

MEDICAL AND HEALTH ACT

Principal Act

Act. No. 1997-25	<i>Commencement Assent</i>	21.8.1997
Amending enactments	Relevant current provisions	Commencement date
LN. 1998/041	Sch. 8	11.6.1998
Acts. 1998-30	ss. 9(7)(b), 15(1)(a), 28(2), Sch.3 and Sch.12	13.8.1998
1999-02	s.81, Sch.3 and Sch.12	25.3.1999
1999-37	Sch.3	2.12.1999
2005-50	s. 61(2)	2.8.2005
2005-65	ss. 2(1), 8(4A) & (4B), 8A, 9(2A), (2B), (3A), (4)(b) & (d), (4A), (4B), (4C), (8), (9) & (10), 23(3A), (4), (7) & (8), 23A, 32(3A), (3B) & (3C), (4)(a), (b), (c) & (d), 45(1A) & (1B), Sch.3, Sch.5, Sch.6 & Sch.9	4.12.2005
LN. 2008/099	ss. 2(1), 32(4), Schs 3, 5, 6 & 9	1.1.2007
2010/090	Sch. 1	6.5.2010
Act. 2011-22	s. 66(ka) & (kb)	18.8.2011
LN. 2013/002	Sch. 8	17.1.2013
2013/058	ss. 59A-59H	11.5.2013
Act. 2013-23	ss. 2, 7(1), (2), (2)(f), (3), 8(1)-(4), 9(1), 10(5), 10A, 14(2)(c)(i), 21A, 21B, 24C, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 40, 44(1)(c), (2), 54A, 55, 76(1)(b), (c), 78A, Sch. 13	15.1.2015 ¹
LN. 2015/006	Sch. 2	15.1.2015
2015/008	Sch. 13	15.1.2015

¹ Commencement notice see LN. 2014/207

2016/136	ss. 2(1), (3), 8(4B), (6), 8A, 9(2A)(b), (2B), (3)(c), (3A)(a), (b), (c)(i), (ii), (4)(b), (c), (d), (e), (4B)(b), (4C), (6)(b), (9)(b), (10), 10(2), (3), (4), (8)(c)(ii), 12, 13(1), (2), (3), (4), (5)(b), 22(b), 23(2), (7)(b), (8), 32(2), (3), (3A), (4), 33(b), 34(1), 44(1)(b), (c), (d), (7), 45(3), Schs 3, 5, 6, 7, 9, 10	23.6.2016
2017/021	Long Title, ss. 59A, 59H(3), 59I	9.2.2017

Transposing:

Directive 98/21/EEC

Directive 98/63/EEC

Directive 1999/46/EEC

Directive 2001/19/EC

Directive 2006/100/EC

Directive 2010/32/EC

Directive 2013/55/EU

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.

PART I. **PRELIMINARY.**

2. Interpretation.
3. Definition of the practice of dentistry.

PART II. **MEDICAL PRACTITIONERS, DENTISTS AND PHARMACISTS.**

4. Establishment and constitution of Medical Registration Board.
5. Committees.
6. Secretary to the Board.
7. Register of medical practitioners, dentists, pharmacists and allied health professionals.
8. Registration of dentists and pharmacists.
- 8A. *Repealed.*
9. Full registration as medical practitioners.
10. Acquired rights -medical practitioner.
- 10A. Acquired rights- pharmacists.
11. Effect of disqualification in an EEA State on registration in Gibraltar.
12. Competent Authority.
13. Visiting EEA medical practitioners.
14. Limited registration of junior doctors and overseas specialists.
15. Eligibility for limited registration.
16. Registration subject to compliance with conditions.
17. Conditions with which the overseas specialist must comply during the period of his registration.
18. Notices.
19. Convictions, malpractice and negligence.
20. Applicability of the Act.
21. Provisional registration as medical practitioner.
- 21A. Dentist and pharmacists- requirement to comply with code of ethics.
- 21B. Waiver of fees.
22. Rules.
23. Qualification by appropriate European diploma for registration in Part II containing the list of registered dentists or Part III containing the list of registered pharmacists.
- 23A. Qualification by recognised overseas diploma for registration in Part II containing the list of registered dentists.

24. Visiting EEA dental practitioners.

PART IIA

ALLIED HEALTH PROFESSIONALS

- 24A. Definitions.
- 24B. Registration.
- 24C. Renewals.
- 24D. Determination of application for registration.
- 24E. Mode of registration.
- 24F. Requirement to comply with code of ethics.
- 24G. Duty to inform about material change.
- 24H. Registration subject to compliance with conditions.
- 24I. Removal from the United Kingdom register.
- 24J. Power to make Regulations.
- 24K. Amendment of Schedule 13.

PART III.

NURSES, MIDWIVES AND HEALTH VISITORS.

- 25. Establishment and constitution of Nurses, Midwives and Health Visitors Registration Board.
- 26. Committees.
- 27. Secretary to the Board.
- 28. Register of nurses, midwives and health visitors.
- 29. Registration.
- 30. Admission to register of nurses, midwives and health visitors trained in the United Kingdom.
- 31. Admission to register of nurses, midwives and health visitors of countries other than Gibraltar and United Kingdom.
- 32. Admission to register of nurses and midwives who are nationals of EEA States.
- 33. Community documents.
- 34. Deemed registration of visiting nurses and midwives from EEA States.
- 35. Relief from fees.
- 36. Regulations.

