

HEALTH CARE PROFESSIONALS BILL 2014

Explanatory Memorandum

1. This Bill is promoted by the Department of Health and will be promoted, after the coming into operation of the Transfer of Functions (Health and Social Care) Order 2014 on 1 April 2014, by the Department of Health and Social Care. If enacted it will consolidate the law relating to the qualifications the majority of health care professionals will need to have to be able to practise their profession in the Island. The only health care professions not covered by the Act will be dentists and opticians, who will continue to be covered by their own separate Acts, and any professions which are not legally recognised in England.
2. The Bill also establishes a legal basis for registered medical practitioners to be revalidated as fit to practice.
3. *Clause 1* provides the short title of the Act.
4. *Clause 2* provides for the Act to be brought into operation by an order or orders made by the Department of Health and Social Care.
5. *Clause 3* defines certain expressions used in the Bill.
6. The effect of *clause 4* is to make it difficult for a person who is not a health care professional to charge for any medical advice or attendance he or she has provided.
7. *Clause 5* provides a means whereby the continued fitness to practise of registered medical practitioners practising in the Island may from time to time be revalidated.
8. *Clause 6* makes it an offence for a person who is not a health care professional, expressly or by implication, to represent himself or herself to be a health care professional. It also makes it an offence for a person, with intent to deceive, expressly or by implication, to represent that another person who is not a health care professional is a health care professional.
9. *Clause 7* makes it an offence for a health care professional to practise while his or her registration to practice is suspended.
10. *Clause 8* makes it an offence for a person who is not the holder of a licence to practise to represent himself or herself to be the holder of such a licence (i.e. a licence to practice as a medical practitioner).
11. *Clause 9* makes it an offence for an unqualified person to perform the functions of a midwife except in an emergency.
12. *Clause 10* provides that certain certificates can be used as evidence that a person is or is not registered.

13. *Clause 11* provides that where a health care professional is employed as, or holds an appointment which can only be held by, a health care professional and his or her registration as a health care professional is suspended, the suspension does not terminate the person's employment or appointment but the person must not carry out the functions of the position.
14. *Clause 12* allows the Island's legislation relating to the regulation of health care professionals to be amended by orders made by the Department of Health where it is necessary to do so to take account of any modification of the equivalent English legislation relating to the regulation of health care professionals.
15. *Clause 13* makes consequential amendments to the National Health Service Act 2001.
16. *Clause 14* makes consequential amendments to other Acts.
17. *Clause 15* repeals the Medical Act 1985.
18. *Clause 16* revokes the Health Professions Order 2002.
19. The administration of the Act will not give to additional expenditure.
20. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

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Ellan Vannin

HEALTH CARE PROFESSIONALS BILL 2014

- 1 **A BILL** to prescribe the manner in which certain health care professionals are
 2 required to be registered and for related purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

5 The short title of this Act is the Health Care Professionals Act 2014.

6 **2 Commencement**

- 7 (1) This Act (apart from this section and section 1) comes into operation on
 8 such day or days as the Department may by order appoint and different
 9 days may be appointed for different purposes of this Act.
 10 (2) An order under subsection (1) may make such transitional and saving
 11 provisions as the Department considers necessary or expedient.

12 **3 Interpretation**

13 In this Act —

14 “**Department**” means the Department of Health and Social Care;

15 “**fully registered chiropractor**” has the same meaning as in the UK
 16 Chiropractors Act;

17 “**fully registered osteopath**” has the same meaning as in the UK Osteopaths
 18 Act;

19 “**fully registered person**” has the same meaning as in the UK Medical Act;

20 “**health care professional**” means —

- 21 (a) a registered medical practitioner;
 22 (b) a fully registered chiropractor;

- 1 (c) a fully registered osteopath;
- 2 (d) a member of the profession of nursing or midwifery who is a
- 3 registrant; or
- 4 (e) a relevant professional who is a registered professional;

5 “**licence to practise**” has the meaning given to that expression by section 29A(1)

