the rule—

- (a) is published in the prescribed manner, and
- (b) is submitted to the Minister for laying before each House of the Oireachtas.

(9) Every rule made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the rule is passed by either such House within the next 21 days on which the House has sat after that rule is laid before it, the rule shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

12.—(1) Without prejudice to the operation of *section 62* or *88(2)(b)* or *(i)*, *(3)(b)*, *(4)(b)* or *(8)*, the Council may from time to time prepare, for the guidance of medical practitioners and the Council's power to issue guidelines.

public, guidelines not inconsistent with this Act (including any regulations or rules made under this Act) indicating the manner in which the Council proposes to perform its functions.

(2) The Council shall ensure that guidelines prepared by it under this section are published in the prescribed manner as soon as is practicable after the guidelines have been prepared.

PART 3

STATEMENT OF STRATEGY, BUSINESS PLAN AND ANNUAL REPORT OF COUNCIL

Council to prepare and submit statement of strategy.

13.—(1) Subject to *subsections (2) to (5)*, the Council shall—

- (a) prepare and adopt a statement of strategy for the term of office of the Council (or, as the case requires, the remaining term of office of the Council), and
- (b) submit the statement to the Minister—
 - (i) within 6 months after the commencement of this section,
 - (ii) within 6 months after the appointment of a new Minister having charge of the Department of Health and Children if that Minister requests that a statement of strategy be submitted,
 - (iii) within 6 months of the beginning of the term of office of each new Council appointed under *section 17*.

(2) The Council shall prepare a statement of strategy in a form and manner in accordance with any directions issued by the Minister and shall ensure that the statement specifies—

- (a) the key objectives of the Council for the period to which the statement relates and the strategies for achieving those objectives,
- (b) the manner in which the Council proposes to measure its achievement of those objectives, and
- (c) the uses for which the Council proposes to apply its resources.

(3) The Council shall, in preparing the statement of strategy, have regard to the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the Council.

(4) The Minister may direct the Council to amend a statement of strategy submitted to the Minister if, in the Minister's opinion, the statement—

- (a) does not contain any information required under *subsection (2)*,
- (b) does not comply in any other respect with *subsection (2)*,
or

(c) has been prepared without regard to the policies referred to in *subsection (3)*.

(5) The Council shall comply with a direction given to it under *subsection (4)* within the period, if any, specified in the direction, being a period reasonable in the circumstances.

(6) The Council may amend an adopted statement of strategy and, in any such case—

(a) *subsections (2) to (5)* shall, with all necessary modifications, apply to the preparation of the amended statement as they apply to a statement of strategy prepared under *subsection (1)*, and

(b) the Council shall adopt the amended statement and submit it to the Minister within 3 weeks of the date on which the Council adopted the amended statement.

(7) Nothing in a statement of strategy is to be construed to prevent the Council from, or to limit the Council in, performing its functions.

14.—(1) The Minister shall ensure that a copy of a statement of strategy or an amended statement of strategy is laid before each House of the Oireachtas within 21 days after the statement is received by the Minister. Publication and implementation of statement of strategy.

(2) The Council shall ensure that, as soon as is practicable after copies of a statement of strategy or of an amended statement of strategy are laid before the Houses of the Oireachtas, the statement is published in the prescribed manner.

(3) The Council shall submit progress reports to the Minister on the implementation of a statement of strategy or an amended statement of strategy, as the case requires—

(a) in its annual report, and

(b) in such other manner and at such intervals as the Minister may direct.

(4) During the specified period, the Freedom of Information Acts 1997 and 2003 shall not apply to a record containing—

(a) a statement of strategy, or an amendment to a statement of strategy, that has not been adopted by the Council, or

(b) a preliminary or other draft of all or part of the contents of a statement of strategy or of an amendment to a statement of strategy.

(5) In *subsection (4)*, “specified period”, in relation to a record, means a period of 5 years commencing on the date of creation of the record.

15.—(1) Subject to *subsections (2) to (5)*, the Council shall—

(a) prepare and adopt a business plan for the calendar year or other period as may be determined by the Minister, and

Council to prepare and forward business plan to Minister.

(b) submit the plan to the Minister.

(2) The Council shall prepare a business plan in a form and manner in accordance with any directions issued by the Minister (including any timescale in which the plan must be submitted to the Minister) and shall ensure that the plan—

(a) indicates the type and volume of business to be undertaken by the Council during the period to which the plan relates,

(b) indicates any capital plans proposed by the Council,

(c) contains estimates of the number of staff of the Council for the period and the business to which the plan relates, and

(d) contains any other information specified by the Minister.

(3) The Council shall, in preparing a business plan, have regard to—

(a) the statement of strategy in operation at that time,

(b) any direction issued by the Minister under *section 9(1)*, and

(c) the policies and objectives of the Minister and the Government as they relate to the functions of the Council.

(4) The Minister may direct the Council to amend a business plan submitted to the Minister if, in the Minister's opinion, the plan—

(a) does not contain any information required under *subsection (2)*,

(b) does not comply in any other respect with *subsection (2)*, or

(c) has been prepared without regard to a matter specified in *subsection (3)*.

(5) The Council shall comply with a direction given to it under *subsection (4)* within the period, if any, specified in the direction, being a period reasonable in the circumstances.

(6) The Council shall submit to the Minister with a business plan a statement of its estimate of the income and expenditure relating to the plan that is consistent with the monies estimated to be available to the Council for the period to which the business plan relates.

(7) The Minister shall ensure that copies of a business plan submitted to the Minister are laid before each House of the Oireachtas within 21 days after the plan is so submitted.

(8) The Council shall ensure that, as soon as is practicable after copies of a business plan are laid before the Houses of the Oireachtas, the plan is published in the prescribed manner.

(9) The Council may amend an adopted business plan and, in any such case—

(a) *subsections (2) to (8)* shall, with all necessary modifications, apply to the preparation of the amended plan as

they apply to a business plan prepared under *subsection (1)*, and

- (b) the Council shall adopt the amended plan and submit it to the Minister within 3 weeks of the date on which the Council adopted the amended plan.

16.—(1) Subject to *subsection (3)*, the Council shall, not later than 3 months after the end of each financial year or such further period, not exceeding 3 months, as the Minister permits, submit to the Minister a report (in this section referred to as the “annual report”) of the activities of the Council in the immediately preceding financial year.

Council to submit annual report to Minister.

(2) The Minister may specify, by direction in writing to the Council, any information which is required to be included in the annual report.

(3) The Council shall comply with a direction given to it under *subsection (2)*.

(4) The Minister shall ensure that copies of the annual report are laid before each House of the Oireachtas as soon as may be after the report is received by the Minister.

PART 4

MEMBERS, COMMITTEES AND STAFF OF COUNCIL

17.—(1) Subject to *subsections (2) to (9)*, the members of the Council shall be appointed by the Minister and shall consist of the following 25 persons:

Members of Council.

- (a) 2 persons jointly nominated by the bodies approved under *section 88(2)(a)(i)(II)* to deliver programmes of basic medical education and training;
- (b) one registered medical practitioner nominated by the Royal College of Physicians of Ireland in relation to medical specialties;
- (c) one registered medical practitioner nominated by the Royal College of Surgeons in Ireland in relation to surgical specialties;
- (d) one registered medical practitioner nominated by the Irish College of General Practitioners in relation to general practice;
- (e) one registered medical practitioner nominated by—
 - (i) subject to *subparagraph (ii)*, the Irish Psychiatric Training Committee in relation to psychiatry,
 - (ii) if a body other than that Committee is approved under *section 89(3)(a)(ii)* to grant evidence of the satisfactory completion of specialist training in relation to psychiatry, that body;
- (f) 6 registered medical practitioners practising medicine in the State (but excluding any visiting EEA practitioner)

following their election, in accordance with regulations made under *section 18*, by registered medical practitioners;

- (g) one person nominated by the Royal Irish Academy who is not and never has been a medical practitioner in the State or in another jurisdiction;
- (h) 2 persons nominated by the Health Service Executive who are representative of the management of the public health sector;
- (i) one person nominated by the Minister for Education and Science, after consultation with the Higher Education Authority, who is not and never has been a medical practitioner in the State or in another jurisdiction;
- (j) one person nominated by An Bord Altranais whose name is entered in the register of nurses and midwives maintained under the Nurses Act 1985;
- (k) one person nominated by the Health and Social Care Professionals Council—
 - (i) subject to *subparagraph (ii)*, who is a registrant within the meaning of section 3 of the Health and Social Care Professionals Act 2005,
 - (ii) in the absence of any such registrant, a person who is a member of a designated profession within the meaning of that section;
- (l) one person nominated by the Health Information and Quality Authority who is not and never has been a medical practitioner in the State or in another jurisdiction;
- (m) one person nominated by the Independent Hospitals Association of Ireland who is not and never has been a medical practitioner in the State or in another jurisdiction; and
- (n) 5 persons who—
 - (i) are not and never have been medical practitioners in the State or in another jurisdiction, and
 - (ii) have such qualifications, expertise, interests or experience as, in the opinion of the Minister, would enable them to make a contribution to the performance of the Council's functions.

(2) Members of the Council shall perform their functions as such in the public interest.

(3) Only registered medical practitioners are eligible for election as the President or Vice-President of the Council in accordance with *Schedule 2*.

(4) The persons appointed under *subsection (1)(n)* may include members of advocacy groups and users of services provided by registered medical practitioners.

(5) The Minister shall, to the extent practicable, endeavour to ensure that there is an equitable balance between men and women in the membership of the Council.

(6) The Minister shall ensure that, as soon as is practicable after a person is appointed as a member of the Council, a notice to that effect that includes the person's name is published in *Iris Oifigiúil*.

(7) A person is not eligible for appointment as a member of the Council, or of a committee, if the person is—

- (a) a member of either House of the Oireachtas or of the European Parliament,
- (b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (c) a member of a local authority.

(8) The 6 registered medical practitioners appointed under *subsection (1)(f)* shall consist of—

- (a) one medical practitioner registered, or able to be registered, in the Specialist Division in relation to obstetrics and gynaecology,
- (b) one medical practitioner registered, or able to be registered, in the Specialist Division in relation to anaesthesia,
- (c) one medical practitioner registered, or able to be registered, in the Specialist Division in relation to public health medicine,
- (d) one medical practitioner registered, or able to be registered, in the Specialist Division in relation to pathology or radiology,
- (e) one registered medical practitioner, not being a consultant, practising medicine in a hospital, and
- (f) one registered medical practitioner not falling within any of *paragraphs (a) to (e)*.

(9) Without prejudice to the generality of the other provisions of this Act relating to the membership of the Council—

- (a) the Minister may not refuse to appoint as a member of the Council a person nominated under *subsection (1)(a), (b), (c), (d), (e), (g), (h), (i), (j), (k), (l) or (m)* or elected as referred to in *subsection (1)(f)*, and
- (b) a person who was a member of the Council immediately before the commencement of *section 3* shall, on that commencement, cease to be a member of the Council unless the person is appointed pursuant to *subsection (1)* to be a member of the Council.

18.—(1) The Minister may make regulations to specify the procedures to be followed for the purposes of an election referred to in *section 17(1)(f)* (including procedures preparatory to, or subsequent to, such an election). Elections.

(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after that regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

First meeting of Council under this Act.

19.—(1) The chief executive officer shall give notice in writing to the members of the Council of the time and place of the first meeting of the Council after the commencement of *section 17*.

(2) The Council shall meet at the time and place notified by the chief executive officer under *subsection (1)* for its first meeting after the commencement of *section 17* and shall thereupon enter on its functions under this Act.

Committees of Council.

20.—(1) Subject to *subsections (2) to (13)*, the Council may establish committees of the Council to perform any functions that, in the opinion of the Council, may be better or more conveniently performed by a committee and that are assigned by the Council to a committee.

(2) Without prejudice to the generality of *subsection (1)*, the Council shall establish—

- (a) a committee, to be known as the Preliminary Proceedings Committee, to give initial consideration to complaints, and
- (b) a committee, to be known as the Fitness to Practise Committee, to inquire into complaints,

to perform the functions under *Parts 7, 8 and 9* that are respectively assigned to the committees.

(3) Without prejudice to the generality of *subsection (1)*, the Council may establish a committee, to be known as the Education and Training Committee, to perform such of the Council's functions under *Part 10* or *section 106* as are assigned by the Council to the Committee.

(4) Without prejudice to the generality of *subsection (1)*, the Council may establish a committee, to be known as the Health Committee, to perform such functions as are specified by the Council in support of—

- (a) medical practitioners with relevant medical disabilities, and
- (b) medical practitioners who have given consents under *section 67(1)(c)*.

(5) Subject to *subsections (7) and (8)*, a committee may include in its membership persons who are not members of the Council.

(6) The chairperson of a *section 20(2)* committee shall be a member of the Council other than the President or Vice-President of the Council.

(7) No person shall be a member of more than one *section 20(2)* committee.

(8) At least one third of the members of a *section 20(2)* committee, including the chairperson, shall be members of the Council.

(9) Subject to *subsection (10)*, at least one third of the membership of the Fitness to Practise Committee shall consist of medical practitioners.

(10) The majority of the membership of the Fitness to Practise Committee shall consist of persons who are not medical practitioners.

(11) The majority of the membership of a committee (except the Fitness to Practise Committee) shall consist of medical practitioners.

(12) The acts of a committee (except a *section 20(2)* committee) shall be subject to confirmation by the Council unless the Council dispenses with the necessity for such confirmation.

(13) The Council may, subject to the provisions of this Act, regulate the procedure of a committee but, subject to any such regulation, the committee may regulate its own procedure.

(14) The members of a *section 20(2)* committee, in performing the functions under this Act respectively conferred on—

(a) the members in their capacity as such members, or

(b) the *section 20(2)* committee of which they are members,

shall have the same protection and immunity as a judge of the Court performing the functions of a judge.

21.—A member of the Council or of any committee shall be paid, out of funds at the disposal of the Council, such allowances for travelling and subsistence expenses incurred in respect of the member's attendance at a meeting of the Council or of the committee, as the case may be, or otherwise in connection with the affairs of the Council as the Minister, with the consent of the Minister for Finance, determines.

Expenses of members of Council and committees.

22.—(1) The Minister may, with the consent of the Minister for Finance, from time to time determine the amount of an allowance that may be paid by the Council to—

Payment of allowances.

(a) the President of the Council in respect of the President's role as President,

(b) a member of the Council in respect of such membership, or

(c) a member of a committee in respect of such membership.

(2) An allowance referred to in *subsection (1)* shall be paid out of the funds at the disposal of the Council.

Removal of
members of Council
from office.

23.—(1) The Minister may at any time remove a member of the Council from office if—

- (a) the member has become incapable through illness of performing the functions of the office,
- (b) the member has committed stated misbehaviour,
- (c) whether or not following a review under *subsection (9)*, the Minister is satisfied that the member's behaviour prevents the Council from, or unnecessarily hinders the Council in, performing its functions in an effective manner,
- (d) the member has contravened—
 - (i) *section 30*, or
 - (ii) an applicable provision of the Ethics in Public Office Act 1995,
 or
- (e) in performing functions under this Act, the member has not been guided by a code of conduct that has been drawn up under section 10(3) of the Standards in Public Office Act 2001 and that relates to the member.

(2) A member of the Council ceases to hold office if the member—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence,
- (d) is convicted of an offence involving fraud or dishonesty,
- (e) is the subject of an order under section 160 of the Companies Act 1990,
- (f) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- (g) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or in another jurisdiction.

(3) A member of the Council who does not, for a consecutive period of 6 months, attend a meeting of the Council ceases at the end of that period to hold office unless the member demonstrates to the Minister's satisfaction that the failure to attend was due to illness.

(4) Where the Council does not perform any function conferred on it under this Act, the Minister may, by order, direct the Council to perform that function and for that purpose to do such other things ancillary or incidental thereto as may be specified in the order.

(5) Subject to *subsection (7)*, where the Council fails to comply with any direction of the Minister contained in an order under *subsection (4)*, the Minister may, by order, remove from office the members of the Council.

(6) Subject to *subsection (7)*, the Minister may, by order, remove all the members of the Council from office if—

- (a) the Council fails to achieve a quorum for 3 consecutive meetings,
- (b) the Council does not comply with a judgment, order or decree of any court,
- (c) the Council does not comply with a direction of the Minister or any other requirement imposed on it by or under any enactment including this Act, or
- (d) whether or not following a review under *subsection (9)*, the Minister is satisfied that the members' behaviour prevents the Council from, or unnecessarily hinders the Council in, performing its functions in an effective manner.