PART IV.

GENERAL PROVISIONS ON REGISTRATION AND DISCIPLINE.

- 37. Evidence of qualification to be given before registration, etc.
- 38. Examinations.
- 39. Registered person may have subsequent qualifications inserted.
- 40. Registration to be gazetted.
- 41. Correction of register.

- 42. Inspection of register.
- 43. Evidence.
- 44. Persons convicted of certain offences, etc., may be suspended etc. or struck off register.
- 45. Appeal from decision of the Board.
- 46. Restoration to the register.
- 47. Suspension of registration of midwives.
- 48. Appeal against refusal to approve institution.
- 49. Service of notice.

PART V. EFFECT OF REGISTRATION.

- 50. Practice of medicine.
- 51. Recovery of fees in relation to medical or dental services.
- 52. Use of description of dentist, etc.
- 53. Use of description of pharmacist and dispenser.
- 54. Use of description of nurse or midwife.
- 54A. Use of protected titles: allied health professions.
- 55. Registration as a Nurse, Midwife, Health Visitor or Allied Health Professional not to confer rights of medical practitioner.
- 56. Saving of specialist consultants.
- 57. Saving for medical practitioners in regard to dentistry.

PART VI. HOSPITALS AND NURSING HOMES.

- 58. Interpretation.
- 59. Rules.

PART VIA PREVENTION OF SHARP INJURIES

- 59A. Interpretation.
- 59B. Application of requirements to employers.
- 59C. Application of requirements to healthcare contractors.
- 59D. Risk Assessments.
- 59E. Use and disposal of medical sharps.
- 59F. Information and training.
- 59G. Arrangements in the event of injury.
- 59H. Notification of injuries.
- 59I. Penalties.

PART VII. PHARMACY AND MEDICINES.

- 60. Interpretation.
- 61. Import of medicinal products not on general sale list.
- 62. Sale or supply of medicinal products not on general sale list.
- 63. Sale or supply of medicinal products on general sale list.
- 64. Provisions as to export.
- 65. Disclosure of composition of medicines.
- 66. Regulations.
- 67. Ownership of registered pharmacies.
- 68. Conditions imposed on carrying on a retail pharmacy business.
- 69. Restriction on use of premises.
- 70. Register of prescriptions to be kept and produced.
- 71. Articles to be deemed poisons.
- 72. Regulations to be observed in the sale of poisons.
- 73. Power of inspection and seizure.
- 74. Saving.

PART VIII.
OFFENCES.

- 75. Procuring registration by false pretences.
- 76. Misleading title unqualified practice, etc.
- 77. Use of title and description by dentists.
- 78. Penalties for unlawful assumption of title of nurse or midwife.
- 78A. Restriction on engaging in an allied health profession.
- 79. Offences relating to the register.
- 80. Employing unregistered substitute.
- 81. Penalty for sale in contravention of section 62.
- 82. Defences.
- 83. Penalty relating to section 64.
- 84. Penalty for refusing to produce or for not properly keeping the register of prescriptions.
- 85. Penalty relating to section 72.
- 86. No commission on prescriptions to be paid.
- 87. General penalty.
- 88. Legal proceedings .

PART IX.
GENERAL AND SUPPLEMENTARY.

- 89. Saving.
- 90. Continuity of the Law.
- 91. Repeals and consequential amendments.

SCHEDULE 1.
Medical Registration Board

This version is out of date

SCHEDULE 2.

Fees

SCHEDULE 3.

Repealed

SCHEDULE 4.

Specialisations

SCHEDULE 5.

Repealed

SCHEDULE 6.

Repealed

SCHEDULE 7.

Visiting EEA Dental Practitioners

SCHEDULE 8.

Nurses, Midwives and Health Visitors Registration Board

SCHEDULE 9.

Repealed

SCHEDULE 10.

Visiting Nurses and Midwives from EEA States

SCHEDULE 11.

Repeals

SCHEDULE 12.

Minor and consequential amendments

SCHEDULE 13.

Part I

Regulated Professions and Protected Titles

Part II

United Kingdom Registering Body

AN ACT TO CONSOLIDATE THE MEDICAL AND HEALTH ACT AND ITS AMENDING PROVISIONS, TO TRANSPOSE, IN PART, INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 2013/55/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 NOVEMBER 2013 AMENDING DIRECTIVE 2005/36/EC ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS AND REGULATION (EU) NO 1024/2012 ON ADMINISTRATIVE COOPERATION THROUGH THE INTERNAL MARKET INFORMATION SYSTEM, AND TO DEAL WITH THE CONSTITUTION OF THE MEDICAL REGISTRATION BOARD AND TO GIVE EFFECT TO OTHER AMENDMENTS RELATING TO VARIOUS PURPOSES INCLUDING PROMOTION OF INTERNATIONAL CO-OPERATION IN THE TRAINING OF MEDICAL PRACTITIONERS WHO ARE NOT NATIONALS OF EEA STATES, THROUGH A SYSTEM OF LIMITED REGISTRATION AND OTHER RELATED MATTERS.