6 of the UK Medical Act;

7 “**registered medical practitioner**” means a person who —

- 8 (a) is a fully registered person; and
- 9 (b) holds a licence to practise;

10 “**registered professional**”, in respect of a relevant professional, has the same

11 meaning as in the UK Health Professions Order;

12 “**registrant**”, in respect of a member of the profession of nursing or midwifery,

13 has the same meaning as in the UK Nursing and Midwifery Order;

14 “**relevant professional**” has the same meaning as in the UK Health Professions

15 Order except that the expression does not include “social workers in

16 England” as that expression is defined by that Order;

17 “**UK Chiropractors Act**” means the Chiropractors Act 1994 (of Parliament);

18 “**UK Health Act**” means the Health Act 1999 (of Parliament);

19 “**UK Health Professions Order**” means the Health and Social Work Professions

20 Order 2001 (originally made as the Health Professions Order 2001) made

21 under section 60 of the UK Health Act;

22 “**UK Medical Act**” means the Medical Act 1983 (of Parliament);

23 “**UK Nursing and Midwifery Order**” means the Nursing and Midwifery Order

24 2001 made under section 60 of the UK Health Act;

25 “**UK Osteopaths Act**” means the Osteopaths Act 1993 (of Parliament).

26 **PART 2 – REGISTERED MEDICAL PRACTITIONERS**

27 **4 Recovery of charges for medical services**

- 28 (1) A person who is not a registered medical practitioner may not, in a court
- 29 of law, recover a charge for providing medical advice or attendance or
- 30 for the performance of a surgical operation.
- 31 (2) However, subsection (1) does not apply in respect of a person who is a
- 32 member of a profession regulated by a body, apart from the General
- 33 Medical Council, mentioned in section 25(3) of the National Health
- 34 Service Reform and Health Care Professions Act 2002 (of Parliament).

5 Appointment of responsible officers

- 1
- 2 (1) The Department has, in respect of the Island, the same functions as a
- 3 body designated in Part 1 of the Schedule to the UK Responsible Officers
- 4 Regulations.
- 5 (2) Accordingly, the Department must appoint one or more persons with the
- 6 qualification prescribed by the UK Responsible Officers Regulations to
- 7 evaluate the fitness to practise of registered medical practitioners
- 8 practising in the Island.
- 9 (3) A responsible officer has, in respect of a registered medical practitioner
- 10 practising in the Island, the same functions as a responsible officer
- 11 appointed under the UK Responsible Officers Regulations has in respect
- 12 of medical practitioners practising in England.
- 13 (4) A responsible officer, in carrying out his or her functions, must
- 14 co-operate with the General Medical Council, any of its committees and
- 15 any person authorised by the Council, in connection with the functions
- 16 of responsible officers.
- 17 (5) In this section “UK Responsible Officers Regulations” means the Medical
- 18 Profession (Responsible Officers) Regulations 2010 made under section
- 19 45A of the UK Medical Act and section 120 of the Health and Social Care
- 20 Act 2008 (of Parliament).

PART 3 – OFFENCES AND EVIDENCE**6 Pretending to be a health care professional**

- 21
- 22
- 23 (1) A person is guilty of an offence if, with intent to deceive, he or she,
- 24 expressly or by implication falsely represents himself or herself to be a
- 25 health care professional.
- 26 (2) A person who describes himself or herself by any name that can be taken
- 27 as implying that the person is any kind of health care professional, is
- 28 guilty of an offence unless he or she is a health care professional of that
- 29 kind.
- 30 (3) A person (“the first person”) is guilty of an offence if the person, with
- 31 intent to deceive, expressly or by implication causes or permits another
- 32 person to make a representation about the first person that, if made by
- 33 the first person with intent to deceive, would be an offence by that
- 34 person under subsection (1) or (2).
- 35 (4) A person is guilty of an offence if, with intent to deceive, the person
- 36 makes with regard to another person (“the second person”) any
- 37 representation that the person knows to be false and that if made by the
- 38 second person with intent to deceive would be an offence by the second
- 39 person under subsection (1) or (2).

