

DEPARTMENT OF HEALTH

HEALTH CARE PROFESSIONALS BILL

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Bill Henderson, MHK

29TH JANUARY 2014

VERSION 2

1. Introduction

The overarching purpose of the Health Care Professionals Bill is to prescribe the manner in which certain health care professionals are required to be registered and for related purposes.

The main aims of the Bill are to facilitate new arrangements for doctors' revalidation and to update and improve the legislation around the regulation of various health care professionals, including doctors, nurses and midwives, chiropractors, osteopaths and some other relevant professionals (see appendix for full list of relevant professionals).

For various reasons, some legislative, some contractual and some historical, the Island is inextricably linked to the United Kingdom in the area of regulating its health care professionals, and the Department of Health is therefore obliged to closely follow the UK if it is to be able to continue to employ the services of qualified registered health care professionals.

In researching how best to introduce new legislation for revalidation it was identified that the existing legislation governing the regulation of various health care professionals would benefit from an update and that, in addition, the opportunity should be taken to bring the Island into line with the UK and add the professions of chiropractic and osteopathy to the professions which are regulated on the Island.

2. Content of Bill

Part 1 - Introductory

Clause 1 – Short title

Clause 1 confirms the short title of the Act as the Health Care Professionals Act 2014.

Clause 2 – Commencement

Clause 2(1) allows for all sections of the Act (apart from this clause and clause 1) to be brought into operation using appointed day orders.

Clause 2(2) allows an appointed day order to also make any transitional and saving provisions the Department considers necessary or expedient.

Clause 3 – Interpretation

Clause 3 contains definitions for the Bill and starts by defining the name of the Department as the Department of Health and Social Care, as this will be the title of the Department by the time this Bill becomes an Act.

In particular, it introduces the term **health care professional** and defines this as any of the following –

- registered medical practitioner;
- fully registered chiropractor;
- fully registered osteopath;
- a member of the profession of nursing or midwifery who is a registrant;
- a relevant professional who is a registered professional.

Registered medical practitioner

The term **registered medical practitioner** is further defined as a person who is a fully registered person and holds a licence to practice. The terms **fully registered person** and **licence to practice** are then further defined as having the same meaning as in the UK Medical Act 1983.

The move towards relying on definitions contained in UK legislation is deliberate as the imperative now is for Manx legislation in respect of the regulation of health care professionals to mirror the UK as closely as possible. This is to ensure that the Island can react swiftly to changes in practice and standards and continue to attract a good quality of professionals.

It should be noted that the Manx equivalent of the UK Medical Act 1983, the Medical Act 1985, is to be replaced by the Health Care Professionals Act.

Fully registered chiropractor

The term **fully registered chiropractor** is further defined as having the same meaning as in the UK Chiropractors Act 1994. No equivalent legislation to the Chiropractors Act 1994 has previously been introduced in the Isle of Man.

Fully registered osteopath

The term **fully registered osteopath** is further defined as having the same meaning as in the UK Osteopaths Act 1993. No equivalent legislation to the Osteopaths Act 1993 has previously been introduced in the Isle of Man.

Member of the profession of nursing or midwifery who is a registrant

The term **registrant** is further defined, in respect of a member of the profession of nursing or midwifery, as having the same meaning as in the UK Nursing and Midwifery Order 2001.

It should be noted that the equivalent Isle of Man legislation to the 2001 UK Order is currently contained in sections 39A to 39D of the National Health Service Act 2001 and is to be replaced by the Health Care Professionals Act.

Relevant professional who is a registered professional

The terms **registered professional** and **relevant professional** are further defined as having the same meaning as in the UK Health and Social Work Professions Order 2001, with social workers excluded.

Social Workers are excluded because they are already regulated under the Regulation of Care Act 2013.

It should be noted that the equivalent Isle of Man legislation to the 2001 UK Order, the Health Professions Order 2002 as amended, is to be replaced by the Health Care Professionals Act.

Part 2 - Registered Medical Practitioners

Clause 4 – Recovery of charges for medical services

Clause 4(1) simply confirms that if a person who is not a registered medical practitioner tries to recover a charge for providing medical advice or attendance or for performing a surgical operation, they would not be able to do this through a court of law. This sub-clause is a modernised re-wording of section 1 of the existing Medical Act 1985, which is in turn essentially copied from the UK Medical Act 1983.

As in the UK, it is not actually illegal for any person to provide medical advice or attendance or to perform a surgical operation (which may be as simple as applying a bandage or plaster, or suggesting that someone takes a paracetamol for a headache) as long as they don't claim to be, or give the impression that they are, a qualified medical practitioner (see clause 6).

The aim of this sub-clause is to take away any incentive that someone might have to set up a business to undertake these functions but allow, for example, charitable organisations to undertake the functions at no charge.

Clause 4(2) states that sub-clause (1) only applies to medical practitioners, in that where certain other professionals are allowed, through their own professional qualifications and registration, to provide medical advice or attendance or perform surgical operations, they are not restricted from pursuing charges through the courts by this Act.