Short title and commencement.

1. (1) This Act may be cited as the Medical and Health Act, 1997.
- (2) The provisions of this Act shall come into force on such day as the Minister may by notice in the Gazette appoint.

PART I.

PRELIMINARY.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“Accession of Greece Act” means the Act annexed to the Treaty relating to the Accession of the Hellenic Republic to the European Community signed at Athens on 28th May 1979;

“Accession of Spain and Portugal Act” means the Act annexed to the Treaty relating to the Accession of the Kingdom of Spain and the Portuguese Republic to the European Community signed at Madrid and Lisbon on 12th June 1985;

“Accession of Austria, Finland and Sweden Act” means the Act annexed to the Treaty relating to the Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24th June 1994, as adjusted by the decision of the Council of the European

Union of 1st January 1995 adjusting the Instruments concerning the Accession of new member States to the European Union;

“Act of Accession 2003” means the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16th April 2003;

“allied health professional” means a person who practises a health profession specified in Part 1 of Schedule 13 and is registered under section 7 and under Part IIA of this Act, and the term “allied health profession” shall be construed accordingly;

“Authority” means the Gibraltar Health Authority;

“Board” means the Medical Registration Board established under section 4, or the Nurses and Midwives Registration Board established under section 25 as the circumstances may require;

“certificate of registration” means a certificate issued under section 37(2);

“Chief Executive” means the Chief Executive of the Authority;

“diploma” includes any certificate or other document granted to a person passing an examination;

“EEA” means the territories to which the EEA Agreement applies;

“EEA Agreement” means the Agreement of the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 and as amended, so far as relevant to this Act, by Decisions of the EEA Joint Committee Nos. 7/94 of 21st March 1994, 190/1999 of 17th December 1999, 89/2000 of 27th October 2000 and 84/2002 of 25th June 2002 and by the Agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14th October 2003;

“EEA qualification” means a qualification which affords the holder of that qualification with an enforceable right of recognition under EU law;

“EEA State” means a State which is a contracting party to the EEA Agreement or Switzerland;

“General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234);

“IMI” means the electronic tool provided by the European Commission to facilitate administrative cooperation between the Central Point of Contact under the Qualifications (Right to Practise) Act 2009, the relevant competent authorities for regulated professions, the EEA States and the European Commission;

“junior doctor” means a doctor who, by reason of his medical qualification is entitled to practise medicine in any country other than Gibraltar or any other part of the EEA who has had appropriate post-graduate clinical experience for the requisite period concluding with the date of his application to the Board for limited registration pursuant to and subject to the conditions contained in sections 14 to 20 who is employed by the Authority in the capacity of Junior or Senior House Officer or Registrar and who is not an overseas specialist;

“Medical Directive” means Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, as amended from time to time and as adapted by the EEA Agreement;

“Minister” means the person charged with responsibility for health;

“national”, in relation to an EEA State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3 (Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services;

“prescribed” means prescribed by rules or regulations made under this Act, as the circumstances may require;

“Public Health Director” means the registered medical practitioner appointed as such by the Authority;

“recognised overseas diploma” means a diploma granted in a country overseas and recognised for the time being by the Board for the purposes of this Act, and does not include an appropriate European diploma;

“Recognition Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as may be amended from time to time;

“registered” means registered under this Act;

“register” means the register of Medical and Dental Practitioners, Pharmacists, Dispensers and Allied Health Professionals kept under section 7 or the register of Nurses and Midwives kept under section 28 as the circumstances may require;

“scale” means the scale prescribed under the Criminal Procedure Act;

“Swiss Agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21st June 1999;

“visiting EEA dental practitioner entered in the list of such practitioners” means a person entered in the list of EEA dental practitioners kept by virtue of Schedule 7;

“visiting EEA medical practitioner” means a person registered under section 13(4);

(2) Any reference in this Act to the register shall, unless the context otherwise requires, be deemed to include a reference to any part of the register; and the expression “registered” shall be construed accordingly.

(3) Any person who—

(a) is not a national of an EEA State; but

(b) is, by virtue of a right conferred by Regulation (EU) No 492/2011 on freedom of movement of workers within the Union or any other enforceable Community right, entitled to be treated for the purposes of access to the profession of medicine,

dentistry, or as the case may be pharmacy, or for the purposes of access to the nursing profession or the profession of midwifery, no less favourably than a national of such a State;

shall be treated for the purposes of sections 9 to 13, 23, 32(1), Schedule 6 paragraph 1 or, as the case may be Schedule 10 paragraph 2, as if he were such a national.