- 1 (5) A person guilty of an offence under this section is liable on summary
2 conviction to a fine not exceeding £5,000.

3 **7 Practising while registration is suspended**

- 4 (1) This section applies to a health care professional while his or her
5 registration is suspended.
- 6 (2) The health care professional is guilty of an offence if he or she carries out
7 the functions of a health care professional or, expressly or by implication,
8 represents himself or herself as being prepared to do so.
- 9 (3) A person guilty of an offence under subsection (2) is liable on summary
10 conviction to a fine not exceeding £5,000.

11 **8 Pretending to be the holder of a licence to practise**

- 12 (1) A person is guilty of an offence if, not being the holder of a licence to
13 practise, he or she, with intent to deceive, expressly or by implication,
14 falsely represents himself or herself to be the holder of a licence to
15 practise.
- 16 (2) A person guilty of an offence under subsection (1) is liable on summary
17 conviction to a fine not exceeding £5,000.

18 **9 Functions of a midwife not to be performed by unqualified person**

- 19 (1) A person is guilty of an offence if, not being a midwife who is a
20 registrant, the person performs the functions of a midwife.
- 21 (2) It is not an offence under subsection (1) if —
- 22 (a) the person is a registered medical practitioner;
- 23 (b) the person is undergoing training to become a medical
24 practitioner and the function was carried out as part of a course of
25 practical instruction in midwifery recognised by the General
26 Medical Council;
- 27 (c) the person is undergoing training to become a midwife and the
28 function was being carried out as part of a course of practical
29 instruction in midwifery recognised by the Nursing and
30 Midwifery Council constituted under article 3 of the UK Nursing
31 and Midwifery Order; or
- 32 (d) the person was required to carry out the function because of
33 sudden and urgent necessity.
- 34 (3) A person guilty of an offence under subsection (1) is liable on summary
35 conviction to a fine not exceeding £5,000.

1 **10 Proof of registration, etc.**

- 2 In respect of an offence under this Part, a certificate mentioned in —
- 3 (a) section 34A(1) of the UK Medical Act;
- 4 (b) section 9(8) of the UK Chiropractors Act;
- 5 (c) section 9(5) of the UK Osteopaths Act;
- 6 (d) article 8(4) of the UK Nursing and Midwifery Order; or
- 7 (e) article 8(4) of the UK Health Professions Order,
- 8 is evidence of a matter certified in it.

9 **PART 4 – FINAL PROVISIONS**

10 **11 Effect of suspension of registration**

- 11 (1) This section applies if a health care professional —
- 12 (a) is employed as a health care professional; or
- 13 (b) is the holder of an appointment that can only be held by a health
- 14 care professional,
- 15 and the registration of the person as a health care professional is
- 16 suspended.
- 17 (2) The suspension does not of itself terminate the employment or
- 18 appointment.
- 19 (3) However, the person must not carry out the functions of the employment
- 20 or appointment during the period of the suspension.

21 **12 Regulation of health care professions**

- 22 (1) The Department may, by order, modify the regulation of a profession
- 23 regulated by this Act or by —
- 24 (a) the *Dental Act 1985*; or
- 25 (b) the *Opticians Act 1996*;
- 26 to give effect in the Island to a modification of the regulation of the
- 27 profession made by an enactment regulating the profession in England.
- 28 (2) The Department may, by order, amend the definition “**health care**
- 29 **professional**” in section 3 to include an additional description of health
- 30 care professional.
- 31 (3) An order under this section may —
- 32 (a) amend or repeal a statutory provision (including a provision of
- 33 this Act) that appears to the Department to be inconsistent with,
- 34 or to have become unnecessary or to require modification, in
- 35 consequence of the order; and

(b) make incidental, supplementary, consequential and transitional provisions (including adding such a provision to this Act) that appear to the Department to be necessary or expedient.