(7) An order under *subsection (5)* or *(6)* removing the members of the Council from office shall not have effect unless—

- (a) a draft of the proposed order and a statement of the reasons for the order have been laid before the Houses of the Oireachtas, and
- (b) a resolution approving the draft has been passed by each House.

(8) Where the Council fails to achieve a quorum for 3 consecutive meetings, the chief executive officer shall, forthwith upon the occurrence of that failure, give the Minister notice in writing of that failure.

(9) The Minister may, if of the opinion that the Council's functions are not being performed in an effective manner, appoint a person to—

- (a) conduct an independent review of any matter giving rise to that opinion, and
- (b) submit a report to the Minister on the results of the review.

(10) For the purposes of a review referred to in *subsection (9)*, the Council shall give the person conducting the review all reasonable assistance, including access to such premises, equipment and records, as the person may require for the purposes of the review.

(11) The removal of the members of the Council from office does not revoke or otherwise affect any delegation of the Council's functions to the chief executive officer under *section 24*.

(12) An order under *subsection (5)* or *(6)* may contain such provisions as the Minister considers necessary to enable the functions of the Council to be performed notwithstanding the removal from office of its members, and any such order may, in particular, appoint a

person or persons to discharge all or any of the functions of the Council.

(13) In this section “applicable provision of the Ethics in Public Office Act 1995”, in relation to a member of the Council, means a provision of that Act that, by virtue of a regulation under section 3 of that Act, applies to that member.

Chief executive officer.

24.—(1) Subject to *subsection (4)(a)*, the Council shall appoint a chief executive officer to—

- (a) carry on and manage and control generally the administration of the Council and the business of the Council, and
- (b) perform any other functions that may be delegated by the Council.

(2) Subject to *subsection (4)(b)*, the chief executive officer holds office on the conditions (including those relating to remuneration, allowances and superannuation) that are determined by the Council with the prior approval of the Minister given with the consent of the Minister for Finance.

(3) The chief executive officer shall be paid by the Council, out of the funds at its disposal, the remuneration and allowances determined under *subsection (2)*.

(4) Notwithstanding the repeal of the Act of 1978 by *section 3*, the person who was the Registrar, within the meaning of that Act, immediately before the commencement of that section shall be deemed to be the chief executive officer of the Council—

- (a) as if, on that commencement, the Council had appointed under *subsection (1)* the person to be the chief executive officer of the Council for the remaining period, if any, that was left to run for the person to hold the office of such Registrar immediately before that commencement, and
- (b) on the same conditions (including those relating to the termination of appointment) as the person held office as such Registrar immediately before that commencement,

and the other provisions of this Act shall be construed accordingly.

Staff of Council.

25.—(1) Subject to *subsection (4)(a)*, the Council shall appoint such and so many persons to be staff of the Council as the Council from time to time thinks proper with the approval of the Minister given with the consent of the Minister for Finance.

(2) Subject to *subsection (4)(b)*, a member of staff of the Council shall hold office or employment on the conditions (including those relating to remuneration, allowances and superannuation) that are determined by the Council with the prior approval of the Minister given with the consent of the Minister for Finance.

(3) The staff of the Council shall be paid by the Council, out of the funds at its disposal, the remuneration and allowances determined under *subsection (2)*.

(4) Notwithstanding the repeal of the Act of 1978 by *section 3*, a person who was an officer or servant of the Council, appointed under *section 17(1)* of that Act, immediately before the commencement of *section 3* shall be deemed to be a member of the staff of the Council—

- (a) as if, on that commencement, the Council had appointed under *subsection (1)* the person to be a member of the staff of the Council for the remaining period, if any, that was left to run for the person to hold office as such officer or servant, as the case may be, immediately before that commencement, and
- (b) on the same conditions (including those relating to termination of appointment) as the person held office as such officer or servant, as the case may be, immediately before that commencement,

and the other provisions of this Act shall be construed accordingly.

26.—(1) Subject to *subsection (2)*, a person who is a permanent officer of the Council shall cease to be a permanent officer— Age limits.

- (a) subject to *paragraph (b)*, on attaining the age of 65 years,
- (b) on attaining the higher age specified in an order under *subsection (3)* applicable to the person.

(2) *Subsection (1)* shall not apply to a person who is a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) appointed on or after 1 April 2004.

(3) The Minister may by order fix an age higher than 65 years upon the attainment of which a person who is a permanent officer of the Council shall cease to be a permanent officer.

27.—The Local Government (Superannuation) Act 1980 shall apply to the Council and its staff as if the Council were a local authority and the staff were the staff of a local authority but subject to any modifications (including modifications relating to service reckonable as pensionable service) which may, with the consent of the Minister for the Environment, Heritage and Local Government, be determined by the Minister. Superannuation.

28.—(1) Where a person who is a member of the staff of the Council (including the chief executive officer) becomes a member of either House of the Oireachtas, the person— Membership of either House of Oireachtas by member of staff of Council.

- (a) shall stand seconded from being a member of such staff during the period (in this section referred to as the “secondment period”)—
 - (i) commencing on the date the person becomes entitled under the Standing Orders of that House to sit therein, and
 - (ii) ending on the date when—

(I) the person ceases to be a member of that House, or

(II) the person ceases to be a member of such staff,

whichever is the earlier,

(b) shall not be paid by, or entitled to receive from, the Council any remuneration or allowance in respect of the secondment period, and

(c) shall not be entitled to reckon the whole or any part of the secondment period for any superannuation benefits payable under this Act.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall, while so entitled, be disqualified from becoming a member of the staff of the Council.

Membership of local authority or European Parliament by member of staff of Council.

29.—*Section 28* shall, with all necessary modifications, apply to a person who is a member of the staff of the Council who becomes a member of—

(a) a local authority, or

(b) the European Parliament,

as that section applies to a member of staff of the Council who becomes a member of either House of the Oireachtas.

Disclosure of interests by members of Council or committee.

30.—(1) Any member present at a meeting where a specified matter arises who, otherwise than in the member's capacity as a member, has a material interest in that matter shall—

(a) at the meeting disclose to the Council or committee the nature of that interest,

(b) withdraw from the meeting for as long as the matter is being discussed or considered,

(c) take no part in any deliberation of the members relating to the matter, and

(d) refrain from voting on any decision relating to the matter.

(2) Where a member discloses a material interest under this section—

(a) the disclosure shall be recorded in the minutes of the meeting concerned, and

(b) for as long as the matter to which the disclosure relates is being dealt with by the meeting, the member shall not be counted in the quorum for the meeting.

(3) Where at a meeting a question arises as to whether or not a course of conduct, if pursued by a member, would be a failure by the member to comply with *subsection (1)*—

- (a) the chairperson of the meeting may, subject to *subsection (4)*, determine the question,
- (b) the chairperson's determination is final, and
- (c) the particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the chairperson of a meeting is the member in respect of whom a question referred to in *subsection (3)* arises, the other members present at the meeting shall choose one of their number to be the chairperson of the meeting for the purposes of that subsection.

(5) A member who, otherwise than in the member's capacity as a member, has a material interest in a specified matter shall neither influence nor seek to influence any decision to be made by the Council or committee in relation to that matter.

(6) Where the Minister is satisfied that a member has failed to comply with *subsection (1)* or (5), the Minister may remove that member from office.

(7) A member removed from office under this section is not eligible for appointment under this Act.

(8) In this section—

“meeting” means a meeting of the Council or of a committee;

“member” means a member of the Council or of a committee;

“specified matter” means—

- (a) an arrangement to which the Council is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Council or a proposed such contract or other agreement.

31.—(1) Subject to *subsection (2)*, a member of the staff of the Council (including the chief executive officer) who, otherwise than in the member's capacity as such a member, has a material interest in a specified matter within the meaning of *section 30(8)* shall—

Disclosure of interests by members of staff of Council.

- (a) disclose to the Council the nature of that interest,
- (b) take no part in the negotiation of the arrangement, contract or other agreement concerned or in any deliberation by the Council or its staff relating to that matter,
- (c) refrain from making any recommendation relating to the matter, and
- (d) neither influence nor seek to influence a decision to be made in relation to the matter.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of the members of the staff of the Council with the Council.

(3) Where a member of the staff of the Council fails to comply with *subsection (1)*, the Council may—

- (a) make such alterations to the member's conditions of employment as it considers appropriate, or
- (b) terminate the member's contract of employment.

PART 5

ACCOUNTS AND FINANCES OF COUNCIL

Accounts of
Council.

32.—(1) The Council shall keep all proper accounts of—

- (a) all income and expenditure of the Council and of the sources of such income and the subject matter of such expenditure, and
- (b) all property, assets and liabilities of the Council.

(2) The accounts of the Council shall be audited at least once in every year by the Comptroller and Auditor General.

(3) The Council shall, as soon as may be after each audit under this section, give the Minister a copy of the accounts of the Council and the Comptroller and Auditor General's certificate and report thereon.

(4) The Council shall—

- (a) as soon as may be after each audit under this section, cause the accounts of the Council and the Comptroller and Auditor General's certificate and report thereon to be printed, published and put on sale, and
- (b) immediately after each such publication, cause a copy of such accounts and such certificate and report thereon as so printed and published to be laid before each House of the Oireachtas.

(5) Nothing in this section shall be construed as entitling the Comptroller and Auditor General to question—

- (a) the policy objectives of the Council, or
- (b) the need for or the conduct of an inquiry.

Power of Council to
borrow.

33.—(1) The Council may, with the consent of the Minister for Finance and subject to the conditions, if any, which are imposed by the Minister, or in accordance with the directions, if any, given by the Minister, borrow money for capital or current purposes.

(2) Any monies borrowed by the Council pursuant to this section and any interest accruing thereon may be secured on the revenue, funds or property of the Council.

Acceptance of gifts
by Council.

34.—(1) Subject to *subsection (2)*, the Council may accept gifts of money, land or other property upon such trusts and conditions, if any, as are specified by the donor.

(2) The Council shall not accept a gift if the conditions attached to the acceptance by the donor are inconsistent with the functions of the Council.

35.—(1) All expenses incurred by the Council shall be defrayed by the Council out of funds at the disposal of the Council.

Expenses of Council and Minister.

(2) Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be approved by the Minister for Finance, be paid out of monies provided by the Oireachtas.

(3) The Minister may—

- (a) with the consent of the Minister for Finance, arrange for the provision of assistance to the Council, in the performance of its functions under *Part 11*, out of monies provided by the Oireachtas for the purpose,
- (b) after consultation with the Council and with the consent of the Minister for Finance, arrange for the provision of assistance to the Council, in the performance of specified functions of the Council not falling under *Part 11*, out of the monies provided by the Oireachtas for the purpose.

(4) The Council may allocate, in a manner that it determines, the surplus of any funds at its disposal to—

- (a) education,
- (b) research, or
- (c) public purposes,

connected with the medical profession.

36.—(1) Subject to *subsections (2) and (3)*, the Council may charge such fees as may, from time to time, be determined by the Council for—

Fees that Council may charge.

- (a) the registration under *section 46, 47, 48 or 49* of a medical practitioner,
- (b) the annual retention of the registration under *section 46, 47, 48 or 49*, of a medical practitioner,
- (c) the restoration of the registration under *section 46, 47, 48 or 49*, or under *section 80 or 81*, of a medical practitioner,
- (d) the entry of additional qualifications of any medical practitioner in the register pursuant to *section 51*,
- (e) the giving to a medical practitioner of a certificate of registration,
- (f) the approval of a body under *section 88(2)(a)(i)(II) or 89(3)(a)(ii)*,
- (g) the annual retention of the approval of a body under *section 88(2)(a)(i)(II) or 89(3)(a)(ii)*,
- (h) the recognition of a body under *section 91(4)(a)*,

- (i) the annual retention of the recognition of a body under *section 91(4)(a)*,
- (j) the grant of a licence referred to in *section 106*,
- (k) any other service which the Council may, from time to time, provide.

(2) The Council shall not charge a fee for the registration, or the restoration of the registration, of a medical practitioner in the Visiting EEA Practitioners Division.

(3) The Council shall not charge a fee for any matter referred to in *subsection (1)(f)* to (i) except with the consent in writing of the Minister.

PART 6

REGISTRATION OF MEDICAL PRACTITIONERS

Unregistered medical practitioners shall not practise medicine.

37.—Subject to *section 38*, an unregistered medical practitioner shall not—

- (a) practise medicine, or
- (b) subject to *section 50*, advertise the practitioner's services as a medical practitioner.

Circumstances in which unregistered medical practitioners may practise medicine.

38.—A medical practitioner does not contravene *section 37(a)* if—

- (a) the practitioner is a dentist registered under the Dentists Act 1985 who only practises medicine in the course of, and for the purpose of, the lawful practise of dentistry,
- (b) the practitioner is a person registered under the Nurses Act 1985 who only practises medicine in the course of, and for the purposes of, the lawful practise of nursing or midwifery,
- (c) the practitioner is a registered pharmaceutical chemist or a registered dispensing chemist and druggist, under the Pharmacy Acts 1875 to 1977, who only practises medicine in the course of, and for the purposes of, the lawful practise of pharmacy in accordance with those Acts,
- (d) the practitioner is a person registered under the Health and Social Care Professionals Act 2005 to practise a profession designated under that Act who only practises medicine in the course of, and for the purposes of, the lawful practise of that profession,
- (e) the practitioner only practises medicine in the course of rendering first aid to a person,
- (f) the practitioner only practises medicine in the State pursuant to the provisions of *section 50*, or
- (g) the practitioner only practises medicine in any combination of any of the circumstances specified in *paragraphs (a) to (f)*.

39.—(1) Subject to *subsections (2), (3) and (4)*, the Minister may, after consulting the Council or pursuant to a recommendation of the Council, make regulations to designate for the purposes of this Act any title (including variants thereof and any combination of letters) to be used by any registered medical practitioner, or a class of registered medical practitioners, as specified in the regulations. Designated titles.

(2) The Minister shall not exercise the power under *subsection (1)* to designate for the purposes of this Act a title unless—

- (a) the Minister has given interested persons, organisations and other bodies an opportunity to make representations to the Minister concerning the proposed designation,
- (b) subject to *subsection (3)*, the Minister considers that it is appropriate and in the public interest that the title be so designated, and
- (c) the regulations made in exercise of that power provide that a person who was, immediately before the commencement of the regulations, lawfully using the title but who, on that commencement, would contravene *section 40(2)* if the person continued to use the title, may continue to use the title for the period specified in the regulations (being a period reasonable in the circumstances but, in any case, not less than 6 months) without contravening that section.

(3) The Minister shall, in considering for the purposes of *subsection (2)(b)* whether it is appropriate and in the public interest that a specific title be designated for the purposes of this Act, have regard to—

- (a) the extent to which any class of medical practitioners has, in the opinion of the Council, a defined scope of practice and applies a distinct and recognised body of knowledge,
- (b) the degree of risk to the health, safety or welfare of the public from the incompetent, unethical or impaired practice of any class of medical practitioners, and
- (c) any other factor that the Minister considers relevant.

(4) The Minister shall not make regulations under this section unless—

- (a) a draft of the proposed regulations has been laid before the Houses of the Oireachtas, and
- (b) a resolution approving the draft has been passed by each such House.

40.—(1) A registered medical practitioner shall not use a title designated for the purposes of this Act pursuant to regulations made under *section 39(1)* unless— Use of designated titles.

- (a) the regulations specify that the title may be used by any registered medical practitioner, or

- (b) the practitioner falls within the class of registered medical practitioners that the regulations specify may use the title.

(2) Subject to *section 39(2)(c)*, a person shall not use a title referred to in *subsection (1)* unless entitled by virtue of that subsection to use the title.

Offences and penalties.

41.—(1) A person is guilty of an offence if the person—

- (a) contravenes *section 37(a)* or *(b)* or *40(2)*,
- (b) falsely represents to be a registered medical practitioner, or
- (c) being a registered medical practitioner, falsely represents to be registered in a division of the register other than the division in which the person is registered.

(2) A person is guilty of an offence if the person causes or permits another person to make representations about the first-mentioned person that, if made by the first-mentioned person, would be an offence under *subsection (1)*.

(3) A person is guilty of an offence if the person, with intent to deceive, makes with regard to another person any representation that—

- (a) the first-mentioned person knows to be false, and
- (b) if made by the other person would be an offence by the other person under *subsection (1)*.

(4) A person is guilty of an offence if the person makes or causes to be made any false declaration or misrepresentation for the purpose of obtaining registration.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both,
- (b) on conviction on indictment—
- (i) in the case of a first offence, to a fine not exceeding €130,000 or to imprisonment for a term not exceeding 5 years or both,
- (ii) in the case of any subsequent offence, to a fine not exceeding €320,000 or to imprisonment for a term not exceeding 10 years or both.

(6) It shall be a defence in proceedings for an offence under *subsection (1)(a)* or *(2)* for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence.