(4) In section 8(4) to (10) and sections 14 to 20 in this Act, unless the context otherwise requires—

“an acceptable overseas qualification” means a qualification granted outside the United Kingdom and for the time being accepted by the General Medical Council for the purposes of limited registration in accordance with section 22 of the Medical Act 1983 of the United Kingdom as furnishing a sufficient guarantee of the possession of the knowledge and skill requisite for the practice of medicine under the supervision of a person who is registered as a registered medical practitioner in Part I of the register;

“Fellow of the Royal College” means a Fellow of the Royal College of England and Wales appropriate to the medical specialisation set out in Schedule 4 and in which specialisation the overseas specialist applying for limited registration has practised and proposes to practise in Gibraltar, save that in the case of medicine, in place of “Fellow”, the appropriate qualification shall be “Member of the Royal College of Physicians”;

“General Medical Council” means the body corporate referred to in section 1(1) of the Medical Act 1983 of the United Kingdom;

“IELTS” means the International English Language Testing System currently operated by—

- (a) the British Council;
- (b) the University of Cambridge Local Examinations Syndicate;
- (c) IDP Education Australia; or
- (d) any additional or successor body to those specified in paragraph (a), (b) or (c) which is shown to the satisfaction of the Board to be authorised to operate IELTS;

“IELTS test” means the test administered in accordance with the International English Language Testing System by any of the

bodies mentioned in paragraph (a), (b), (c) or (d) in the definition of “IELTS”;

“limited registration” has the meaning given to it in section 14;

“overseas specialist” means a doctor who, by reason of his medical qualification is entitled to practise medicine in any country other than Gibraltar or any other part of the EEA and who has specialised in any of the medical specialisations set out in Schedule 4 for a period of at least five years concluding with the date of his application to the Board for limited registration pursuant to and subject to the conditions contained in sections 14 to 20;

“PLAB test” means the examination of that name set and administered by the Professional and Linguistic Assessment Board of the General Medical Council on a periodic basis to doctors;

“supervised employment” means employment in a teaching hospital or clinic with such degree of supervision by a consultant who is a medical practitioner registered in Part I of the register as is appropriate to the level of employment of the overseas specialist being supervised;

“teaching hospital or clinic” means a hospital or clinic in Gibraltar devoted to the practice of one or more of the medical specialisations set out in Schedule 4, operated under the supervision of one or more Fellows of the Royal College appropriate to the medical specialisation or specialisations practised in that hospital or clinic, at which post-graduate training in such medical specialisation or specialisations is provided to the extent that similar training is provided in teaching hospitals in the United Kingdom.

Definition of the practice of dentistry.

3. (1) For the purposes of this Act, the practice of dentistry shall be deemed to include the performance of any such operation and the giving of any such treatment, advice or attendance as is usually performed or given by dentists; and any person who performs any operation or gives any treatment, advice or attendance on or to any person as preparatory to or for the purpose of or in connection with the fitting, insertion or fixing of dentures, artificial teeth or other dental appliances shall be deemed to have practised dentistry within the meaning of this Act.

(2) Subject to sub-section (3), dental work shall not be treated for the purposes of this Act as amounting to the practice of dentistry if it is undertaken under the direct personal supervision of a registered dentist—

- (a) by a person approved as a student of dentistry by an authority awarding dental qualifications or diplomas recognised under this Act; or
- (b) by a person approved as a medical student by an authority awarding medical qualifications or diplomas recognised under this Act;

as part of a course of instruction approved by that authority for students of that kind, or as part of an examination so approved.

(3) A person who undertakes dental work in the course of his studies (whether or not under the supervision of a registered dentist) shall be treated for the purposes of this Act as practising dentistry if he would have been treated for those purposes as practising dentistry if he had undertaken that work in the course of earning his livelihood.

PART II.

MEDICAL PRACTITIONERS, DENTISTS AND PHARMACISTS.

Establishment and constitution of Medical Registration Board.

4. (1) There shall be established a Medical Registration Board.

(2) The provisions contained in Schedule 1 shall have effect with respect to the constitution and proceedings of the Board.

(3) The Minister may by order alter, add to or amend, the provisions of Schedule 1.

Committees.

5. (1) The Board may from time to time, by notice published in the Gazette—

- (a) appoint committees comprising members of the Board or members of the Board and other persons;
- (b) specify quorums for such committees;

- (c) delegate to any committee any specified functions, powers and duties of the Board; and
- (d) give directions to any committee as to the procedure to be followed by it.

(2) Subject to this Act, and to any directions given to it by the Board, every committee may regulate its procedure in such manner as it may determine.

Secretary to the Board.

6. The Minister may appoint a fit and proper person to be secretary to the Board.

Register of medical practitioners, dentists, pharmacists and allied health professionals.

7.(1) Subject to and in accordance with the provisions of this Act, the Board shall keep a register in which shall be entered the name, address, qualifications and date of registration of every person entitled to registration under this Part or Part IIA.

- (2) The register shall consist of seven parts as follows—
 - (a) Part I containing the list of fully registered medical practitioners, other than those provisionally registered;
 - (b) Part IA containing the list of provisionally registered medical practitioners;
 - (c) Part IB containing the list of junior doctors and overseas specialists;
 - (d) Part II containing the list of registered dentists;
 - (e) Part III containing the list of registered pharmacists; and
 - (f) Part IIIA containing the list of registered dispensers;
 - (g) Part IV containing the list of registered allied health professionals.

(3) *Repealed*

Registration of dentists and pharmacists.

8. (1) Subject to section 23, any person who satisfies the Board that he is of good character and—

- (a) is registered in the dental register or the register of Pharmaceutical Chemists of the United Kingdom under or pursuant to any law for the time being in force in the United Kingdom; or
- (b) is in possession of such Commonwealth or foreign (other than an EEA) diploma in dentistry or pharmacy and has such professional experience as would entitle him to be so registered in either of those registers;

shall on payment of such fee as may be prescribed be entitled to be registered in the appropriate part of the register.