Clause 5 – Appointment of responsible officers

In the autumn of 2012 the United Kingdom introduced a new scheme for the General Medical Council ('the GMC') to review the performance of doctors and to confirm their registration and license to practice. This is known as revalidation. The first full year of a five year cycle of revalidation started in the UK early in 2013.

Although the Island did not have to start operating the scheme at the same time as the UK, it does need to start as soon as possible to allow all doctors to be revalidated within the first 5 years of the scheme.

Clause 5(1) gives the Department the legal authority to act as a designated body, in the same way as a body in the UK would, so that it can appoint responsible officers for the purposes of doctors' revalidation.

As part of the new scheme all Health Bodies in the UK are required to appoint responsible officers to manage the process locally and the UK authorities, principally the GMC, have made it very clear that the Isle of Man must do the same. This legislation will facilitate this process.

The role of responsible officer is a new one. Each doctor will be linked to a responsible officer on the Island and it will be the responsible officer's responsibility to make a recommendation to the GMC every five years as to whether the doctor should be revalidated as fit to practice.

Clause 5(2), therefore, requires the Department to appoint one or more responsible officers, in accordance with the UK Responsible Officers Regulations, to evaluate the fitness to practice of registered medical practitioners practising in the Isle of Man.

The responsible officer will be responsible for ensuring that appropriate systems of clinical governance and appraisal are in place to enable revalidation to take place for all of the doctors in their area. This includes private doctors as well as those employed or contracted by the Department so the responsible officer needs to have enough influence to make sure that organisations (the Department of Health, GP practices etc.) meet the requirements of the scheme. The appointee is therefore usually a senior licensed doctor and it is anticipated that the Department's Medical Director will fulfil the role here.

The responsible officer themselves will be revalidated by a senior doctor from the UK.

Clauses 5(3) and 5(4) confirm that an Isle of Man responsible officer will have the same functions as in the UK and must co-operate with the General Medical Council.

The GMC have made it clear that appointing responsible officers other than via legislation would be unacceptable to them, and the Island would be considered as having not met the standards set for the revalidation system. Under these circumstances the GMC would not then renew Doctors' registrations, thus removing their licence to practice.

Whilst in theory a doctor could still work in the Island under these circumstances it has been made very clear to the Department that no self-respecting doctor would come to work in the Island if we did not have this legislation. This is because, if the Island was not recognised by the General Medical Council, any work done here by a doctor would not count towards their revalidation and they would risk their registration being compromised or possibly even withdrawn.

Any doctors who might still come to the Island would most likely be doctors who were not interested in maintaining their registration, due to imminent retirement or perhaps a chequered past, which of course we would have no way of checking if we had no links to the GMC. The Department does not consider this an acceptable alternative.

Clause 5(5) gives the full title of the UK Responsible Officers Regulations and confirms the primary legislation under which they are made. The Department has taken the view that, because of the desire to mirror the UK as closely as possible in this important area, it is more appropriate to adopt the UK regulations and avoid the need to constantly update our own regulations.

Part 3 – Offences and Evidence

This Part deals with offences and evidence in relation to all of the various health care professionals defined in Part 1.

The Department has decided that, in the first instance, the penalties for the various offences should remain as they are set out in both the existing Manx legislation and in the equivalent UK legislation.

Clause 6 - Pretending to be a health care professional

Clause 6(1) creates the offence of falsely representing oneself as a health care professional with intent to deceive, either expressly or by implication.

In order to remove any doubt that sub-clause (1) might only apply to registered professionals, sub-clause (2) goes on to say that any person who describes himself or herself by any name that implies that they are a health care professional is also guilty of an offence.

Clauses 6(3) and 6(4) also make it an offence for another person to cause or permit the false representation of a person as a health care professional.

Clause 6(5) states the penalty for the above offences, on summary conviction, as a fine not exceeding £5,000.

Clause 7 - Practising while registration is suspended

Taken together sub-clauses (1) and (2) make it an offence for a health care professional to carry out, or give the impression that they are prepared to carry out, the functions of a health care professional if their professional registration is suspended.

Clause 7(3) states the penalty for the above offence, on summary conviction, as a fine not exceeding £5,000.

Clause 8 - Pretending to be the holder of a licence to practice

Clause 8(1) creates the offence of falsely representing oneself as holding a licence to practice as a health care professional.

Clause 8(2) states the penalty for the above offence, on summary conviction, as a fine not exceeding £5,000.

Clause 9 – Functions of a midwife not to be performed by unqualified person

Clause 9(1) creates the offence of performing the functions of a midwife without being registered as such. No offence would be committed under this paragraph by an unqualified person who was present at a birth as long as they did not assume responsibility by assisting or assuming the role of a medical practitioner or registered midwife or give midwifery or medical care in childbirth.

An unqualified person may include a non-registered midwife, a doula or labour coach, a nurse, the woman's partner, a relative or a friend who is not a registered midwife or registered doctor. A doula or labour coach is a non-medical person who assists a woman before, during and after childbirth by providing information, physical assistance and emotional support.

Clause 9(2) creates exceptions for:

- registered medical practitioners;
- medical practitioners and midwives whilst they are undergoing specific midwifery training; and
- persons who are required to carry out the functions of a midwife because of sudden and urgent necessity.