(7) Where a person is convicted of an offence under this section, the court recording the conviction shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the prosecution the costs and expenses, measured

by the court, incurred by the prosecution in relation to the prosecution of the offence.

42.—(1) Subject to *subsection (2)*, an unregistered medical practitioner shall not be entitled to charge or recover fees or outlays for medical services provided by the practitioner in the course of practising medicine. Recovery of fees, etc.

(2) *Subsection (1)* shall not apply to—

- (a) medical services provided by an unregistered medical practitioner at a time when the practitioner was a registered medical practitioner, or
- (b) medical services provided by an unregistered medical practitioner to the extent that they were provided in any of the circumstances specified in any of *paragraphs (a) to (g)* of *section 38*.

43.—(1) The Council shall establish and maintain a register to be known as the register of medical practitioners. Register.

(2) The register shall contain the names of the medical practitioners registered, and the qualifications they are entitled to have registered, under this Act and shall consist of 4 divisions comprising—

- (a) the General Division, which shall include the names of those medical practitioners registered in that division pursuant to *section 46* and such other identifying particulars of those practitioners as the Council considers appropriate,
- (b) the Specialist Division, which shall include the names of those medical practitioners registered in that division pursuant to *section 47* and such other identifying particulars of those practitioners as the Council considers appropriate,
- (c) the Trainee Specialist Division, which shall include the names of those medical practitioners registered in that division pursuant to *section 48* or *49* and such other identifying particulars of those practitioners as the Council considers appropriate, and
- (d) the Visiting EEA Practitioners Division, which shall include the names of those medical practitioners registered in that division pursuant to *section 50* and such other identifying particulars of those practitioners as the Council considers appropriate.

(3) The register may be established and maintained in paper or electronic form.

(4) A certificate purporting to be signed by the chief executive officer, or another member of the staff of the Council authorised by the chief executive officer to give a certificate under this subsection, and to certify that on a specified day or days or during the whole of a specified period—

- (a) a person named in the certificate—

- (i) was a registered medical practitioner,
 - (ii) was a registered medical practitioner in the General Division, the Specialist Division, the Trainee Specialist Division or the Visiting EEA Practitioners Division, or
 - (iii) was not a registered medical practitioner,
- or
- (b) the registration of a medical practitioner named in the certificate—
 - (i) was suspended, or
 - (ii) was subject to the relevant conditions specified in the certificate,

shall, without proof of the signature of the person purporting to sign the certificate or that the person was the chief executive officer or another member of the staff of the Council so authorised, as the case may be, be evidence, unless the contrary is proved, of the matters stated in the certificate.

(5) The Council shall, as soon as is practicable after a medical practitioner has been registered and the appropriate fees paid, give the practitioner a certificate stating—

- (a) the practitioner's name,
- (b) the registration number attached to the practitioner's registration,
- (c) the division of the register in which the practitioner's name has been included, and
- (d) such other identifying particulars of the practitioner as the Council considers appropriate.

(6) Where relevant conditions have been attached to the registration of a practitioner, the Council shall enter in the register—

- (a) a statement that the practitioner's registration is subject to conditions, and
- (b) particulars of the conditions.

(7) A registered medical practitioner shall, as soon as may be after the practitioner has received the certificate referred to in *subsection (5)* and if it is practicable to do so, cause the certificate to be displayed—

- (a) at the principal place where the practitioner practises medicine, and
- (b) at all times during which the practitioner's registration continues and at no other time.

(8) A registered medical practitioner shall, as soon as may be after the person has received the certificate referred to in *subsection (5)*, cause the registration number stated on that certificate to be included on all medical prescriptions and all other documentation

and records, whether in paper or electronic format, relating to that practitioner's practice as a registered medical practitioner.

44.—(1) Notwithstanding the repeal of the Act of 1978 by *section 3*—

Transitional provisions applicable to register.

- (a) the General Register of Medical Practitioners, as that Register was in force immediately before the commencement of *section 3*, shall, subject to *subsection (2)*, be deemed to be the General Division until the register establishment day, and the other provisions of this Act (including the definition of "General Division" in *section 2* and the provisions relating to the inclusion in, or the deletion of, names from the register) shall apply to that Register accordingly, and
- (b) the Register of Medical Specialists, as that Register was in force immediately before the commencement of *section 3*, shall be deemed to be the Specialist Division until the register establishment day, and the other provisions of this Act (including the definition of "Specialist Division" in *section 2* and the provisions relating to the inclusion in, or the deletion of, names from the register) shall apply to that Register accordingly.

(2) Without prejudice to the operation of *subsection (3)*, a medical practitioner whose name is entered in the General Register of Medical Practitioners pursuant to—

- (a) *section 28* (as substituted by *section 6* of the Act of 2002) of the Act of 1978, or
- (b) *section 29* (as amended by *section 7* of the Act of 2002) of the Act of 1978,

may, for so long as the practitioner's name is so entered, only practise medicine pursuant to that registration subject to the same conditions that were applicable to the practise of medicine by that practitioner immediately before the commencement of *section 3*.

(3) Where the Council gives the Minister a notice in writing stating the date on which the Council will be ready to administer the register, the Minister shall publish a notice in *Iris Oifigiúil* specifying that date as the date on which the register comes into operation.

(4) The Council shall ensure that, on the register establishment day—

- (a) subject to *paragraphs (c) to (i)*, the name of a medical practitioner whose name is entered in the General Register of Medical Practitioners immediately before that day is entered in the General Division,
- (b) subject to *paragraphs (c) to (i)*, the name of a medical practitioner whose name is entered in the Register of Medical Specialists immediately before that day is entered in the Specialist Division,
- (c) the name of a medical practitioner whose name is entered in both the General Register of Medical Practitioners and the Register of Medical Specialists immediately before that day is only entered in the Specialist Division,

- (d) the name of a medical practitioner whose name is entered in the General Register of Medical Practitioners immediately before that day pursuant to section 28 (as substituted by section 6 of the Act of 2002) of the Act of 1978 is entered in the Trainee Specialist Division,
- (e) the name of a medical practitioner—
- (i) whose name is entered in the General Register of Medical Practitioners or the Register of Medical Specialists, or both, immediately before that day, and
 - (ii) who practises medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training,
- is only entered in the Trainee Specialist Division,
- (f) the name of a medical practitioner whose name is entered in the General Register of Medical Practitioners immediately before that day pursuant to section 29 (as amended by section 7 of the Act of 2002) of the Act of 1978 is only entered in the Trainee Specialist Division,
- (g) subject to *subsection (5)*, where any conditions were, immediately before that day, attached to the registration of any medical practitioner whose name is entered in the General Register of Medical Practitioners or the Register of Medical Specialists immediately before that day, there is entered in the register—
- (i) a statement that the practitioner's registration is subject to conditions, and
 - (ii) particulars of the conditions,
- (h) where immediately before that day and pursuant to Part V of the Act of 1978 the registration of the name of a medical practitioner entered in the General Register of Medical Practitioners or the Register of Medical Specialists immediately before that day had no effect for the duration of a specified period which expires on a date after the register establishment day, there is entered in the register—
- (i) a statement that the practitioner's registration has no effect for the time being, and
 - (ii) a statement as to the date on which the practitioner's registration will (barring any further sanctions being imposed under this Act on the practitioner) once again have effect,
- and
- (i) no medical practitioner is registered in more than one division of the register except that a medical practitioner who is registered in the Specialist Division may also be registered in the Trainee Specialist Division if, and only if, the practitioner is undergoing specialist training in a medical specialty other than the medical specialty in

respect of which the practitioner is registered in the Specialist Division.

(5) The Council is not required to comply with *subsection (4)(g)* in the case of conditions referred to in that subsection attached to the registration of a medical practitioner referred to in that subsection if the Council is satisfied that the division of the register in which the practitioner is registered makes those conditions redundant.

(6) Nothing in this section shall of itself operate to prevent a medical practitioner registered in the Specialist Division from practising medicine as if the practitioner were registered in the General Division.

45.—(1) A medical practitioner may make an application to the Council, accompanied by the appropriate fee or fees, to be registered.

Registration of medical practitioners — general.

(2) Subject to *subsection (3)* and *sections 46, 47, 48, 49, 50, 53 and 54(4)*, the Council shall determine an application under *subsection (1)* from a medical practitioner by registering the practitioner in that division of the register which is considered by the Council to be appropriate.

(3) Subject to *section 44(4)(i)*, the Council shall not register a medical practitioner in more than one division of the register.

(4) Subject to *subsection (5)*, the Council shall determine an application to be registered under the terms of Directive 2005/36/EC—

(a) subject to *paragraph (b)*, as soon as is possible after it receives all the documents required to determine the application, but

(b) in any event, not later than 3 months after the date on which it receives the last of those documents.

(5) Where the Council has a reasonable and justified doubt in relation to an application referred to in *subsection (4)* from a person, it may require of a competent authority of a Member State—

(a) confirmation of the authenticity of diplomas, certificates and other evidence of formal qualifications issued in the Member State and referred to in Articles 21, 23 and 50 of Directive 2005/36/EC,

(b) confirmation that the person has fulfilled the minimum training requirements specified in Article 23 or, as the case requires, Article 24 or 25 of Directive 2005/36/EC.

(6) The Council shall, in considering an application referred to in *subsection (4)* from a person, take into account any relevant training undergone or experience gained by the person in a third country.

(7) For the avoidance of doubt, it is declared that the Council shall not register a medical practitioner pursuant to *section 46, 47, 48 or 49* unless the practitioner has made an application under *subsection (1)*.

Medical practitioners to be registered in General Division.

46.—The Council shall register in the General Division a medical practitioner (other than a visiting EEA practitioner)—

- (a) who is not able to be registered—
 - (i) in the Specialist Division pursuant to *section 47*, or
 - (ii) in the Trainee Specialist Division pursuant to *section 48* or *49*,

and
- (b) who—
 - (i) has passed an examination, specified in rules made under *section 11* for the purposes of this subparagraph, for the purposes of registration in the General Division,
 - (ii) is exempted from *subparagraph (i)* by virtue of falling within a ground, specified in rules made under *section 11* for the purposes of this subparagraph, for such exemption,
 - (iii) is a national of a Member State who has been awarded a qualification in medicine or a certificate of acquired rights by a competent body or authority designated for that purpose by a Member State, pursuant to Directive 2005/36/EC, or
 - (iv) subject to rules made under *section 11* which apply to this subparagraph, has been granted a document which, in the opinion of the Council, is at least the equivalent of a certificate of experience.

Medical practitioners to be registered in Specialist Division.

47.—(1) The Council shall, in accordance with the relevant criteria specified in rules made under *section 11*, register in the Specialist Division the following medical practitioners:

- (a) every medical practitioner who has, in the opinion of the Council, completed specialist training in a medical specialty recognised by the Council under *section 89(1)*;
- (b) every medical practitioner who is granted evidence of satisfactory completion of specialist training by a body approved under *section 89(3)(a)(ii)*;
- (c) every national of the State or a Member State who possesses a degree, diploma or other evidence of formal qualification in specialised medicine recognised by the Council and awarded by a competent body or authority designated for that purpose by a Member State, pursuant to Directive 2005/36/EC;
- (d) every national of the State or a Member State who possesses a certificate of acquired rights in specialised medicine awarded by a competent body or authority designated for that purpose by a Member State, pursuant to Directive 2005/36/EC;
- (e) every national of the State or a Member State who possesses a degree, diploma, certificate or other evidence of

formal qualification in specialised medicine awarded in a third country and certified by a competent body or authority designated for that purpose by a Member State, pursuant to Directive 2005/36/EC; or

- (f) any medical practitioner who satisfies the Council that the practitioner has completed a programme of training and has acquired sufficient experience in specialised medicine of a standard considered by the Council to be adequate for the purposes of registration in the Specialist Division.

(2) The Council may, until the 5th anniversary of the commencement of this subsection, grant registration in any particular list of the Specialist Division to any medical practitioner who, being able to be registered in the General Division, satisfies the Council that the practitioner has obtained sufficient training and experience such that the practitioner should be registered as a specialist in that list.

(3) For the purposes of *subsection (2)*, the Council shall, until the 5th anniversary of the commencement of that subsection, work with the bodies approved under *section 89(3)(a)* to assist medical practitioners registered in the General Division to achieve the necessary standard for registration in the Specialist Division.

48.—(1) The Council shall register in the Trainee Specialist Division a medical practitioner who—

- (a) has been granted a certificate of experience, and
- (b) practises medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training.

Medical practitioners to be registered in Trainee Specialist Division.

(2) The Council shall register in the Trainee Specialist Division a medical practitioner who is a national of a Member State and—

- (a) has been awarded a qualification in medicine or a certificate of acquired rights by a competent body or authority designated for that purpose by a Member State, pursuant to Directive 2005/36/EC,
- (b) practises medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training, and
- (c) subject to rules made under *section 11* which apply to this paragraph, has been granted in a Member State a document which, in the opinion of the Council, is at least the equivalent of a certificate of experience.

(3) The Council shall register in the Trainee Specialist Division a medical practitioner who is a national of a Member State who does not fall within *subsection (1)* or *(2)*, or who is a national of a third country, and—

- (a) either—
- (i) has passed an examination, specified in rules made under *section 11* for the purposes of this subparagraph, for the purposes of registration in the Trainee Specialist Division, or

(ii) is exempted from *subparagraph (i)* by virtue of falling within a ground, specified in rules made under *section 11* for the purposes of this subparagraph, for such exemption,

(b) practises medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training, and

(c) subject to rules made under *section 11* which apply to this paragraph, has been granted in a third country a document which, in the opinion of the Council, is at least the equivalent of a certificate of experience.

(4) The Council shall register in the Trainee Specialist Division a medical practitioner who has been granted refugee status in the State and—

(a) either—

(i) has passed an examination, specified in rules made under *section 11* for the purposes of this subparagraph, for the purposes of registration in the Trainee Specialist Division, or

(ii) is exempted from *subparagraph (i)* by virtue of falling within a ground, specified in rules made under *section 11* for the purposes of this subparagraph, for such exemption,

(b) practises medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training, and

(c) satisfies any other requirements, specified in rules made under *section 11*, for the purposes of this paragraph.

(5) A medical practitioner who is registered in the Trainee Specialist Division but who ceases to practise medicine in an individually numbered, identifiable post which has been approved by the Council for the purpose of medical specialist training shall, as soon as is practicable after so ceasing to practise medicine but, in any case, not later than 14 days after so ceasing to practise medicine, give notice in writing to the Council of that fact.

(6) Where—

(a) the Council receives a notice under *subsection (5)* from a medical practitioner, or

(b) a medical practitioner fails to comply with *subsection (5)*,

sections 45(3) and 46 shall apply to and in relation to the Council and the practitioner.

Internship
registration in
Trainee Specialist
Division.

49.—(1) The Council shall register in the Trainee Specialist Division a medical practitioner who has completed a course of study in the State or a Member State resulting in the award of a basic medical qualification and who intends to practise medicine in an individually numbered, identifiable intern post which has been approved by the Council for the purposes of intern training.

(2) Subject to *subsection (3)*, on and after the relevant day, where a medical practitioner has completed a period of internship to the satisfaction of the Council, the Council shall grant the practitioner a certificate of experience.

(3) The Council shall not grant under *subsection (2)* a certificate of experience to a medical practitioner unless the Council is satisfied that the practitioner has, for the period or periods specified in rules made under *section 11* for the purposes of this subsection, been employed as a medical practitioner—

- (a) in a hospital, health institution, clinic, general medical practice, or other health service setting, as is specified in rules made under *section 11* for the purposes of this subsection, and
- (b) such hospital, health institution, clinic, general medical practice, or other health service setting, as the case may be, has been inspected and approved by the Council for acceptable intern training standards.

(4) Notwithstanding the repeal of the Act of 1978 by *section 3*, section 28 of the Act of 1978 shall, until the relevant day, and with all necessary modifications, apply to the grant of a certificate of experience under this Act as it applies to the grant of a certificate of experience under the Act of 1978.

(5) Where the Council gives the Minister a notice in writing stating the date on which the Council will be ready to grant certificates of experience, the Minister shall publish a notice in *Iris Oifigiúil* specifying that date as the date on which the Council shall commence to grant such certificates.

(6) In this section, “relevant day” means the date specified in the notice referred to in *subsection (5)* published in *Iris Oifigiúil* as the date on which the Council shall commence to grant certificates of experience.

50.—(1) Subject to *subsections (2) and (7)*, a medical practitioner who is a national of a Member State and lawfully established in medical practice in a Member State (by virtue of being registered or licensed to practise medicine by a competent authority of a Member State that is the last-mentioned Member State’s equivalent to the Council) may, on visiting the State—

Visiting EEA practitioners providing services on temporary and occasional basis.