(2) *Deleted*

(3) *Deleted*

(4) Subject to section 21B, a person applying for registration shall at the time of making his application forward to the Board the fee or fees prescribed in Schedule 2 in respect of that application.

(4A) The Board shall notify the applicant in writing of its decision within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application and when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant's right of appeal under section 45(1A).

(4B) Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009, failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under subsection (4A).

(5) Where an application for registration is refused the Board shall return to the applicant that part of the fee payable under sub-section (4) as relates to the registration but shall not be required to return that part of the fee which relates to the administration of the application.

(6) The Board may require any person making an application for registration to furnish to the Board such information and evidence as in the opinion of the Board it may reasonably require to enable it to be satisfied that the requirements are met in respect of that application, and in the

absence of such information or evidence the Board shall not be required to consider or determine the application:

Provided that nothing herein shall permit the Board to require from an applicant information or evidence, or that information or evidence in any form, other than that which may be required of that applicant in accordance with the Qualifications (Right to Practise) Act 2009.

(7) Registration shall be valid for a period of 12 months unless earlier terminated in accordance with the Act and no fee or part thereof payable by virtue of sub-section (4) shall be refundable in the event of early termination of a registration:

Provided that registration may in a particular case and at the discretion of the Board be valid for such period in excess of 12 months but not in excess of 36 months as the Board may determine in respect of that registration.

(8) The date of commencement of a registration and the date until which, unless earlier terminated, that registration is valid shall be entered in the register beside the name of the person registered.

(9) Where a person has been registered and applies to register for a further period of one year commencing at the termination of the earlier period of registration the provisions of this section shall be treated as satisfied if the applicant provides to the Board together with such fee as may be prescribed, his declaration—

- (a) that there has been no change in the information or evidence upon the basis of which he was registered; or
- (b) setting out the change in the information or evidence upon the basis of which he was registered and the Board are satisfied that the change is not of the kind or extent that would result in the applicant ceasing to be entitled to registration.

The declaration referred to in this sub-section shall be in such form as may be prescribed by the Board.

(10) The Board may cause to be erased from the register the name of any person whose registration has ceased to be valid.

8A. *Repealed*

Full registration as medical practitioners.

9. (1) Subject to the following provisions of this section and section 21B, a person who is of good character shall on payment of the prescribed fee be entitled to be entered in the medical register, as a fully registered medical practitioner if he is—

- (a) a medical practitioner with a United Kingdom or a European primary qualification;
- (b) a medical practitioner with a United Kingdom or a European qualification in specialised medicine; or
- (c) a medical practitioner with an overseas qualification as prescribed in sub-section (6), but not being a qualification referred to in paragraphs (a) or (b).

(2) The qualifications and specialisations, if any, of each medical practitioner shall be entered against his name in the register.

(2A) Where a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)) applies for registration as a medical practitioner under this section, the Board shall notify him of the result of his application in writing—

- (a) within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application; or
- (b) within such longer period as is allowed by the Qualifications (Right to Practise) Act 2009; and
- (c) when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant's right of appeal under section 45(1A).

(2B) Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009, failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under sub-section (2A).

(3) A person is a medical practitioner with a United Kingdom or a European primary qualification if he is—

- (a) fully registered on the coming into effect of this section and has obtained such qualification entitling him to be so registered in an EEA State;

- (b) registered, or is entitled to be registered, as a fully registered medical practitioner under section 3 of the Medical Act 1983; or
- (c) a national of an EEA State who has obtained a European primary qualification set out in Annex V point 5.1.1 to the Recognition Directive or who has satisfied the Board that his diploma, certificate or other formal qualification should be treated as such a qualification in accordance with Part III of that Schedule.

(3A) A medical practitioner with primary medical qualifications may apply to the Board to be registered as a general medical practitioner if–

- (a) he is a person who has been awarded a Certificate of Completion of Training in general practice under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010; or
- (b) he is a national of an EEA State who has obtained an EEA qualification listed in Annex V point 5.1.4 to the Recognition Directive, together with the corresponding professional title or a certificate of acquired rights issued in an EEA State other than the United Kingdom to the effect that he has an acquired right to practise as a general practitioner under the national social security scheme of the issuing State without a vocational training certificate in general practice; or
- (c) he is a national of an EEA State who–
 - (i) holds an EEA qualification awarded by an EEA State that is not listed in Annex V point 5.1.4 to the Recognition Directive, and
 - (ii) that EEA qualification is accompanied by a certificate of the competent authorities of that State to the effect that the EEA qualification was awarded following training in accordance with the relevant provisions of the Recognition Directive and is treated by that State as if it were an EEA qualification set out under the heading relating to the State in Annex V to the Recognition Directive.