Clause 9(3) states the penalty for the above offence, on summary conviction, as a fine not exceeding £5,000.

Clause 10 - Proof of registration, etc.

Clause 10 confirms that certificates mentioned in the Acts and Orders referred to in the Bill are to be taken as evidence of the matters they are certifying.

Part 4 – Final Provisions

Clause 11 - Effect of suspension of registration

Clause 11(1) confirms that the clause applies where the registration of a health care professional is suspended whilst they are either employed as a health care professional or are the holder of an appointment that can only be held by a health care professional.

Clause 11(2) states that a suspension does not automatically terminate any employment or appointment held by a health care professional. However, sub-clause (3) goes on to say that the professional must not carry out the functions of their employment or appointment during the period of the suspension.

Clause 12 - Regulation of health care professionals

Under the National Health Service Act 2001 the modification of the regulation of certain professions in England can be applied to the Island by Order but only if the changes in England have been made using an Order in Council under the UK Health Act 1999.

Clause 12(1) extends this provision so that the Department can use an Order to apply any legislative changes to the Island which have been applied in England in relation to the health care professionals covered by this Bill.

The extended provision will avoid the need for us to introduce amending primary legislation every time there is a change to the UK legislation. This should speed up the whole process of keeping up to date with England, which, in this area, is imperative. For example, the new English provisions relating to revalidation could have been implemented on the Island before now if this provision had already been in place.

The professions regulated by the Dental Act 1985 and the Opticians Act 1996 have been included in this provision as they were included in the previous provision under the NHS Act 2001.

Dentists and Opticians could also have been brought into the other provisions of this Bill but it was identified that their respective existing Acts, which contain legislation which extends beyond simply regulating health care professionals, may need more significant updating which could cause delays. Because of the urgency to implement revalidation the Department decided not to risk a delay and to leave progressing the updating of these Acts to a later date.

Clause 12(2) will allow the Department, by Order, to add additional types of health care professional to the list contained in the definition of health care professional in clause 3. Given the way in which this Bill is constructed an additional type of health care professional would only be added if the UK decided to regulate a health care profession which is not covered by the existing definition.

Clause 12(3) allows an Order under this provision to also make any necessary consequential statutory changes.

Clause 12(4) requires the Department to consult representatives of any relevant professions before making an Order under this clause, and sub-clause (5) requires an Order to be approved by Tynwald.

Clause 13 - National Health Service Act 2001 amended

Clause 13 makes amendments to the NHS Act 2001 as a consequence of this Bill by repealing sections 39A, 39B, 39C, 39D and 40 and amending the definition of medical practitioner in that Act to reflect the meaning in this Bill.

Sections 39 A to 39D of the NHS Act 2001 contain provisions relating to the regulation of nurses and midwives which will no longer be needed, and section 40 contains the wording about modifying orders which has now been amended and included as clause 12 of this Bill.

Clause 14 - Other legislation amended

Clause 14 contains all of the amendments to other legislation which are required as a consequence of this Bill.

Access to Health Records and Reports Act 1993

A definition of 'medical practitioner' in the Schedule to the 1993 Act is amended as a consequence of the Medical Act 1985 being repealed under clause 15.

Control of Employment Act 1975

Wording in Schedule 1, paragraph (6) of the 1975 Act is amended as a consequence of the Medical Act 1985 being repealed.

Interpretation Act 1976

The definition of 'registered' in section 3(1) of the 1976 Act is extended to include reference to any of the professions mentioned in this Bill.

Medicines Act 2003, Misuse of Drugs Act 1976 and Poisons Act 1979

Definitions of 'doctor' in schedule 2 to the 2003 Act, section 38(1) of the 1976 Act and section 9(2) of the 1979 Act are amended as a consequence of the Medical Act 1985 being repealed.

Veterinary Surgeons Act 2005

Wording in section 2(1)(c) and (e) of the 2005 Act is amended as a consequence of the Medical Act 1985 being repealed.

Video Recordings Act 1985

Wording in section 8(11) of the 1985 Act is amended as a consequence of the Medical Act 1985 being repealed and as a consequence of the Nurses and Midwives Act 1947 having been repealed by the Regulation of Care Act 2013.

Clause 15 – Medical Act 1985 repealed

Clause 15 repeals the Medical Act 1985 which is no longer required as a consequence of this Act.

Clause 16 – Health Professions Order 2002 revoked

Clause 16 revokes the Health Professions Order 2002, which is no longer required as a consequence of this Act.

3. Conclusion

The Department would like to see this legislation in effect as soon as possible, ideally by July 2014, so that the urgent need for legislation to be introduced to allow doctors' revalidation can be addressed.

The Department is not aware of any Human Rights implications from this legislation.

Appendix

List of relevant professionals

arts therapists
biomedical scientists
chiropractors and podiatrists
clinical scientists
dietitians
hearing aid dispensers
occupational therapists
operating department practitioners
orthoptists
paramedics
physiotherapists
practitioner psychologists
prosthetists and orthotists