- (a) practise medicine on a temporary and occasional basis without first being registered, and
- (b) advertise the practitioner’s services as a medical practitioner for the purposes of *paragraph (a)*.

(2) Subject to *subsection (4)*, a visiting EEA practitioner shall, before practising medicine in the State and thereafter on an annual basis, give to the Council a declaration in writing—

- (a) giving particulars of the medical services to be rendered and the period or periods in which the practitioner expects to render them, and
- (b) accompanied by the following documents in the case of the first such declaration (and thereafter only if there is

a material change in the situation substantiated by such documents):

- (i) proof of the nationality of the practitioner; and
- (ii) an attestation from the relevant competent authority (being the authority or body designated by the Member State concerned as competent for the purposes of Article 56 of Directive 2005/36/EC) certifying that the practitioner is—
 - (I) lawfully established in a Member State for the purpose of practising medicine, and
 - (II) not prohibited from practising medicine, even temporarily, at the moment of delivering the attestation.

(3) The Council may, in respect of a visiting EEA practitioner who has made a declaration pursuant to *subsection (2)*, request any competent authority of the Member State in which the practitioner is established as mentioned in *subsection (2)(b)(ii)(I)*, for each provision of medical services specified in the declaration, to provide any information relevant to the legality of the practitioner's establishment and the practitioner's good conduct and the absence of any disciplinary or criminal sanctions of a professional nature.

(4) A visiting EEA practitioner may give to the Council the documents referred to in *subsection (2)(b)* after the practitioner has rendered any medical services specified in a declaration referred to in *subsection (2)* given by the practitioner to the Council where the provision of those services was urgently required but, in any case, not more than 15 days after the date on which the services were provided.

(5) The temporary and occasional nature of the proposed provision of medical services by a visiting EEA practitioner shall be assessed by the Council on a case by case basis, in particular in relation to its duration, its frequency, its regularity and its continuity.

(6) Where a visiting EEA practitioner complies with the requirements of *subsection (2)*, the Council shall—

- (a) register the practitioner in the Visiting EEA Practitioners Division, and
- (b) enter in the register the particulars referred to in *subsection (2)(a)* contained in the practitioner's declaration made pursuant to *subsection (2)*.

(7) A visiting EEA practitioner shall not practise medicine in the State otherwise than in accordance with a declaration made by the practitioner under *subsection (2)(a)* or in a case of urgency.

Registration of additional qualifications.

51.—(1) A registered medical practitioner may make an application, accompanied by the appropriate fee, to the Council to have a qualification acquired by the practitioner and which falls within *subsection (2)* entered in the register in addition to the practitioner's qualifications already entered therein.

(2) The Council shall determine the qualifications, not being qualifications required for the purposes of registration, which may be entered in the register as additional qualifications.

(3) Where the Council enters in the register an additional qualification acquired by a medical practitioner, the Council shall, as soon as is practicable thereafter, give the practitioner a certificate stating that the additional qualification has been entered in the register.

52.—(1) A registered medical practitioner may make an application to the Council to have the practitioner's registration removed.

Application to have registration removed, etc.

(2) Subject to *subsection (3)*, the Council shall determine an application under *subsection (1)* from a registered medical practitioner by removing the practitioner's registration.

(3) Where the Council receives an application under *subsection (1)* from a registered medical practitioner and—

- (a) the practitioner is the subject of a complaint which has not been disposed of or otherwise dealt with under *Part 7* and, if applicable, *Parts 8* and *9*, or
- (b) the practitioner has been convicted in the State of an offence triable on indictment or has been convicted outside the State of an offence consisting of acts or omissions which would constitute an offence triable on indictment if done or made in the State,

then the Council shall not consider the application until such time as the Council has decided whether or not the practitioner's registration should be removed (including cancelled) pursuant to another provision of this Act.

(4) A medical practitioner whose registration has been removed pursuant to *subsection (2)* may make an application, accompanied by the appropriate fee, to the Council to have the practitioner's registration restored.

(5) The Council shall determine an application under *subsection (4)* from a medical practitioner by restoring the practitioner's registration.

(6) Where the Council is satisfied by medical evidence that a registered medical practitioner is suffering from an illness or condition of a permanent or terminal nature which, due to the nature of the condition, renders it impossible for the practitioner—

- (a) to practise medicine in a safe and competent manner, and
- (b) to notify the Council of the practitioner's illness or condition, as the case may be,

then the Council may remove the practitioner's registration.

53.—(1) A medical practitioner making an application for registration shall declare in the application whether the practitioner has any relevant medical disability.

Conditions attached to first registration.

(2) Where the Council is satisfied that—

- (a) a medical practitioner making an application for registration has a relevant medical disability, and
- (b) in the interests of public safety, registration should only be granted to the practitioner subject to conditions on the practising of medicine by the practitioner which take account of that disability,

the Council shall specify the conditions (in this section referred to as the “proposed conditions”) which, in the opinion of the Council, are necessary to be attached to the registration of the practitioner in those interests.

(3) Where the medical practitioner the subject of a decision under *subsection (2)* agrees in writing to the attachment of the proposed conditions to the practitioner’s registration, the Council shall register the practitioner and at the same time comply with *section 43(6)* in respect of the conditions.

Refusal of registration, etc., and appeal to Court against Council’s decision.

54.—(1) Nothing in *sections 45 to 53* shall operate to prevent the Council from refusing to register or restore the registration of a medical practitioner on the grounds of the unfitness of the practitioner to practise medicine.

(2) Where the Council makes a decision—

- (a) under *subsection (1)* to refuse to register or restore the registration of a medical practitioner,
- (b) to register a medical practitioner in a division of the register other than the division specified in the practitioner’s application under *section 45* for registration, or
- (c) to attach conditions to the registration of a medical practitioner pursuant to *section 53*,

the Council shall forthwith give notice in writing to the practitioner of the decision, the date of the decision and the reasons for the decision.

(3) A medical practitioner the subject of a decision referred to in *subsection (2)* may, not later than 3 months after the date on which the practitioner was given notice of the decision pursuant to that subsection, appeal to the Court against the decision.

(4) The Court may, on the hearing of an appeal under *subsection (3)* by a medical practitioner—

- (a) either—
 - (i) confirm the decision the subject of the appeal, or
 - (ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—
 - (I) to register or restore the registration of the practitioner in such division of the register as the Court considers appropriate and with no conditions attached to the registration, or

(II) to register or restore the registration of the practitioner—

(A) in such division of the register as the Court considers appropriate, and

(B) with such conditions attached to that registration as the Court considers appropriate,

and

(b) give the Council such directions as the Court considers appropriate and direct how the costs of the appeal are to be borne.

(5) The Council shall, on complying with a direction given by the Court under *subsection (4)*, give notice in writing to the medical practitioner concerned of the Council's compliance with the direction.

55.—(1) For the purpose of keeping the register correct, the Council shall from time to time as occasion requires correct all clerical errors in the register, remove therefrom all entries therein procured by fraud or misrepresentation, enter in the register every change which comes to the Council's knowledge in the addresses of the registered medical practitioners, and remove the registration of all registered medical practitioners whose death has been notified to, or comes to the knowledge of, the Council. Correction of register.

(2) Where the Council takes any action pursuant to *subsection (1)* for the purposes of keeping the register correct, the Council shall forthwith notify the medical practitioner concerned, or the practitioner's next of kin, as may be appropriate, of the action taken and of the reasons therefor.

(3) The Council shall take such steps as it considers necessary from time to time to ensure that the particulars entered in the register are accurate.

(4) Where any particulars entered in the register in respect of a registered medical practitioner change, the practitioner shall, as soon as is practicable but, in any case, not later than 30 days after the occurrence of the change, give notice in writing to the Council specifying the change.

(5) Where a registered medical practitioner intends to be, or has been, absent from the State for a continuous period of more than 12 months, the practitioner shall, as soon as is practicable, give notice in writing to the Council—

(a) of that fact, and

(b) of particulars of any employment that the practitioner intends to take up, or has taken up, outside the State in a medical capacity.

(6) A registered medical practitioner shall give notice in writing to the Council of any material matter which would be likely to affect the continuation of the practitioner's registration not later than 30 days after that matter comes to the knowledge of the practitioner.

(7) In *subsection (6)*, "material matter", in relation to a registered medical practitioner, includes—

- (a) the imposition of conditions on any registration or licence,
- (b) the suspension, withdrawal or removal of any registration or licence, or
- (c) the refusal to grant registration or a licence,

in relation to any regulatory body in or outside the State, and any medical capacity of the practitioner, and includes any conviction of a criminal nature whether imposed in or outside the State.

Publication of register.

56.—(1) Subject to *subsection (2)*, the Council shall ensure that the register is published in the prescribed manner.

(2) The Council need not make available for inspection or publish the residential addresses, home telephone numbers or e-mail addresses of registered medical practitioners or other similar details that, in its opinion, should, in the interests of the security of the practitioners, be protected from disclosure.

PART 7

COMPLAINTS TO PRELIMINARY PROCEEDINGS COMMITTEE CONCERNING REGISTERED MEDICAL PRACTITIONERS

Complaints concerning registered medical practitioners.

57.—(1) A person (including the Council) may make a complaint to the Preliminary Proceedings Committee concerning a registered medical practitioner on one or more than one of the grounds of—

- (a) professional misconduct,
- (b) poor professional performance,
- (c) a relevant medical disability,
- (d) a failure to comply with a relevant condition,
- (e) a failure to comply with an undertaking or to take any action specified in a consent given in response to a request under *section 67(1)*,
- (f) a contravention of a provision of this Act (including a provision of any regulations or rules made under this Act), or
- (g) a conviction in the State for an offence triable on indictment or a conviction outside the State for an offence consisting of acts or omissions that, if done or made in the State, would constitute an offence triable on indictment.

(2) A complaint may be made on the grounds of professional misconduct or poor professional performance notwithstanding that the matter to which the complaint relates occurred outside the State.

(3) The Preliminary Proceedings Committee shall make reasonable efforts to ensure that—

- (a) the complainant is kept informed of all decisions made under this Part and, if applicable, *Parts 8 and 9* by the Committee, any other committee, or the Council, in relation to the complaint concerned,

- (b) the Committee acts expeditiously, and
- (c) complaints are processed in a timely manner.

(4) The Preliminary Proceedings Committee may use the services of a person appointed under *section 58* in relation to the investigation of a complaint.

(5) Where a complaint falls within *subsection (1)(g)*, the Preliminary Proceedings Committee shall immediately refer the complaint to the Council.

(6) The Council shall consider a complaint referred to it under *subsection (5)* and—

- (a) if it is of the opinion that—
 - (i) the nature of the offence that is the subject of the complaint or the circumstances in which the offence was committed render the practitioner permanently unfit to continue to practise medicine, and
 - (ii) it is in the public interest that it take action immediately under this paragraph,

the Council shall decide under *section 71* to impose on the practitioner the sanction referred to in *section 71(f)* as if the complaint were a report referred to in *section 69(1)* of the Fitness to Practise Committee in relation to the complaint, and the other provisions of *Part 9* (except *section 72(2)*) shall apply to that decision accordingly,

- (b) in any other case, shall refer the complaint back to the Preliminary Proceedings Committee and direct the Committee to deal with the complaint as if the complaint had never been so referred.

(7) Nothing in *subsection (6)* shall be construed to—

- (a) prejudice the generality of *section 60*, or
- (b) limit the range of the sanctions which the Council may decide to impose under *section 71* on a registered medical practitioner in any case where the Council has taken the action referred to in *subsection (6)(b)*.

(8) The Preliminary Proceedings Committee shall refuse to consider or further consider a complaint in respect of a matter which occurred before the commencement of *section 3* if the matter was the subject of an application under *section 45* of the Act of 1978.

(9) A complaint is a protected disclosure under the Health Act 2004 (as amended by the *Health Act 2007*).

58.—(1) The Council—

- (a) may appoint persons (including any members of the staff of the Council other than the chief executive officer) to assist the Preliminary Proceedings Committee, and
- (b) shall determine the conditions of appointment of persons so appointed.

Persons to assist
Preliminary
Proceedings
Committee.

(2) Subject to *subsection (4)*, the chairperson of the Preliminary Proceedings Committee shall specify the functions to be performed by the persons appointed under *subsection (1)*.

(3) Without prejudice to the generality of *subsection (2)*, the functions specified under that subsection may include one or more than one of the following:

- (a) interviewing persons for the purposes of assessing the relevance or evidential value of information or documents they wish to give to the Preliminary Proceedings Committee;
- (b) interviewing persons as to the evidence they propose to give to the Preliminary Proceedings Committee;
- (c) recording, in writing or otherwise, the statements given and answers made by persons whilst being so interviewed;
- (d) reporting to the Preliminary Proceedings Committee on the results of those interviews;
- (e) requesting persons to provide the Preliminary Proceedings Committee with statements in writing concerning any matter relevant to the Committee's functions and examining statements given in response to the requests; and
- (f) providing the Preliminary Proceedings Committee with any other advice or assistance required in relation to the preparation of its reports.

(4) A person appointed under *subsection (1)*—

- (a) shall not administer oaths or take affirmations, but
- (b) may, if authorised by the Preliminary Proceedings Committee to do so, request a person interviewed as described in *subsection (3)* to sign a record of a statement made or answer given by the person during the interview.

(5) A person appointed under *subsection (1)* who makes a request referred to in *subsection (4)(b)* shall inform the person to whom the request is made of the power under *section 66* of the Fitness to Practise Committee to give a direction in relation to the statement or answer the subject of the request.

(6) The Council shall provide each person appointed under *subsection (1)* with a warrant—

- (a) identifying the person, and
- (b) specifying the functions that the person has the authority to perform by virtue of *subsection (2)* and, if applicable, *subsections (4)(b)* and *(5)*.

(7) Where a person appointed under *subsection (1)* performs a function specified in that person's warrant provided under *subsection (6)*, the person shall produce the warrant for inspection at the request of a person in respect of whom the function is performed.

59.—(1) The Preliminary Proceedings Committee shall, as soon as is practicable after receiving a complaint, consider whether there is sufficient cause to warrant further action being taken in relation to the complaint.

Consideration of
complaints by
Preliminary
Proceedings
Committee.

(2) Where the Preliminary Proceedings Committee considers that a complaint is proper to the procedures of another body or authority, including any scheme which may be in place pursuant to Part 9 of the Health Act 2004, it may inform the complainant of its view that the complaint is proper to such other procedures.

(3) The Preliminary Proceedings Committee may, by notice in writing given to a complainant, do one or more than one of the following:

- (a) require the complainant to verify, by affidavit or otherwise, anything contained in the complaint;
- (b) request the complainant to supply to the Committee, within a reasonable period specified in the notice, more information relating to the matter the subject of the complaint;
- (c) require that information requested under *paragraph (b)* be supplied by the complainant by means of a statutory declaration.

(4) The Preliminary Proceedings Committee may refuse to consider or further consider a complaint if the complainant, without reasonable excuse, does not comply with a notice under *subsection (3)* given to the complainant.

(5) The Preliminary Proceedings Committee shall give notice in writing to the registered medical practitioner the subject of a complaint of the complaint, its nature and the name of the complainant.

(6) The registered medical practitioner the subject of a complaint may supply to the Preliminary Proceedings Committee any information that the practitioner believes should be considered by the Committee or the Fitness to Practise Committee.

(7) The Preliminary Proceedings Committee may, by notice in writing given to a registered medical practitioner the subject of a complaint, require the practitioner to supply the Committee, within a reasonable period specified in the notice, with such information relating to the complaint as is specified in the notice.

(8) A registered medical practitioner shall comply with a notice under *subsection (7)* given to the practitioner.

(9) The Preliminary Proceedings Committee shall, before forming an opinion on whether there is sufficient cause to warrant further action being taken in relation to a complaint, or whether the complaint should be referred to another body or authority, consider—

- (a) any information supplied under this section concerning the complaint, and
- (b) whether the complaint is trivial or vexatious or without substance or made in bad faith.

(10) Where a complaint is withdrawn while it is being considered by the Preliminary Proceedings Committee, the Committee may, with the Council's agreement—

- (a) decide that no further action is to be taken in relation to the matter the subject of the complaint, or
- (b) proceed as if the complaint had not been withdrawn.

(11) *Subsections (1)(c), (2) (in so far as it relates to the production of records) and (9) of section 66* shall apply to and in relation to the Preliminary Proceedings Committee and the chairperson of that Committee as those subsections apply to and in relation to the Fitness to Practise Committee and the chairperson of the Fitness to Practise Committee.

If immediate suspension of registration is necessary to protect public.