(4) A person is a medical practitioner with a United Kingdom or a European qualification in specialised medicine if–

- (a) he applies to and satisfies the Board under section 10(7);
- (b) he is a person who has been awarded a Certificate of Completion of Training in a scheduled speciality under Schedule 1 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010;
- (c) *Repealed*
- (d) he is a national of an EEA state who has obtained in an EEA qualification listed in 5.1.2 Annex V to the Recognition Directive, or who has satisfied the Board that his diploma, certificate or other qualification in specialised medicine should be treated as such a qualification in accordance with Annex V point 5.1.2 to the Recognition Directive; or
- (e) he is a national of an EEA State and is a person who has undertaken specific training in general medical practice in an EEA State which meets the requirements of section 40 of the Qualifications (Right to Practise) Act 2009, or has been awarded a certificate which is required to be recognised under section 71(2) of the Qualifications (Right to Practise) Act 2009, or has been awarded a certificate which is required to be recognised under section 42(3) of the Qualifications (Right to Practise) Act 2009.

(4A) The Board shall, within the specified period, give the applicant notice of its decision as to whether it is satisfied that he is a medical practitioner with an EEA qualification in specialised medicine and where it is not so satisfied, of the reasons for its decision and of the applicant's right to appeal under section 45(1A).

(4B) In sub-section (4A), "the specified period" means—

- (a) the period of four months beginning with the date on which the Board receives the application together with all supporting documents (or any remaining documents); or
- (b) such longer period as is allowed by the Qualification (Right to Practise) Act 2009.

(4C) Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009, failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under sub-section (4A).

(5) A national of an EEA State who engages in general medical practice without being registered under sub-section (1)(b) as having a European qualification in specialised medicine in general medical practice or under sub-section (6), shall be guilty of an offence.

(6) A person is a medical practitioner with an overseas qualification if he is—

- (a) fully registered under section 7(1)(b) of the Medical and Health Act 1973 on the coming into effect of this section but has not obtained the qualifications which would entitle him to be registered in an EEA State;
- (b) registered or is entitled to be registered under section 19 or 19A of the Medical Act 1983; or
- (c) in possession of such Commonwealth or foreign diploma (other than one granted in an EEA State) in medicine and has such professional experience as would entitle him to be so registered in the United Kingdom and as the Board considers appropriate.

(7) The provisions of sub-sections (2) to (10) of section 8 shall apply to the medical practitioners specified in sub-section (1) of this section provided that, as respects limited registration—

- (a) sub-sections (2) and (7) of that section shall apply subject to section 14(2)(c); and
- (b) sub-section (7) of that section shall apply subject to section 15(1)(f)(i).

(8) In the case of a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)), the Board shall, when considering whether it is satisfied that the person has primary or specialist medical qualifications awarded outside the United Kingdom or an EEA State, take into account—

- (a) all his medical qualifications, knowledge or experience, wherever acquired, which are relevant to its determination; and
- (b) where the person has primary or specialist qualifications awarded outside the EEA which have been accepted by an EEA State as qualifying him to practise as a medical practitioner with primary or specialist medical qualifications in that State, that acceptance.

(9) The Board shall give the applicant notice of its decision under sub-section (8)–

- (a) within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application; or
- (b) within such longer period as is allowed by the Medical Directive Qualification (Right to Practise) Act 2009; and
- (c) where it is not so satisfied, of the reasons for its decision and of the applicant's right to appeal under section 45(1A).

(10) Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009, failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under sub-section (9).

Acquired rights -medical practitioner.

10. (1) For the purposes of article 36(2) of the Medical Directive (which requires each EEA State to specify the acquired rights that it recognises for the purpose of exercising general medical practice under its national social security scheme without a qualification referred to in article 30 of that Directive), a doctor has an acquired right to practise as a general medical practitioner providing general medical services in Gibraltar if–

- (a) on 31 December 1994 his name was included in Part I of the register; or
- (b) on 31 December 1994 he was established in Gibraltar by virtue of a qualification in medicine awarded in an EEA State other than the United Kingdom which had in his case to be recognised in Gibraltar by virtue of the Medical Directive (whether or not as read with the EEA Agreement), or by virtue of any enforceable Community right, as entitling him to be registered, or to practise as if he were registered, as a fully registered medical practitioner;
- (c) subject to sub-section (2), on at least 10 days in the period of 4 years ending with 31 December 1994, or at least 40 days in the period of 10 years ending with that date, he had been engaged as a deputy by, or provided as a deputy to, a doctor whose name was included in the medical list of the Government or Authority Hospital.

(2) *Repealed.*

(3) The Board shall, if a doctor so requests in writing, issue a certificate of acquired rights to him if it is satisfied that he has an acquired right specified in the Qualifications (Right to Practise) Act 2009.

(4) It is hereby declared that a restricted services principal is not entitled to practise otherwise than in accordance with the restriction which applies in his case merely because he has the acquired right specified in the Qualifications (Right to Practise) Act 2009..

(5) Subject to sub-section (4) and for the avoidance of doubt, no provision of this Act or of any subordinate legislation made under it shall have the effect of depriving any person registered in the medical register of such right to practise as he had immediately before the coming into effect of this Act“, save that the Board shall have the right to refuse registration pursuant to the provisions of this section if–

- (a) it is satisfied that an applicant has failed to meet ongoing training requirements of his professional governing body; or
- (b) the applicant has failed to remain in current practice since the date that he asserts he has acquired rights to practise in Gibraltar.