(4) Before making an Order under this section the Department must consult any body that appears to the Department to represent the members of the relevant profession.

(5) An order under this section cannot come into operation unless it has been approved by Tynwald.

13 National Health Service Act 2001 amended

The *National Health Service Act 2001* is amended —

(a) by omitting the cross-heading “Regulation of medical professions” immediately before section 39A;

(b) by repealing sections 39A, 39B, 39C, 39D and 40; and

(c) by substituting for “**medical practitioner**” in section 43 —

“**“medical practitioner”** means a registered medical practitioner;”.

14 Other legislation amended

In a provision mentioned in column 1 of the following table, for the expression in column 2 there is substituted the expression in column 3.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Provision	Expression to be omitted	Expression to be substituted
Access to Health Records and Reports Act 1993 Schedule, para 1(1)	“ medical practitioner ” means a fully registered person within the meaning of the <i>Medical Act 1985</i> ;	“ medical practitioner ” means a registered medical practitioner;
Control of Employment Act 1975 Schedule 1, para 6	6. Employment as a doctor, that is to say, a fully registered person within the meaning of the <i>Medical Act 1985</i> .	6. Employment as a registered medical practitioner.
Interpretation Act 1976 Section 3(1)	“ registered ”, for a nurse or midwife, means registered as mentioned in section 39A of the <i>National Health Service Act 2001</i> ;	“ registered ”, followed by a reference to a medical practitioner, chiropractor, osteopath, nurse, midwife or other health professional regulated by the <i>Health Care Professionals Act 2014</i> , means a person of that description registered in the manner prescribed by that Act;
Medicines Act 2003	means a fully registered	means a registered medical

Schedule 2 (definition of doctor)	person within the meaning of the <i>Medical Act 1985</i>	practitioner
Misuse of Drugs Act 1976 Section 38(1) (definition of “doctor”)	“ doctor ” means a fully registered person within the meaning of the <i>Medical Act 1985</i> ;	“ doctor ” means a registered medical practitioner;
Poisons Act 1979 Section 9(2)	“ doctor ” means a fully registered person within the meaning of the <i>Medical Act 1985</i> ;	“ doctor ” means a registered medical practitioner;
Veterinary Surgeons Act 2005 Section 2(1)(c)	(c) the carrying out or performance of any treatment, test or operation by a fully registered person within the meaning of the <i>Medical Act 1985</i> or a registered dentist within the meaning of the <i>Dental Act 1985</i> at the request of a veterinary surgeon;	(c) the carrying out or performance of any treatment, test or operation by a registered medical practitioner or a registered dentist within the meaning of the <i>Dental Act 1985</i> at the request of a veterinary surgeon;
Veterinary Surgeons Act 2005 Section 2(1)(e)	(e) the performance by a fully registered person within the meaning of the <i>Medical Act 1985</i> of an operation on an animal for the purpose of removing an organ or tissue for use in the treatment of human beings.	(e) the performance by a registered medical practitioner of an operation on an animal for the purpose of removing an organ or tissue for use in the treatment of human beings.
Video Recordings Act 1985 Section 8(11)	(11) For the purposes of subsection (10), an occupation is a medical or related occupation if, to carry on the occupation, a person is required – (a) to be a fully registered person within the meaning of section 9 of the <i>Medical Act 1985</i> ; or (b) to be registered as a nurse or midwife.	(11) For the purposes of subsection (10), an occupation is a medical or related occupation if, to carry on the occupation, a person is required to be a registered medical practitioner, a registered nurse or a registered midwife.

1

15 Medical Act 1985 repealed

2

The *Medical Act 1985* is repealed.

3

16 Health Professions Order 2002 revoked

4

The Health Professions Order 2002 is revoked.

5

6

IN THE KEYS

HEALTH CARE PROFESSIONALS BILL 2014

A **BILL** to prescribe the manner in which certain health care professionals are required to be registered and for related purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR HENDERSON

FEBRUARY 2014