60.—(1) The Council may make an *ex parte* application to the Court for an order to suspend the registration of a registered medical practitioner, whether or not the practitioner is the subject of a complaint, if the Council considers that the suspension is necessary to protect the public until steps or further steps are taken under this Part and, if applicable, *Parts 8 and 9*.

(2) An application under *subsection (1)* shall be heard otherwise than in public unless the Court considers it appropriate to hear the application in public.

(3) The Court may determine an application under *subsection (1)* by—

- (a) making any order it considers appropriate, including an order directing the Council to suspend the registration of the registered medical practitioner the subject of the application for the period specified in the order, and
- (b) giving to the Council any direction that the Court considers appropriate.

(4) The Council shall, on complying with a direction of the Court given under *subsection (3)*, give notice in writing to the medical practitioner concerned of the Council's compliance with the direction.

No further action or referral of complaint to another body or authority or to professional competence scheme.

61.—(1) Where the Preliminary Proceedings Committee is, in respect of a complaint, of the opinion that—

- (a) there is not sufficient cause to warrant further action being taken in relation to the complaint,
- (b) the complaint should be referred to another body or authority or to a professional competence scheme, or
- (c) the complaint is one that could be resolved by mediation or other informal means pursuant to guidelines prepared under *section 62(1)*,

it shall inform the Council of that opinion.

(2) The Council may, after considering an opinion referred to in *subsection (1)* in respect of a complaint—

- (a) decide that no further action is to be taken in relation to the complaint,
- (b) direct the Preliminary Proceedings Committee to refer the complainant to another body or authority,
- (c) refer the complaint to a professional competence scheme,
- (d) refer the complaint for resolution by mediation or other informal means, or
- (e) if it considers it necessary to do so, direct that further action be taken under *section 63*.

(3) Where the Council, in respect of a complaint, makes a decision referred to in *subsection (2)(a)* or a referral referred to in *subsection (2)(b)* or *(d)*, the Council shall give notice in writing of the decision or referral, as the case may be, to—

- (a) the registered medical practitioner the subject of the complaint, and
- (b) the complainant in any case where the Council is not the complainant.

62.—(1) Subject to *subsections (3)* and *(6)* and without prejudice to the generality of *section 12*, the Council may prepare guidelines for resolving complaints by mediation or other informal means.

Resolution of complaints by mediation or other informal means.

(2) Without prejudice to the generality of *subsection (1)*, guidelines prepared under that subsection may include provision for one or more than one of the following:

- (a) a determination to be made about whether a complaint can be resolved by mediation or other informal means or whether it warrants the holding of an inquiry;
- (b) the persons who may attempt to mediate or otherwise resolve the complaint;
- (c) the recording of the manner in which the complaint was resolved and of the agreement of the complainant and the registered medical practitioner the subject of the complaint to the resolution;
- (d) the steps to be taken (including notice to the complainant, the registered medical practitioner the subject of the complaint and the Preliminary Proceedings Committee) if the complaint cannot, in the opinion of the person attempting to do so, be resolved by mediation or other informal means;
- (e) any other matters that the Council considers necessary or appropriate for facilitating the resolution of the complaint by mediation or other informal means.

(3) No attempt may be made to resolve a complaint by mediation or other informal means without the consent of the complainant and the registered medical practitioner the subject of the complaint.

(4) A consent given by a registered medical practitioner the subject of a complaint for the purpose of this section shall not be taken as an admission of any allegation.

(5) No answer or statement made, in the course of attempting to resolve a complaint pursuant to the guidelines prepared under *subsection (1)*, by the complainant or the registered medical practitioner the subject of the complaint may—

- (a) be communicated to any person other than the persons participating in the attempt to resolve the complaint, or
- (b) be used in any disciplinary, civil or criminal proceedings.

(6) The resolution of a complaint pursuant to guidelines prepared under *subsection (1)* shall not include the payment by any party of any financial compensation.

(7) The Council shall ensure that guidelines prepared by it under *subsection (1)* are published in the prescribed manner.

Referral of
complaint to Fitness
to Practise
Committee.

63.—Where—

- (a) the Preliminary Proceedings Committee is of the opinion that there is a *prima facie* case to warrant further action being taken in relation to a complaint, or
- (b) the Council directs under *section 61(2)(e)* that further action be taken under this section in relation to a complaint,

the Preliminary Proceedings Committee shall refer the complaint to the Fitness to Practise Committee.

PART 8

COMPLAINTS REFERRED TO FITNESS TO PRACTISE COMMITTEE

Duty to notify
registered medical
practitioner and
complainant or
other witnesses of
referral to, and
hearing by, Fitness
to Practise
Committee.

64.—(1) The chief executive officer shall, as soon as is practicable after a complaint is referred under *section 63* to the Fitness to Practise Committee, give notice in writing to—

- (a) the registered medical practitioner the subject of the complaint of the following:
 - (i) the referral of the complaint to the Fitness to Practise Committee;
 - (ii) the nature of the matter that is to be the subject of the inquiry, including the particulars of any evidence in support of the complaint;
 - (iii) the opportunity of the practitioner, or the practitioner's representative, to be present and to defend the practitioner at the hearing; and
 - (iv) the opportunity for the practitioner to request that some or all of the hearing be held otherwise than in public if the practitioner can show reasonable and sufficient cause;

and

- (b) any witnesses who may be required to give evidence at an inquiry (including, where appropriate, the complainant) of the opportunity of the witness to request that some or all of the hearing be held otherwise than in public if the witness can show reasonable and sufficient cause.

(2) The chief executive officer shall give notice in writing to the registered medical practitioner the subject of a complaint referred to the Fitness to Practise Committee of the date, time and place of the hearing of the complaint in sufficient time for the practitioner to prepare for the hearing.

65.—(1) The Fitness to Practise Committee shall, subject to *sections 67 and 68*, hear a complaint referred to it under *section 63*. Conduct of hearing.

(2) A hearing before the Fitness to Practise Committee shall be held in public unless—

- (a) following a notification under *section 64*, the registered medical practitioner or a witness who will be required to give evidence at the inquiry or about whom personal matters may be disclosed at the inquiry requests the Committee to hold all or part of the hearing otherwise than in public, and
- (b) the Committee is satisfied that it would be appropriate in the circumstances to hold the hearing or part of the hearing otherwise than in public.

(3) At the hearing of a complaint before the Fitness to Practise Committee—

- (a) the chief executive officer, or any other person with leave of the Committee, shall present the evidence in support of the complaint,
- (b) the testimony of witnesses attending the hearing shall be given on oath, and
- (c) there shall be a full right to cross-examine witnesses and call evidence in defence and reply.

(4) Any member of the Fitness to Practise Committee may administer oaths for the purposes of an inquiry.

66.—(1) For the purposes of an inquiry, the Fitness to Practise Committee has all the powers, rights and privileges that are vested in the Court or a judge of the Court on the occasion of an action and that relate to— Powers and protections relating to witnesses and evidence.

- (a) enforcing the attendance of witnesses,
- (b) examining witnesses on oath or otherwise, and
- (c) compelling the production (including discovery) of records.

(2) Without prejudice to the generality of *subsection (1)*, a summons issued by the chairperson of the Fitness to Practise Committee

or by such other member of that Committee as is authorised by it for the purpose of the inquiry may be substituted for and is the equivalent of any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records.

(3) Subject to any rules in force under *section 11* and to the necessity of observing fair procedures, the Fitness to Practise Committee may receive evidence given—

- (a) orally before the committee,
- (b) by affidavit, or
- (c) as otherwise allowed by those rules, including by means of a live video link, a video recording, a sound recording or any other mode of transmission.

(4) A witness before the Fitness to Practise Committee is entitled to the same immunities and privileges as a witness before the Court.

(5) A person is guilty of an offence if the person—

- (a) having been duly summoned to attend before the Fitness to Practise Committee fails without reasonable excuse to attend at the time and place indicated on the summons,
- (b) while attending as a witness before the Fitness to Practise Committee refuses to—
 - (i) take an oath lawfully required by the Committee to be taken,
 - (ii) produce any record in the person's power or control that the person is lawfully required by the Committee to produce, or
 - (iii) answer any question that the person is lawfully required by the Committee to answer,

or

- (c) while attending before the Fitness to Practise Committee does anything that, if the Committee were a court of law having power to punish for contempt, would be contempt of court.

(6) A person guilty of an offence under *subsection (5)* is liable on summary conviction to a fine not exceeding €5,000.

(7) Where a person fails to comply with a summons to attend before the Fitness to Practise Committee or refuses, while attending as a witness before the Fitness to Practise Committee, to do anything referred to in *subsection (5)(b)* that the person is lawfully required by the Committee to do, the Court, on application by the Council, may—

- (a) by order require the person to attend before the Committee or to do the thing that the person refused to do, as the case may be, and
- (b) make such interim or interlocutory orders as it considers necessary for that purpose.

(8) Neither an application for an order under *subsection (7)* nor the making of such an order precludes proceedings being brought for an offence under *subsection (5)(a)* or *(b)* in relation to a person on whose failure or refusal the application or order was based.

(9) Where the Fitness to Practise Committee requires the medical records of a patient of any registered medical practitioner to be produced for the purposes of an inquiry conducted by the Committee, the records shall not be made available to the Committee unless—

- (a) the patient has consented in writing to the records being made so available, or
- (b) the Committee has directed in writing the practitioner, or any other person who has power over or control of the records, to make the records so available.

67.—(1) The Fitness to Practise Committee may, at any time after a complaint is referred to it, request the registered medical practitioner the subject of the complaint to do one or more than one of the following:

If registered medical practitioner consents to censure or remedial action, etc.

- (a) if appropriate, undertake to not repeat the conduct the subject of the complaint;
- (b) undertake to be referred to a professional competence scheme and to undertake any requirements relating to the improvement of the practitioner's competence and performance which may be imposed;
- (c) consent to undergo medical treatment;
- (d) consent to being censured by the Council.

(2) Where a registered medical practitioner refuses to give an undertaking or consent the subject of a request under *subsection (1)* by the Fitness to Practise Committee, the Committee may proceed as if the request had not been made.

68.—Where a complaint is withdrawn while it is being considered by the Fitness to Practise Committee, the Committee may, with the Council's agreement—

If complaint is withdrawn while it is being considered by Fitness to Practise Committee.

- (a) decide that no further action is to be taken in relation to the matter the subject of the complaint, or
- (b) proceed as if the complaint had not been withdrawn.

69.—(1) Subject to *subsection (2)*, the Fitness to Practise Committee shall, on completing an inquiry into a complaint, submit to the Council a report in writing on its findings.

Report to Council by Fitness to Practise Committee.

(2) The report referred to in *subsection (1)* of the Fitness to Practise Committee—

- (a) shall specify—
 - (i) the nature of the complaint that resulted in the inquiry,

- (ii) the evidence presented to the Committee, and
- (iii) the Committee's findings as to whether any allegation is proved,

and

- (b) may include such other matters relating to the registered medical practitioner the subject of the complaint as the Committee considers appropriate.

Steps to be taken by Council after receiving report.

70.—The Council shall, on receiving the report referred to in *section 69(1)* of the Fitness to Practise Committee in relation to a complaint—

- (a) if the Committee finds that no allegation against the registered medical practitioner the subject of the complaint is proved, dismiss the complaint,
- (b) if the Committee finds that any allegation against the practitioner is proved, decide under *section 71* one or more than one sanction to be imposed on the practitioner.

PART 9

IMPOSITION OF SANCTIONS ON REGISTERED MEDICAL PRACTITIONERS FOLLOWING REPORTS OF FITNESS TO PRACTISE COMMITTEE

Duty of Council to decide on appropriate sanction.

71.—Subject to *sections 57(6)(a)* and *72*, the Council shall, as soon as is practicable after receiving and considering the report referred to in *section 69(1)* of the Fitness to Practise Committee in relation to a complaint concerning a registered medical practitioner where *section 70(b)* is applicable, decide that one or more than one of the following sanctions be imposed on the practitioner:

- (a) an advice or admonishment, or a censure, in writing;
- (b) a censure in writing and a fine not exceeding €5,000;
- (c) the attachment of conditions to the practitioner's registration, including restrictions on the practice of medicine that may be engaged in by the practitioner;
- (d) the transfer of the practitioner's registration to another division of the register;
- (e) the suspension of the practitioner's registration for a specified period;
- (f) the cancellation of the practitioner's registration;
- (g) a prohibition from applying for a specified period for the restoration of the practitioner's registration.

Provisions supplementary to *section 71*.

72.—(1) The Council shall, on deciding under *section 71* to impose a sanction referred to in *section 71(b)*, *(c)*, *(d)*, *(e)* or *(g)* on a registered medical practitioner, specify—

- (a) in the case of a sanction referred to in *section 71(b)*, the amount of the fine imposed on the practitioner,
- (b) in the case of a sanction referred to in *section 71(c)*, the nature of the conditions to be attached to the practitioner's registration,
- (c) in the case of a sanction referred to in *section 71(d)*, the division of the register to which the practitioner's registration is to be transferred,
- (d) in the case of a sanction referred to in *section 71(e)*, the period of suspension of the practitioner's registration,
- (e) in the case of a sanction referred to in *section 71(g)*, the period for which the practitioner is prohibited from applying for the restoration of the practitioner's registration.

(2) The Council shall not decide under *section 71* to impose the sanction referred to in *section 71(f)* on a registered medical practitioner on the grounds of a conviction for an offence referred to in *section 57(1)(g)* unless—

- (a) in the Council's opinion, the nature of the offence or the circumstances in which it was committed render the practitioner unfit to continue to practise medicine, or
- (b) a conviction for such offence would render a person unable to be registered under this Act.

73.—(1) Subject to *subsection (2)*, the Council shall, as soon as is practicable after deciding under *section 71* to impose a sanction on a registered medical practitioner, give notice in writing to the practitioner and, in any case where the Council is not the complainant, the complainant, of—

Duty to notify registered medical practitioner of Council's sanction.

- (a) the nature of the sanction that the Council has decided to impose,
- (b) the date on which the decision was made, and
- (c) the reasons for the imposition of the sanction.

(2) Where the Council has decided to impose a sanction on a registered medical practitioner other than a sanction referred to in *section 71(a)*, the Council shall ensure that the notice under *subsection (1)* is accompanied by a copy of *section 75* (and, if *section 57(6)(a)* is applicable, a copy of *section 57*).

74.—A decision under *section 71* to impose a sanction (other than a sanction referred to in *section 71(a)*) on a registered medical practitioner shall not take effect unless the decision is confirmed by the Court on an application under *section 75* or *76*.

Confirmation by Court required before certain decisions become effective.

75.—(1) A registered medical practitioner the subject of a decision under *section 71* to impose a sanction (other than a sanction referred to in *section 71(a)*) may, not later than 21 days after the practitioner received the notice under *section 73(1)* of the decision, appeal to the Court against the decision.

Appeal to Court against Council's decision under *section 71*.

(2) The Court may, on the hearing of an appeal under *subsection (1)* by a medical practitioner, consider any evidence adduced or argument made, whether or not adduced or made to the Fitness to Practise Committee.

(3) The Court may, on the hearing of an appeal under *subsection (1)* by a medical practitioner—

(a) either—

(i) confirm the decision the subject of the application, or

(ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—

(I) to impose a different sanction on the practitioner, or

(II) to impose no sanction on the practitioner,

and

(b) give the Council such directions as the Court considers appropriate and direct how the costs of the appeal are to be borne.

(4) The Council shall, on complying with a direction given by the Court under *subsection (3)*, give notice in writing to the medical practitioner concerned of the Council's compliance with the direction.

Application to Court for confirmation of Council's decision.

76.—(1) Where a registered medical practitioner does not, within the period allowed under *section 75(1)*, appeal to the Court against a decision under *section 71* to impose a sanction (other than a sanction referred to in *section 71(a)*) on the practitioner, the Council shall, as soon as is practicable after the expiration of that period, make an application to the Court for the confirmation of the decision.

(2) An application under *subsection (1)* may be made on an *ex parte* basis.

(3) The Court shall, on the hearing of an application under *subsection (1)*, confirm the decision under *section 71* the subject of the application unless the Court sees good reason not to do so.

Evidence relating to appeal under *section 75(1)* or application under *section 76(1)* to Court.

77.—(1) The Court may, on the hearing of an appeal under *section 75(1)* or an application under *section 76(1)*, admit and have regard to the evidence of any person of good standing in the medical profession as to what constitutes professional misconduct or poor professional performance in relation to the practice of that profession.

(2) The decision of the Court on an appeal under *section 75(1)* or an application under *section 76(1)* is final except that the Council or the medical practitioner to whom the decision relates may, by leave of the Court or Supreme Court, appeal against the decision to the Supreme Court on a specified question of law.