(6) In the foregoing provisions of this section–

“restricted services principal” means a person who has undertaken to provide general medical services limited to–

- (a) child health surveillance services;
- (b) contraceptive services;
- (c) maternity medical services; or
- (d) minor surgery services;

or to any combination of the above.

(7) A person may apply to satisfy the Board under section 9(4)(a) if–

- (a) he is a registered medical practitioner and, in the case of an oral and maxillo-facial surgeon, he is also a registered dentist; and
- (b) he falls within sub-section (8).

- (8) A person falls within this sub-section if–
- (a) he is, or has been, a consultant in a Government or Authority Hospital in a medical specialisation other than general practice; or
 - (b) he has been accredited in such a specialisation; or
 - (c) he has satisfied the Board that–
 - (i) he has been trained in the United Kingdom in such a specialisation and that training complied with the requirements relating to training in that specialisation current in the United Kingdom at the time he undertook it; or
 - (ii) he has qualifications awarded in the United Kingdom or another EEA State in such a specialisation that are equivalent to that specialisation as mentioned in Annex V point 5.1.2 to the Recognition Directive.

(9) In sub-section (8)(b), “accredited” refers to the former practice whereby certain medical Royal Colleges and Faculties in the United Kingdom acknowledged the satisfactory completion of a period of specialist training, to a level previously determined by that body, by granting an application for accreditation made by the person who had completed the training.

(10) A person registered with full registration (within the meaning of section 9) at the time of the passing of this Act shall continue to be so registered, provided that he continues to meet the requirements of that section, but shall not be registered as having a European primary qualification or a European diploma in specialised medicine unless he otherwise meets the requirements for being registered under section 9 as having such a qualification or diploma.

Acquired rights- pharmacists.

10A. A pharmacist who prior to the Medical and Health (Amendment) Act 2013 was registered under section 8 shall remain registerable notwithstanding the provisions of that Act as regards section 8.

Effect of disqualification in an EEA State on registration in Gibraltar.

11. (1) A person who is subject to a disqualifying decision in an EEA State (which includes disqualification in the United Kingdom) in which he is or has been established in medical practice shall not be entitled to be registered by virtue of section 9 for so long as the decision remains in force in relation to him.

(2) A disqualifying decision in respect of a person is a decision, made by competent authorities of the EEA State in which he was established in medical practice or in which he acquired a primary United Kingdom or primary European qualification, and—

- (a) expressed to be made on the grounds that he has committed a criminal offence or on grounds related to his professional conduct; and
- (b) having in that State the effect either that he is no longer registered or otherwise officially recognised as a medical practitioner, or that he is prohibited from practising medicine there.

(3) If a person has been registered by virtue of section 9 and it is subsequently shown to the satisfaction of the Board that he was subject to a disqualifying decision in force at the time of registration, and that the decision remains in force, the Board shall remove the person's name from the register.

(4) If registration is refused or a person's name is removed from the register in accordance with sub-section (3) above—

- (a) the Board shall, on request, state in writing the reasons for the refusal, or the removal, as the case may be;
- (b) the person may appeal by lodging such appeal with the Registrar of the Supreme Court within thirty days (or such longer period as the Court may allow) of the receipt of such reasons; and
- (c) any such appeal shall be determined by the Supreme Court.

(5) If a person has been registered as a fully registered medical practitioner by virtue of section 9 at a time when a disqualifying decision was in force in respect of him, the Board may suspend his registration for a period, not exceeding the period for which such registration is valid, and the period of suspension shall begin on a date to be specified by the Board.

Competent authority.

12. The Board shall be the competent authority for the purposes of the Recognition Directive for doctors, specialised doctors, dental practitioners, specialised dental practitioners and pharmacists.

Visiting EEA medical practitioners.

13. (1) A person who wishes to render medical services in Gibraltar temporarily without first being registered under section 9, may do so, where an application is made via the IMI and that application meets the requirements of the Qualifications (Right to Practise) Act 2009.

(2) *Repealed.*

(3) *Repealed.*

(4) Where a person satisfies the requirements of subsection (1), the Board shall register him under this section in Part 1A of the register as a visiting EEA medical practitioner.

(5) Registration of a person as a visiting EEA medical practitioner shall cease if—

- (a) he becomes established in medical practice in Gibraltar; or
- (b) he renders, save in a case of urgency, medical services in Gibraltar otherwise than in accordance with a declaration made by him under the Qualifications (Right to Practise) Act 2009.

(6) Section 56 and sub-section (1) of this section shall not apply to a person and that person shall not be registered as a visiting EEA medical practitioner at any time when he is subject to a disqualifying decision imposed by the competent authority of an EEA State.

Limited registration of junior doctors and overseas specialists.

14. (1) In this section “limited registration” means registration in Part 1B of the register of either—

- (a) a junior doctor who gained his qualifications in a non-EEA state and who—
 - (i) is employed by the Government or the Authority in the capacity of Junior or Senior House Officer or Registrar; and

- (ii) receives vocational training and supervision in the course of performance of his duties in order to gain knowledge and skills in the field of medicine; or
- (b) an overseas specialist of high calibre for the purpose of—
 - (i) enabling that overseas specialist to further in Gibraltar his knowledge of and practise his skill in his particular specialisation in one or more supervised training environments in one or more teaching hospitals or clinics; and
 - (ii) fostering of valuable technical, professional and social links between Gibraltar and overseas countries;

in each case subject to compliance with the requirement in section 9 relating to good character and limited in accordance with sub-section (2)(c) in respect of the period for which and the supervised employment for the purposes of which it has effect.