78.—(1) The Council shall, on complying with a decision confirmed or given by the Court under *section 75* or *76* to attach conditions to the registration of a medical practitioner, give notice in writing to the practitioner of the conditions as soon as is practicable after complying with *section 43(6)* in respect of the conditions.

Duty to notify registered medical practitioner of compliance with decisions confirmed or given by Court.

(2) The Council shall, on complying with a decision confirmed or given by the Court under *section 75* or *76* to transfer a registered medical practitioner's registration to another division of the register—

- (a) transfer the practitioner's registration to the division concerned, and
- (b) give notice in writing to the practitioner of the division to which the practitioner's registration has been transferred as soon as is practicable after effecting such transfer.

(3) The Council shall, on complying with a decision confirmed or given by the Court under *section 75* or *76* to suspend for a specified period or to cancel the registration of a medical practitioner, give notice in writing to the practitioner of—

- (a) the suspension or cancellation, as the case may be, and
- (b) in the case of a suspension, the period, beginning not earlier than 7 days after the date of the Court's decision, during which the registration is to be suspended.

(4) For the avoidance of doubt, it is hereby declared that where the registration of a medical practitioner is suspended in compliance with a decision confirmed or given by the Court under *section 75* or *76* to suspend that registration for a specified period—

- (a) subject to *paragraphs (b)* and *(c)*, this Act shall apply to the practitioner during that period as if the practitioner were an unregistered medical practitioner,
- (b) *section 40* shall not apply to the practitioner during that period to the extent only that the practitioner uses a title referred to in that section which would not be a contravention of that section if the practitioner's registration were not suspended, and
- (c) if the practitioner is a visiting EEA practitioner, *section 50* shall not apply to the practitioner during that period.

79.—(1) Subject to *subsection (2)*, where a registered medical practitioner fails to pay an appropriate fee required to be paid by the practitioner notwithstanding that a reminder notice to pay the fee has been sent to the practitioner at the practitioner's registered address, the Council may, not earlier than 21 days after that reminder has been sent, remove the practitioner's registration.

Removal of registration for failure to pay fee.

(2) The Council shall not exercise its power under *subsection (1)* in the case of a registered medical practitioner the subject of a complaint which has not been disposed of or otherwise dealt with under *Part 7* and, if applicable, *Part 8* and this Part.

Restoration, etc., of registration following payment of certain fees.

80.—Where a medical practitioner’s registration has been removed pursuant only to *section 79*, the chief executive officer shall restore that registration if—

- (a) within 6 months after the date on which the appropriate fee became due, the practitioner makes an application to the Council for the restoration of the practitioner’s registration, and
- (b) the practitioner pays to the Council the appropriate fees.

Restoration of registration which has been cancelled.

81.—(1) The Council shall not restore a medical practitioner’s registration which has been cancelled except in accordance with this section.

(2) The Council may at any time decide to restore the registration of a medical practitioner whose registration has been cancelled if—

- (a) the practitioner has requested the Council to make the decision and has paid the appropriate fee required at the time of the request for restoration,
- (b) the practitioner is not prohibited under this Part from applying for restoration of the registration,
- (c) the practitioner has been given an opportunity to make an oral or written submission to the Council,
- (d) the Council has considered any submission made under *paragraph (c)* and the criteria specified in rules made under *section 11* for the restoration of registration pursuant to this section, and
- (e) after considering all relevant facts, the Council considers it appropriate to make the decision.

(3) The Council may on deciding to restore a medical practitioner’s registration, also decide to attach to the registration any conditions that the Council considers appropriate.

(4) The Council shall, on deciding to restore a medical practitioner’s registration or to attach conditions to the registration of a medical practitioner whose registration has been so restored, give notice in writing to the practitioner of the restoration and, if applicable, of the attachment of the conditions as soon as is practicable after—

- (a) restoring the registration, or
- (b) restoring the registration and complying with *section 43(6)* in respect of the conditions,

as the case may be.

(5) The Council shall, on deciding to refuse to restore a medical practitioner’s registration, give notice in writing (accompanied by a copy of *section 83*), as soon as is practicable after making the decision, to the practitioner of—

- (a) the decision,
- (b) the date on which the decision was made, and

- (c) the reasons for the decision.

82.—(1) The Council may at any time decide to remove all or any conditions, to which this section applies pursuant to *subsection (4)*, attached to the registration of a registered medical practitioner if—

Removal of conditions attached to registration.

- (a) the practitioner has requested the Council to make the decision,
- (b) the practitioner has been given an opportunity to make an oral or written submission to the Council,
- (c) the Council has considered any submission made under *paragraph (b)* and any other relevant information that has come to its attention, and
- (d) after considering all relevant facts, the Council considers it appropriate to make the decision.

(2) The Council shall, on deciding to remove any or all conditions referred to in *subsection (1)* attached to the registration of a registered medical practitioner, give notice in writing to the practitioner of their removal.

(3) The Council shall, on deciding to refuse to remove any condition referred to in *subsection (1)* attached to the registration of a medical practitioner, give notice in writing (accompanied by a copy of *section 83*), as soon as is practicable after making the decision, to the practitioner of—

- (a) the decision,
- (b) the date on which the decision was made, and
- (c) the reasons for the decision.

(4) This section applies to any conditions attached to the registration of a medical practitioner pursuant to—

- (a) a decision referred to in *section 78(1)*, or
- (b) *section 81(3)*.

83.—(1) A medical practitioner the subject of a decision made by the Council—

Appeal to Court against Council's decision under *section 81* or *82*.

- (a) under *section 81* to refuse to restore the practitioner's registration or to attach conditions to the practitioner's registration, or
- (b) under *section 82* to refuse to remove a condition to which that section applies attached to the person's registration,

may, not later than 21 days after the practitioner received notice of the decision under *section 81(5)* or *82(3)*, as the case may be, appeal to the Court against the decision.

(2) The Court may, on the hearing of an appeal under *subsection (1)* by a medical practitioner, consider any evidence adduced or argument made, whether or not adduced or made to the Council.

(3) The Court may, on the hearing of an appeal under *subsection (1)* by a medical practitioner—

(a) either—

- (i) confirm the decision the subject of the appeal, or
- (ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—

(I) to restore the registration of the practitioner in such division of the register as the Court considers appropriate and—

(A) with no conditions attached to the registration, or

(B) with such conditions attached to the registration as the Court considers appropriate,

or

(II) to remove the conditions attached to the practitioner's registration or replace conditions attached to the registration of the practitioner with such other conditions as the Court considers appropriate,

and

(b) give the Council such directions as the Court considers appropriate and direct how the costs of the appeal are to be borne.

(4) The Council shall, on complying with any direction given by Court under *subsection (3)*, give notice in writing to the medical practitioner concerned of the Council's compliance with the direction.

Notification to Minister, Health Service Executive and employer of certain matters relating to sanctions.

84.—(1) The Council shall give notice in writing to the Minister and the Health Service Executive as soon as is practicable after any of the following measures take effect under this Part:

- (a) the cancellation of a medical practitioner's registration;
- (b) the restoration of a medical practitioner's registration;
- (c) the removal of a medical practitioner's registration;
- (d) the suspension of a medical practitioner's registration;
- (e) the termination of the period during which a medical practitioner's registration is suspended;
- (f) the transfer of a medical practitioner's registration to another division of the register;
- (g) the attachment of conditions to a medical practitioner's registration;
- (h) the removal of conditions attached under this Part to the registration of a medical practitioner's registration;

- (i) the prohibiting of a medical practitioner from applying for a specified period for the restoration of the practitioner's registration;
- (j) the censuring and fining of a registered medical practitioner;
- (k) the censuring of a registered medical practitioner.

(2) Where it comes to the Council's attention that, under the law of a state other than the State, a measure corresponding to one referred to in any of *paragraphs (a) to (k) of subsection (1)* has been taken in relation to a registered medical practitioner, the Council shall, as soon as is practicable, give notice in writing to the Minister and the Health Service Executive of the measure.

(3) The Council shall give notice in writing to an employer (other than the Health Service Executive) where—

- (a) it comes to the Council's attention that any measure referred to in *subsection (1) or (2)* has been taken in relation to a registered medical practitioner employed by the employer, and
- (b) the employer's name is known to the Council.

(4) Where—

- (a) it comes to the Council's attention that any measure referred to in *subsection (1) or (2)* has been taken in relation to a registered medical practitioner, and
- (b) the Council has reason to believe that—
 - (i) the practitioner is registered in another jurisdiction, and
 - (ii) those measures may not have come to the attention of the body duly authorised to perform functions in that jurisdiction that correspond to the functions of the Council,

the Council shall give notice in writing to that body of those measures.

85.—The Council shall, if satisfied that it is in the public interest to do so—

Information Council may publish in public interest.

- (a) advise the public when—
 - (i) any measure referred to in *section 84(1)* takes effect under this Part in respect of a medical practitioner,
 - (ii) any measure referred to in *section 84(2)* in respect of a medical practitioner comes to the knowledge of the Council,
- (b) after consultation with the Fitness to Practise Committee, publish a transcript of all or any part of the proceedings of the Committee at an inquiry, whether with or without any information which would enable all, or any one or

more than one, of the parties to the proceedings to be identified.

PART 10

EDUCATION AND TRAINING

Duties of Health Service Executive in relation to medical and dental education and training.

86.—(1) In this section—

“dental training bodies” means the bodies approved by the Dental Council under section 37(3) of the Dentists Act 1985;

“medical training bodies” means the bodies approved by the Council under *section 89(3)(a)(ii)*.

(2) The Health Service Executive, in accordance with section 7(4)(b) of the Health Act 2004, shall, with respect to basic medical education and training, facilitate the education and training of students training to be registered medical practitioners.

(3) The Health Service Executive shall, with respect to specialist medical and dental education and training, have the following responsibilities:

- (a) to promote the development of specialist medical and dental education and training and to co-ordinate such developments in co-operation with the Council, the Dental Council, the medical training bodies and the dental training bodies;
- (b) in co-operation with the medical training bodies and the dental training bodies and after consultation with the Higher Education Authority, to undertake appropriate medical and dental practitioner workforce planning for the purpose of meeting specialist medical and dental staffing and training needs of the health service on an ongoing basis;
- (c) to assess on an annual basis the number of intern training posts and the number and type of specialist medical training posts required by the health service and, pursuant to that assessment, to put proposals to the Council in relation to the Council’s functions under *section 88(3)(a)* and *(4)(a)*;
- (d) to assess on an annual basis the need for and appropriateness of medical posts which—
 - (i) do not fall within *paragraph (c)*, and
 - (ii) are not posts for consultants,
 and to publish the results of that assessment; and
- (e) to advise the Minister, after consultation with the medical training bodies and the dental training bodies and with such other bodies as it may consider appropriate, on medical and dental education and on all other matters, including financial matters, relating to the development and co-ordination of specialist medical and dental education and training.

(4) The Minister may, by notice in writing given to the Health Service Executive, require the Executive to provide such information in relation to the performance of the Executive's functions under this Act as is specified in the notice and within the period specified in the notice (being a period reasonable in the circumstances).

(5) The Health Service Executive shall comply with a notice given to it under *subsection (4)* except to the extent that it is prohibited from doing so by another provision of this Act.

(6) Specialist medical and dental education and training shall, for the purposes of sections 38 and 39 of the Health Act 2004, be deemed to be a health and personal social service within the meaning of section 2 of that Act.

(7) The Health Service Executive shall carry out such functions, other than functions assigned to it by this Act, as may be assigned to it from time to time by the Minister following consultation with it in relation to medical and dental education and training.

87.—(1) The Council is designated, in accordance with Article 56 of Directive 2005/36/EC, as the competent authority to award or receive evidence of formal qualifications in medicine and specialised medicine and other documents or information, to receive applications and take the decisions referred to in the Directive as they relate to medical practitioners.

Functions of Council in relation to Directives of European Union relating to medical education and training.

(2) The Council shall ensure that basic medical qualifications granted in the State by bodies approved under *section 88(2)(a)(i)(II)* satisfy the requirements of Article 24 of Directive 2005/36/EC in relation to basic medical training.

(3) The Council shall ensure that the requirements relating to education and training in specialised medicine in the State satisfy the minimum standards specified in Directive 2005/36/EC relating to such education and training and within the period, if any, specified in the Directive.

(4) The Council shall ensure the confidentiality of information received by it under Article 50.1 of Directive 2005/36/EC.

(5) The Council shall give notice to the Minister forthwith of any administrative measure implemented by it for the purposes of this section.

88.—(1) The Council shall—

- (a) set and publish in the prescribed manner the standards of medical education and training for basic and specialist medical qualifications, and
- (b) monitor adherence to the standards referred to in *paragraph (a)*.

Duties of Council in relation to medical education and training.

(2) The Council shall, in relation to basic medical education—

- (a) subject to *section 87(2)*, after it has consulted with the Minister for Education and Science, and in accordance with the relevant criteria specified in rules made under *section 11*—

- (i) approve, approve subject to conditions attached to the approval of, amend or remove conditions attached to the approval of, or withdraw the approval of—
 - (I) programmes of basic medical education and training, and
 - (II) the bodies which may deliver those programmes,
 - (ii) refuse to approve a body as a body which may deliver those programmes,
 - (b) prepare and publish in the prescribed manner guidelines on curriculum issues and content to be included in programmes approved under *paragraph (a)*,
 - (c) prepare and publish in the prescribed manner standards required for the award of a basic medical qualification pursuant to programmes approved under *paragraph (a)*,
 - (d) monitor adherence to the criteria referred to in *paragraph (a)*, the guidelines referred to in *paragraph (b)* and the standards referred to in *paragraph (c)*,
 - (e) inspect bodies approved under *paragraph (a)* in order to ensure ongoing compliance with the criteria referred to in that paragraph, the guidelines referred to in *paragraph (b)* and the standards referred to in *paragraph (c)*,
 - (f) inspect places in the State where training is provided to persons undertaking training for a basic medical qualification, for the purposes of medical education and training standards,
 - (g) following inspections under *paragraph (f)*, issue recommendations to the management of any place referred to in that paragraph on any improvements in medical education and training standards which may be required or any other issues arising from such inspections,
 - (h) publish in the prescribed manner details of all inspections carried out under this subsection,
 - (i) prepare and publish in the prescribed manner guidelines for bodies approved under *paragraph (a)* on ethical standards and behaviour appropriate for medical students pursuing a course of study leading to a basic medical qualification pursuant to programmes approved under *paragraph (a)*, and
 - (j) advise the Minister and the Minister for Education and Science on any issues relating to its functions under this subsection.
- (3) The Council shall, in relation to medical education and training for interns—
- (a) on foot of proposals received from the Health Service Executive under *section 86(3)(c)*, and in accordance with relevant criteria specified in rules made under *section 11*, specify the number of intern training posts it approves for the purposes of intern training,

- (b) prepare and publish in the prescribed manner guidelines on medical education and training for interns,
 - (c) advise the Health Service Executive in regard to the minimum entry criteria for posts approved under *paragraph (a)* in consultation with bodies approved under *section 89(3)(a)(ii)*,
 - (d) specify and publish in the prescribed manner the standards for training and experience required for the granting of a certificate of experience,
 - (e) inspect places with posts approved under *paragraph (a)* for the purposes of monitoring adherence to guidelines referred to in *paragraph (b)* and the standards referred to in *paragraph (d)*,
 - (f) following inspections under *paragraph (e)*, issue recommendations to the management of any place referred to in that paragraph on any improvements which may be required or any other issues arising from such inspections,
 - (g) following prior consultation with the Minister, the Health Service Executive and the management of any place referred to in *paragraph (e)*, and having regard to the views expressed in that consultation, remove approval from such place for the purposes of internship training where the Council considers that the guidelines referred to in *paragraph (b)* or the standards referred to in *paragraph (d)* are no longer being adhered to in respect of that place,
 - (h) publish in the prescribed manner details of all inspections carried out under this subsection, and
 - (i) advise the Minister on any issues relating to its functions under this subsection.
- (4) The Council shall, in relation to specialist medical education and training—
- (a) on foot of proposals received from the Health Service Executive under *section 86(3)(c)*, and in accordance with the relevant criteria specified in rules made under *section 11*, specify the number and type of posts it approves for the purposes of specialist medical education and training,
 - (b) prepare and publish in the prescribed manner guidelines on specialist medical education and training,
 - (c) advise the Health Service Executive in regard to the minimum entry criteria for posts approved under *paragraph (a)* in consultation with bodies approved under *section 89(3)(a)(ii)*,
 - (d) specify and publish in the prescribed manner the standards for training and experience required for the granting of a specialist medical qualification,
 - (e) inspect places with posts approved under *paragraph (a)* for the purposes of monitoring adherence to guidelines

referred to in *paragraph (b)* and the standards referred to in *paragraph (d)*,

- (f) following inspections under *paragraph (e)*, issue recommendations to the management of any place referred to in that paragraph on any improvements which may be required or any other issues arising from such inspections,
- (g) following prior consultation with the Minister, the Health Service Executive and the management of any place referred to in *paragraph (e)*, and having regard to the views expressed in that consultation, remove approval from such place for the purposes of specialist training where the Council considers that the guidelines referred to in *paragraph (b)* or the standards referred to in *paragraph (d)* are no longer being adhered to in respect of that place,
- (h) publish in the prescribed manner details of all inspections carried out under this subsection, and
- (i) advise the Minister on issues relating to its functions under this subsection.

(5) Where the Council makes a decision under *subsection (2)(a)(i)(II)* or *(ii)*, it shall give notice in writing (accompanied by a copy of *section 90*), as soon as is practicable after making the decision, to the body the subject of the decision of—

- (a) the decision,
- (b) the date on which the decision was made, and
- (c) the reasons for the decision.

(6) Notwithstanding the repeal of the Act of 1978 by *section 3*—

- (a) a programme of basic medical education and training leading to the qualification of—
 - (i) Bachelor of Medicine and Bachelor of Surgery of the National University of Ireland,
 - (ii) Bachelor of Medicine and Bachelor of Surgery of the University of Dublin, or
 - (iii) Licentiate of the Royal College of Physicians of Ireland and Licentiate of the Royal College of Surgeons in Ireland,

shall be deemed to be a programme of basic medical education and training approved under *subsection (2)(a)(i)(I)* as if, on the commencement of *section 3*, the Council had approved such programme under that subsection, and the other provisions of this Act (including *subsection (7)*) shall be construed accordingly,

- (b) a body which, immediately before the commencement of *section 3*, delivered a programme of basic medical education and training leading to a qualification referred to in *paragraph (a)* shall be deemed to be a body approved

under *subsection (2)(a)(i)(II)* in respect of such programme as if, on that commencement, the Council had so approved the body, and the other provisions of this Act (including *section 17(1)(a)*) shall be construed accordingly.

(7) The Council may recognise a degree, diploma or other qualification awarded in a third country to be at least the equivalent of a qualification awarded following the satisfactory completion of a programme of basic medical education and training approved under *subsection (2)(a)(i)(I)*.

(8) The Council shall prepare and publish in the prescribed manner guidelines on ethical considerations to be taken into account in respect of the acceptance or otherwise of any non-Exchequer funding offered or provided in relation to medical education and training for basic and specialist medical qualifications.

(9) The Council shall, in consultation with the Dental Council, the Health Service Executive and such other appropriate bodies as the Council thinks fit, arrange for the provision of career information to registered medical practitioners and registered dentists.

89.—(1) Subject to *subsection (5)*, the Council may, with the consent of the Minister, determine the medical specialties which it recognises for the purpose of its functions under this Act.

Training bodies and qualifications for the purposes of the Specialist and Trainee Specialist Divisions.

(2) The Council shall specify, in relation to each medical specialty recognised under *subsection (1)*, the titles and designations of qualifications in specialised medicine granted in the State which may be required to enable a medical practitioner to secure registration in the Specialist Division in respect of that specialty.

(3) Subject to *section 87(3)*, the Council shall, in relation to each medical specialty recognised under *subsection (1)*, with the consent of the Minister and in accordance with the relevant criteria specified in rules made under *section 11*—

- (a) approve, approve subject to conditions attached to the approval of, amend or remove conditions attached to the approval of, or withdraw the approval of—
 - (i) programmes of specialist training in relation to that medical specialty, and
 - (ii) the bodies which may grant evidence of the satisfactory completion of specialist training in relation to that medical specialty,
- (b) refuse to approve a body as a body which may grant evidence of the satisfactory completion of specialist training in relation to that medical specialty.

(4) Where the Council withdraws an approval under *subsection (3)* from a body referred to in that subsection, it shall, where appropriate, make every effort to approve under that subsection an alternate body.

(5) The medical specialties recognised under *subsection (1)* shall include such medical specialties as may be designated as applying to the State in any Directive adopted by the Council of the European Communities relating to specialised medicine.

(6) Where the Council makes a decision under *subsection (3)(a)* or *(b)*, it shall give notice in writing (accompanied by a copy of *section 90*), as soon as is practicable after making the decision, to the body the subject of the decision of—

- (a) the decision,
- (b) the date on which the decision was made, and
- (c) the reasons for the decision.

(7) Notwithstanding the repeal of the Act of 1978 by *section 3*—

- (a) a specialty which was, immediately before the commencement of *section 3*, recognised under *section 38(1)* of that Act shall be deemed to be a medical specialty recognised under *subsection (1)*—
 - (i) as if, on that commencement, the Council had recognised it as a medical specialty under that subsection, and
 - (ii) on the same conditions as the specialty was recognised under *section 38(1)* of that Act immediately before that commencement,

and the other provisions of this Act shall be construed accordingly, and

- (b) a body which was, immediately before the commencement of *section 3*, recognised under *section 38(3)* of that Act for the purpose of granting evidence of satisfactory completion of specialist training in relation to a specialty recognised under *section 38(1)* of that Act and which falls within *paragraph (a)* shall be deemed to be a body approved under *subsection (3)(a)(ii)* for the purposes of granting evidence of the satisfactory completion of specialist training in relation to that medical specialty—
 - (i) as if, on that commencement, the Council had approved it as such a body under that subsection, and
 - (ii) on the same conditions as the body was approved under *section 38(3)* of that Act immediately before that commencement,

and the other provisions of this Act shall be construed accordingly.

Appeal to Court against Council's decision under *section 88(2)(a)(i)(II)* or *88(2)(a)(i)(II)* or *(ii)* or *89(3)(a)(ii)* or *(b)*.

90.—(1) A body the subject of a decision made by the Council under *section 88(2)(a)(i)(II)* or *(ii)* or *89(3)(a)(ii)* or *(b)* may, not later than 21 days after the body received notice of the decision under *section 88(5)* or *89(6)*, as the case may be, appeal to the Court against the decision.

(2) The Court may, on the hearing of an appeal under *subsection (1)* by a body, consider any evidence adduced or argument made, whether adduced or made to the Council.

(3) The Court may, on the hearing of an appeal under *subsection (1)* by a body—

- (a) either—
 - (i) confirm the decision the subject of the appeal, or
 - (ii) cancel that decision and replace it with such other decision as the Court considers appropriate,
 and
- (b) give the Council such direction as the Court considers appropriate and direct how the costs of the appeal are to be borne.

(4) The Council shall, on complying with any direction given by the Court under *subsection (3)*, give notice in writing to the body concerned of the Council's compliance with the direction.

PART 11

MAINTENANCE OF PROFESSIONAL COMPETENCE

91.—(1) It shall be the duty of the Council to satisfy itself as to the ongoing maintenance of the professional competence of registered medical practitioners.

Duty of Council in relation to maintenance of professional competence of registered medical practitioners.

(2) The Council shall, not later than the 1st anniversary of the commencement of this section, or such longer period as the Minister permits in writing at the request of the Council, develop, establish and operate one or more than one scheme for the purposes of performing its duty under *subsection (1)*.

(3) The Council shall, in respect of a professional competence scheme—

- (a) review the operation of the scheme periodically, and
- (b) may, following such a review, make recommendations to the Minister as to the steps that, in the opinion of the Council, may need to be taken to improve the operation of the scheme.

(4) The Council may, with the consent of the Minister and in accordance with the relevant criteria specified in rules made under *section 11*—

- (a) recognise, recognise subject to conditions attached to the recognition of, amend or remove conditions attached to the recognition of, or withdraw the recognition of, a body approved under *section 88(2)(a)(i)(II)* or *89(3)(a)(ii)* with which the Council may make and carry out an arrangement with for the purposes of assisting the Council to perform its duty under *subsection (1)*, or
- (b) refuse to recognise a body approved under *section 88(2)(a)(i)(II)* or *89(3)(a)(ii)* as a body with which the Council may make and carry out an arrangement with for those purposes.

(5) The Council shall monitor and assess the performance of bodies recognised under *subsection (4)* based on the criteria referred to in that subsection.

(6) Where, arising from the performance of its duty under *subsection (1)*, the Council considers that a registered medical practitioner—

- (a) who, being required under *section 94(2)* to co-operate with any requirements imposed on the practitioner in rules made under *section 11*, has refused to so co-operate, has failed to so co-operate or has ceased to so co-operate,
- (b) has contravened *section 94(4)*,
- (c) may pose an immediate risk of harm to the public, or
- (d) may have committed a serious breach of its guidance on ethical standards and behaviour,

then the Council shall forthwith make a complaint.

(7) Where, arising from the performance of its duty under *subsection (1)*, the Council considers that a medical practitioner registered in the Specialist Division or the Trainee Specialist Division has been given every reasonable opportunity by the Council to improve the practitioner's professional performance but whose professional competence is found by the Council to continue to be below the standards of competence that can reasonably be expected for continued registration in the Specialist Division, or the Trainee Specialist Division, as the case may be then the Council may make a complaint.

(8) Where the Council makes a decision under *subsection (4)(a)* or *(b)*, it shall give notice in writing (accompanied by a copy of *section 92*), as soon as is practicable after making the decision, to the body the subject of the decision of—

- (a) the decision,
- (b) the date on which the decision was made, and
- (c) the reasons for the decision.

Appeal to Court against Council's decision under *section 91(4)(a)* or *(b)*.

92.—(1) A body the subject of a decision made by the Council under *section 91(4)(a)* or *(b)* may, not later than 21 days after the body received notice of the decision under *section 91(8)*, appeal to the Court against the decision.

(2) The Court may, on the hearing of an appeal under *subsection (1)* by a body, consider any evidence adduced or argument made, whether adduced or made to the Council.

(3) The Court may, on the hearing of an appeal under *subsection (1)* by a body—

- (a) either—
 - (i) confirm the decision the subject of the appeal, or
 - (ii) cancel that decision and replace it with such other decision as the Court considers appropriate,

and

- (b) give the Council such direction as the Court considers appropriate and direct how the costs of the appeal are to be borne.

(4) The Council shall, on complying with any direction given by the Court under *subsection (3)*, give notice in writing to the body concerned of the Council's compliance with the direction.

93.—(1) The Health Service Executive shall facilitate the maintenance of professional competence of registered medical practitioners pursuant to a professional competence scheme applicable to the practitioners concerned.

Duty of Health Service Executive and other employers in relation to the maintenance of professional competence of registered medical practitioners.

(2) An employer of a registered medical practitioner, not being the Health Service Executive, shall facilitate the maintenance of professional competence of registered medical practitioners pursuant to a professional competence scheme applicable to the practitioners concerned.

94.—(1) A registered medical practitioner shall maintain the practitioner's professional competence on an ongoing basis pursuant to a professional competence scheme applicable to that practitioner.

Duty of registered medical practitioners to maintain professional competence.

(2) A registered medical practitioner shall co-operate with any requirements imposed on the practitioner in rules made under *section 11*.

(3) The Council may, by notice in writing given to a registered medical practitioner whose registration does not fall within *subsection (2)* but who has given an undertaking pursuant to *section 67(1)*, require the practitioner to co-operate with such an undertaking to the satisfaction of the Council.

(4) A medical practitioner shall comply with a notice under *subsection (3)* given to the practitioner.

95.—(1) Subject to *subsections (2) and (4)*, a person who acquires any information by virtue of the person's performance or assistance in the performance of functions under this Act relating to any professional competence scheme shall preserve confidentiality with regard to the information and, without prejudice to the foregoing, shall not—

Confidentiality.

- (a) disclose the information to another person except where the disclosure is necessary for such performance or assistance, or
- (b) cause or permit any other person to have access to the information except where the access is necessary for that other person to perform or assist in the performance of functions under this Act (including the functions of any *section 20(2)* committee).

(2) Notwithstanding *subsection (1)*, the Council may disclose information—

- (a) in the form of a summary compiled from information provided in relation to registered medical practitioners participating in a competence scheme if the summary is so

compiled as to prevent particulars relating to the identity of any such practitioners being ascertained from it,

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or any investigation in the State, or

(c) in connection with any civil proceedings to which the Council is a party.

(3) The Freedom of Information Acts 1997 and 2003 shall not apply to a record (within the meaning of those Acts) relating to any professional competence scheme.

(4) Nothing in this section shall be construed as prohibiting a disclosure of information pursuant to a court order.

(5) A person who contravenes *subsection (1)* shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or both.

PART 12

DISSOLUTION OF POSTGRADUATE MEDICAL AND DENTAL BOARD

Interpretation of *Part 12*.

96.—In this Part—

“Postgraduate Medical and Dental Board” means the board established under section 39 of the Act of 1978;

“transfer day” means the day appointed by the Minister under *section 97(1)* as the transfer day.

Transfer day and dissolution of Board.

97.—(1) The Minister shall, by order, appoint a day as the transfer day for the purposes of this Part.

(2) The Postgraduate Medical and Dental Board is, by this Act, dissolved on the transfer day.

(3) References to the Postgraduate Medical and Dental Board in any Act of the Oireachtas passed before the transfer day or in any instrument made before the transfer day under an Act of the Oireachtas are to be read on and after that day as references to the Health Service Executive.

Minister may require information from Board.

98.—(1) The Minister, may, by notice in writing given to the Postgraduate Medical and Dental Board, require the Board to provide to the Minister, either on or before the transfer day, such information in relation to the performance of the Board’s functions as is specified in the notice.

(2) The Postgraduate Medical and Dental Board shall comply with a notice given to it under *subsection (1)* except to the extent that it is prohibited from doing so by another provision of the Act of 1978.

Transfer of staff.

99.—(1) Every person who, immediately before the transfer day, was an officer or servant of the Postgraduate Medical and Dental

Board is transferred to, and becomes a member of, the Health Service Executive's staff on the transfer day.

(2) Except in accordance with a collective agreement negotiated with a recognised trade union or staff association, a person transferred under this section is entitled, while in the Health Service Executive's service, to be employed on conditions of employment no less favourable than those to which that person was entitled immediately before the transfer day.

(3) The previous service of a person transferred under this section with the Postgraduate Medical and Dental Board is to be counted as service for the purposes of, but subject to any exceptions or exclusions in—

- (a) the Redundancy Payments Acts 1967 to 2003,
- (b) the Protection of Employees (Part-Time Work) Act 2001,
- (c) the Organisation of Working Time Act 1997,
- (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005,
- (e) the Unfair Dismissals Acts 1977 to 2005,
- (f) the Carer's Leave Act 2001,
- (g) the Parental Leave Acts 1998 and 2006.

(4) Any superannuation benefits awarded by the Executive to or in respect of a person transferred under this section, and the conditions relating to those benefits, are to be no less favourable than those applicable to or in respect of that person immediately before the transfer day.

(5) In this section—

“conditions of employment” includes conditions in respect of remuneration and related matters;

“recognised trade union or staff association” means a trade union or staff association recognised by the Health Service Executive for the purposes of negotiations that are concerned with the conditions of employment or working conditions of employees.

100.—(1) With effect from the transfer day, the following are transferred to the Health Service Executive:

Transfer of property and liabilities to Health Service Executive.

- (a) all property (real and personal) and rights held or enjoyed immediately before that day by the Postgraduate Medical and Dental Board;
- (b) all liabilities incurred before that day by that Board that had not been discharged before that day.

(2) Without any further conveyance, transfer or assignment—

- (a) property which falls within *subsection (1)* vests, on the transfer day, in the Health Service Executive for all the estate, term or interest for which, immediately before that day, it was vested in the Postgraduate Medical and

Dental Board, but subject to all trusts and equities affecting the property and capable of being performed,

- (b) rights which fall within *subsection (1)* are, on and after the transfer day, rights of the Health Service Executive, and
- (c) liabilities which fall within *subsection (1)* are, on and after the transfer day, liabilities of the Health Service Executive.

(3) All monies, stocks, shares and securities transferred to the Health Service Executive by this section that, immediately before the transfer day, are in the name of the Postgraduate Medical and Dental Board, shall, at the request of the Executive, be transferred into its name.

(4) Every right and liability transferred to the Health Service Executive by this section may, on and after the transfer day, be sued on, recovered or enforced by or against the Executive in its own name and it shall not be necessary for it to give notice of the transfer to the person whose right or liability is transferred by this section.

Preservation of certain contracts and adaptation of references.

101.—Every contract or agreement made between the Postgraduate Medical and Dental Board (or any trustee or agent acting on its behalf) and any other person, and in force immediately before the transfer day—

- (a) continues in force on and after that day,
- (b) is to be read and have effect as if the name of the Health Service Executive were substituted in the contract or agreement, as the case may be, for that of the Postgraduate Medical and Dental Board or, as the case may be, any trustee or agent acting on its behalf, and
- (c) is enforceable against the Health Service Executive.

Pending legal proceedings.

102.—If, immediately before the transfer day, any legal proceedings to which the Postgraduate Medical and Dental Board is a party are pending, the Health Service Executive's name shall be substituted in the proceedings for the name of that Board, and the proceedings shall not abate because of the substitution.

Preparation of accounts.

103.—(1) The Health Service Executive shall, as soon as is practicable after the transfer day, prepare, in such form as may be approved by the Minister, all proper and usual accounts of money received or expended by the Postgraduate Medical and Dental Board in the accounting year, or the part of an accounting year, of that Board ending immediately before the transfer day.

(2) The Health Service Executive shall submit accounts prepared under *subsection (1)* to the Comptroller and Auditor General for audit.

(3) The Health Service Executive shall, after the audit by the Comptroller and Auditor General of the accounts prepared under *subsection (1)*, present to the Minister the audited accounts together with the Comptroller and Auditor General's report.

(4) The Minister shall ensure that, as soon as possible after the audited accounts and the report referred to in *subsection (3)* are presented to the Minister, copies of them are laid before each House of the Oireachtas.

PART 13

MISCELLANEOUS

104.—(1) In any action for defamation, the following proceedings, reports and communications are absolutely privileged—

- (a) proceedings of a Preliminary Proceedings Committee or of the Fitness to Practise Committee under any of *Parts 7, 8 and 9*,
- (b) communications by the Fitness to Practise Committee under *section 67*,
- (c) reports of the Fitness to Practise Committee under *section 69*,
- (d) communications by the Council under *section 70*, and
- (e) any other communication made by—
 - (i) a committee pursuant to any of *Parts 7, 8 and 9* in performing a function of the committee, or
 - (ii) the Council pursuant to any of *Parts 7, 8 and 9* in performing a function of the Council.

(2) Subject to *subsection (4)*, a document which relates to a medical practitioner's participation in a professional competence scheme, to the extent that it does so relate, shall not be admitted in evidence (whether by discovery or otherwise) in any civil proceedings except with the consent of the medical practitioner (in this section referred to as the "relevant consent").

(3) No witness in any civil proceedings shall be obliged or permitted to disclose, in the absence of the relevant consent—

- (a) subject to *subsection (4)*, the contents of a document which relates to a medical practitioner's participation in a professional competence scheme to the extent that it does so relate, or
- (b) subject to *subsection (5)*, any deliberation, in relation to a medical practitioner's participation in a professional competence scheme, of a person.

(4) Neither *subsection (1)* nor *subsection (3)(a)* shall apply in the case of a document the subject of an allegation that it has not been made in good faith.

(5) *Subsection (3)(b)* shall not apply in the case of a deliberation the subject of an allegation that it has not been made in good faith.

Investigation.

105.—(1) The Council shall, at the request of the Minister, or may, of its own initiative or upon a complaint made by a member of the public, investigate any case of an individual—

- (a) who, not being a registered medical practitioner, is suspected of practising or having practised medicine in contravention of a provision of this Act, or
- (b) who, not being a registered medical practitioner, is suspected of claiming or having claimed to be a registered medical practitioner in contravention of a provision of this Act.

(2) Where the Council has carried out an investigation under *subsection (1)*, the Council shall, if it has reasonable grounds to believe that the individual the subject of the investigation—

- (a) is not a registered medical practitioner, and
- (b) either—
 - (i) is practising or has practised medicine in contravention of a provision of this Act, or
 - (ii) is claiming or has claimed to be a registered medical practitioner,

then the Council shall report the matter forthwith to the Garda Síochána and the Minister and may seek an injunction in the High Court requiring the person to cease the activities the Council reasonably believes to be in contravention of this Act.

Council to be licensing authority, etc., under Anatomy Act 1832.

106.—The Council—

- (a) is, by virtue of this section, authorised to—
 - (i) grant a licence to practise anatomy in the State,
 - (ii) appoint inspectors of places in the State where anatomy is carried on, and
 - (iii) be the person to whom such inspectors shall make returns,

under and in accordance with the Anatomy Act 1832, and
- (b) shall, at the request of the Minister and as soon as is practicable after it receives the request, provide the Minister with such information concerning its functions under the Anatomy Act 1832 as the Minister specifies in the request.

Power to specify forms.

107.—(1) The relevant body may specify the form of documents required for the purposes of this Act as the relevant body thinks fit.

(2) The relevant body's power under *subsection (1)* may be exercised in such a way as to—

- (a) include in the specified form of any document referred to in that subsection a statutory declaration—

- (i) to be made by the person completing the form, and
- (ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief,

and

- (b) specify two or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the relevant body thinks fit.
- (3) A form specified under this section shall be—
- (a) completed in accordance with such directions and instructions as are specified in the form,
 - (b) accompanied by such documents as are specified in the form, and
 - (c) if the completed form is required to be provided to—
 - (i) the relevant body,
 - (ii) another person on behalf of the relevant body, or
 - (iii) any other person,

so provided in the manner, if any, specified in the form.

(4) Without prejudice to the generality of *subsection (1)*, the Council may—

- (a) specify a form to be completed by a registered medical practitioner in connection with the payment by the practitioner of any fee determined under *section 36(1)(b)*,
 - (b) in that form, require the practitioner to supply the Council with such information that the practitioner would have to supply the Council if the practitioner were not registered but were seeking registration (including information about any relevant medical disability).
- (5) In this section, “relevant body” means—
- (a) subject to *paragraph (b)*, the Council,
 - (b) in relation to a function under this Act performed by a *section 20(2)* committee, that committee.

108.—(1) Every reference to a registered medical practitioner contained in any enactment or any statutory instrument shall be construed as a reference to a registered medical practitioner within the meaning of *section 2*.

Construction of references to registered medical practitioner and Medical Council, etc.

(2) Every reference to the General Register of Medical Practitioners contained in any other enactment or any statutory instrument shall be construed as a reference to any division of the register.

(3) Every reference to—

- (a) the Medical Council, or
- (b) the Medical Registration Council,

contained in any other enactment or any statutory instrument shall be construed as the Council within the meaning of *section 2*.

Persons entitled to sign medical certificates.

109.—(1) Subject to *subsection (2)*, every certificate which is required for any purpose by or under any enactment or any statutory instrument to be signed by any physician, surgeon, licentiate in medicine and surgery or other medical practitioner shall, on and after the commencement of *section 3*, be signed by a registered medical practitioner and no such certificate signed on or after that commencement by a person who is not a registered medical practitioner shall be of any validity or effect.

(2) *Subsection (1)* shall not operate to prevent a person who is not a registered medical practitioner from signing a certificate if any enactment or any statutory instrument requires or permits the person to sign the certificate in a capacity other than the capacity of physician, surgeon, licentiate in medicine and surgery or other medical practitioner and that person is of that other capacity.

(3) In this section, “certificate” includes a prescription.

Section 3.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

1. Medical Practitioners Act 1978 (No. 4 of 1978).
2. Medical Practitioners (Amendment) Act 1993 (No. 17 of 1993).
3. Medical Practitioners (Amendment) Act 2000 (No. 24 of 2000).
4. Medical Practitioners (Amendment) Act 2002 (No. 17 of 2002).

PART 2

STATUTORY INSTRUMENTS REVOKED

1. Medical Practitioners Act 1927 (Application of Section 26) Order 1944 (S.I. No. 82 of 1944).
2. Medical Practitioners Act 1927 (Application of Section 26) Order 1953 (S.I. No. 272 of 1953).
3. Medical Practitioners Act 1927 (Application of Section 26) Order 1958 (S.I. No. 212 of 1958).
4. Medical Practitioners Act 1927 (Application of Section 26) Order 1960 (S.I. No. 206 of 1960).

5. Medical Practitioners Act 1927 (Application of Section 26) Order 1961 (S.I. No. 31 of 1961).
6. Medical Practitioners Act 1927 (Application of Section 26) Order 1961 (S.I. No. 99 of 1961).
7. Medical Council (Election of Members) Regulations 1978 (S.I. No. 197 of 1978).
8. European Communities (Recognition of Medical Qualifications) Regulations 1976 (S.I. No. 288 of 1976).
9. Medical Practitioners (Termination of Agreement) Order 1979 (S.I. No. 158 of 1979).
10. Rules made pursuant to section 25A of the Medical Practitioners Act 1978 as inserted by the Medical Practitioners (Amendment) Act 2002 (S.I. No. 285 of 2003).
11. Rules made pursuant to section 25A of the Medical Practitioners Act 1978 as inserted by the Medical Practitioners (Amendment) Act 2002 (S.I. No. 286 of 2003).
12. Rules made pursuant to section 25A of the Medical Practitioners Act 1978 as inserted by the Medical Practitioners (Amendment) Act 2002 (S.I. No. 287 of 2003).

SCHEDULE 2

Section 4(4).

COUNCIL: MEMBERSHIP AND MEETINGS

Tenure of Office

1. Subject to the provisions of this Schedule in relation to the filling of casual vacancies, every member of the Council shall hold office, unless the member sooner dies, resigns or becomes disqualified, for a period, not exceeding 5 years, specified in writing by the Minister.

2. No person shall hold office as a member of the Council for more than 2 consecutive terms of 5 years (for which purpose membership of the Council which occurred before the commencement of this paragraph shall be taken into account).

Resignations and Termination of Membership

3. Subject to *paragraph 4*, where the Minister receives a request in writing from the Council to terminate the appointment of a member of the Council on the ground that the member has failed to comply with *paragraph 12*, the Minister may terminate the appointment of the member.

4. The Minister shall not terminate the appointment of a member of the Council pursuant to a request referred to in *paragraph 3* unless—

- (a) the request is accompanied by evidence which satisfies the Minister that—
 - (i) the member has been given a reasonable opportunity to make representations in writing to the Council to

explain the reasons why the member has failed to comply with *paragraph 12*, and

- (ii) the member has failed or refused to make those representations,

or

- (b) the request is accompanied by—

- (i) evidence which satisfies the Minister that the member has been given a reasonable opportunity to make representations in writing to the Council to explain the reasons why the member has failed to comply with *paragraph 12*,

- (ii) copies of the representations in writing made by the member to the Council, and

- (iii) a statement by the Council that it has given due regard to those representations in writing but has reached the conclusion that they do not afford a reasonable excuse for the member's failure to comply with *paragraph 12*,

and

- (c) where *subparagraph (b)* is applicable, the Minister is satisfied that the conclusion referred to in *clause (iii)* of that subparagraph is reasonable in the circumstances of the case.

5. A member of the Council may resign membership by giving notice in writing signed by the member to the Council, but the resignation shall not become effective until the meeting of the Council next held after receipt of the notice of resignation.

6. The membership of the Council of a medical practitioner appointed under any of *section 17(1)(b) to (f)* shall terminate on the person ceasing to be a registered medical practitioner.

Casual Vacancies

7. (1) Where a casual vacancy occurs among the members of the Council, other than those appointed under *section 17(1)(f) or (n)*, the Council shall forthwith notify the body or authority which nominated such person and that body or authority shall, as soon as is convenient, nominate a person or persons which the Minister may consider for appointment to fill such vacancy and any person so appointed shall, subject to the other provisions of this Act, serve as a member of the Council for such period as is unexpired of the term of office of the person whom the person so appointed replaces.

(2) Where a casual vacancy occurs among the members of the Council appointed under *section 17(1)(f)*, the Council, after consultation with the Minister, shall co-opt a registered medical practitioner who would, pursuant to the provisions of this Act, be eligible for election to fill such vacancy and any practitioner so co-opted shall, subject to the provisions of this Act, serve as a member of the Council for such period as is unexpired of the term of office of the person whom the practitioner so appointed replaces.

(3) Where a casual vacancy occurs among the members of the Council appointed under *section 17(1)(l)*, the Minister may appoint a person who would, pursuant to the provisions of this Act, be eligible to fill such vacancy and any person so appointed shall, subject to the provisions of this Act, serve as a member of the Council for such period as is unexpired of the term of office of the person whom the person so appointed replaces.

Quorum

8. The quorum for a meeting of the Council shall be 7 provided that, in the case of a meeting of the Council where the matter of the imposition of a sanction under *Part 9* on a registered medical practitioner is on the agenda, the quorum shall be 10.

Meetings

9. The Council shall hold at least 4 meetings in every year and may hold such other meetings as may be necessary for the performance of its functions by video link or by the circulation of papers.

10. The Council may, by notice in writing given to all the members of the Council, specify the minimum number of meetings of the Council which the members are required to attend.

11. The Council may, by notice in writing given to all the members of a committee, specify the minimum number of meetings of the committee which the members are required to attend.

12. A member of the Council given a notice under *paragraph 10* or *11* shall take all necessary steps to comply with the notice.

President and Vice-President

13. (1) Subject to *section 17(3)*, the Council shall, from time to time, elect one of its members eligible under that section to be elected, to be President of the Council and another of its members to be Vice-President of the Council.

(2) The President and Vice-President of the Council shall each hold office as such for such term as may be specified by the Council at the time of their respective appointments unless—

- (a) the President or Vice-President, as the case may be, ceases to be, or becomes disqualified from being, a member of the Council,
- (b) the President or Vice-President, as the case may be, resigns that office and the resignation becomes effective under this paragraph, or
- (c) the Council by a resolution, for which not less than two-thirds of the members of the Council vote, and of the intention to propose which not less than 7 days notice is given to every member of the Council, terminates the appointment of the President or Vice-President.

(3) The President or Vice-President of the Council may at any time resign from that office by giving notice in writing signed by the President or Vice-President, as the case may be, to the Council, but the resignation shall not become effective until the meeting of the Council next held after the receipt by the Council of the notice of resignation.

(4) Where, at an election of the President or Vice-President of the Council, there is an equality of votes for 2 or more registered medical practitioners, it shall be determined by lot which of those practitioners shall be President or Vice-President, as the case may be.

Proceedings at Meetings

14. The proceedings of the Council shall not be invalidated by any vacancy or vacancies among its members or by any defect in the appointments to the Council or in the qualifications of any member thereof.

15. The President or, in the absence of the President, the Vice-President of the Council—

(a) may convene a meeting of the Council,

(b) shall convene a meeting of the Council when requested to do so by a requisition signed by not less than 6 members of the Council.

16. (1) Where the President or, in the absence of the President, the Vice-President of the Council refuses to convene a meeting of the Council after a requisition for that purpose signed by not less than 6 members of the Council has been presented to the President or Vice-President, as the case may be, any 3 members of the Council may forthwith convene a meeting of the Council.

(2) Where the President or, in the absence of the President, the Vice-President of the Council, without so refusing, does not, within 7 days after the presentation of a requisition for that purpose signed by not less than 6 members of the Council, convene a meeting of the Council, any 3 members of the Council may, on the expiration of those 7 days, convene a meeting of the Council.

17. At least 3 clear days before every meeting of the Council, notice in writing, signed by the President or Vice-President of the Council, as the case may be, or, if the meeting is convened by members of the Council, by such members, of the time and place of the meeting shall be sent to every member of the Council: if the meeting is convened by members of the Council, the notice convening the meeting shall specify the business to be transacted thereat.

18. At a meeting of the Council—

(a) the President of the Council shall, if present, be the chairperson,

(b) if and so long as the President of the Council is not present, or if the office of President is vacant, the Vice-President of the Council shall, if present, be the chairperson,

(c) if and so long as the President of the Council is not present or the office of President is vacant and the Vice-President is not present or the office of Vice-President is vacant, the members of the Council who are present shall elect one of their number to be chairperson of that meeting.

19. (1) The Council shall ensure that minutes of each meeting of the Council are prepared.

(2) The minutes of a meeting shall be submitted for confirmation as an accurate record at the next meeting of the Council.

(3) When confirmed, with or without amendment, the minutes of a meeting shall be signed by the person chairing the meeting at which they were submitted for confirmation.

20. The names of all members present at a meeting of the Council shall be recorded in the minutes of the proceedings of the meeting.

21. Subject to *paragraphs 8 and 13(4)*, all acts of the Council and all questions coming or arising before the Council may be done and decided by a majority of such members of the Council as are present and vote in relation to the act or matter at a meeting of the Council duly convened according to law.

22. In the case of an equality of votes on any question arising at a meeting of the Council (other than the election of the President or the Vice-President) the chairperson of that meeting shall have a second or casting vote.

23. Save as is otherwise provided by any enactment, including this Act, the Council may make standing orders for the regulation of its proceedings, and may amend or revoke such standing orders.