(2) The limits of a person's registration referred to in sub-section (1) shall be—

- (a) determined by the Board on the occasion on which it determines the eligibility of the person to be registered;
- (b) recorded in the register beside the name of the person; and
- (c) in accordance with the following provisions, that is to say—
 - (i) for such a period as the Board directs; and
 - (ii) in respect of the particular supervised employment for the purposes of which the limited registration is granted;

and subject to payment of the fee prescribed in Schedule 2 that person's registration shall have effect for the period and for the purposes of the employment so determined.

(3) Where the supervised employment specified by virtue of sub-section (2)(c)(ii) terminates before the end of the period specified by virtue of subparagraph (i) of that sub-section, the registration of a person under this section shall cease to have effect when that supervised employment terminates.

(4) A person registered with limited registration in accordance with this section shall be treated as registered in Part IB of the register in relation to the following matters, that is to say—

- (a) the supervised employment in which he is engaged during the currency of his registration, being the supervised employment specified by virtue of sub-section (2)(c)(ii); and
- (b) things done or omitted in the course of that supervised employment; and
- (c) any other thing incidental to his work in that supervised employment which, by virtue of the Act or any other statutory provision, may not be lawfully or validly done except by a registered medical practitioner entered in Part I of the register;

but in relation to other matters he shall be treated as not so registered.

(5) Continuation of the limited registration for the period determined in accordance with sub-section (2)(a), shall be subject to the person registered fulfilling and continuing for the period of the registration to comply with such conditions as are referred to in section 16(1).

(6) At the expiry of the period of limited registration determined in accordance with sub-section (2)(a) unless that limited registration shall have earlier terminated, the registration shall cease to have effect and the entry shall be removed from the register.

Eligibility for limited registration.

15. (1) Subject to section 14, where a person seeking registration as a junior doctor satisfies the Board that—

- (a) he has been accepted for supervised employment in one of the capacities set out in section 14(1)(a) (i);
- (b) he holds, has held, or has passed the examination necessary for obtaining an acceptable overseas qualification;
- (c) he has at least 12 months post-graduate clinical experience in a teaching hospital (save that an applicant for a post in casualty or in accident or emergency departments must have practised clinical medicine for two years since qualification of which at least 12 months was spent in a teaching hospital which included 6 months surgical experience of which not less than 18 weeks was spent in a department of General Surgery);

- (d) either—
 - (i) he has passed the PLAB test; or
 - (ii) he satisfies the Board (in a manner to be prescribed by the Board) that he has the necessary knowledge of English and that he has the knowledge and skill which are necessary for practice as a medical practitioner and are appropriate in his case;
- (e) he has confirmed in writing that he will leave Gibraltar at the end of his period of employment in Gibraltar;

the Board shall be satisfied that the requirements of section 9(1)(c) have been met, and subject to—

- (f) (i) payment of the prescribed fee; and
- (ii) satisfying the Board that he is of good character;

the junior doctor shall be entitled to be registered in Part IB of the register, such registration to be subject to the conditions imposed by the Board in accordance with section 17, which conditions shall be entered in the register beside the name of the person registered together with the statement that the registration is a limited registration under the provisions of sections 14 to 20, the date of commencement of the registration and the date until which, unless earlier terminated, the registration is valid.

(2) Subject to section 14, where a person seeking registration as an overseas specialist satisfies the Board that—

- (a) he has been selected for supervised employment in his specialisation in a teaching hospital or clinic in Gibraltar as an overseas specialist for a period not less than the duration of his proposed registration;
- (b) he holds, has held, or has passed the examination necessary for obtaining an acceptable overseas qualification in the medical specialisation in which he has been selected for supervised employment;
- (c) he has at least 12 months post-graduate clinical experience in a hospital in the country in which he obtained his acceptable overseas qualification;

- (d) he has specialised in one or more of the medical specialisations set out in Schedule 4 in which he proposes to take up supervised employment for a period of at least 5 years concluding with the date of his application to the Board for registration;
- (e) he has passed module B of the IELTS test to an average of band 7.0 in all four categories;
- (f) he has letters of support for his application from—
 - (i) a Fellow of the appropriate Royal College familiar with the teaching clinic or hospital at which the overseas specialist is to be employed certifying that the writer of the letter referred to in subparagraph (ii) is known personally to him and that he is a distinguished practitioner in the medical specialisation or specialisations in which the person proposes to take up supervised employment; and
 - (ii) a distinguished practitioner in that medical specialisation or specialisations from either the country in which the overseas specialist obtained the overseas qualification or qualifications or, if different, the country in which that person practised the medical specialisations in accordance with paragraph (d) certifying that that person is known personally to the distinguished practitioner, but is not a close relative of his, that he is of exceptional ability and selected on merit, that he is a fit and proper person who will benefit from practising his specialisation in a teaching environment in Gibraltar and that the practice of his skill will be of benefit to patients of the teaching clinic or hospital;
- (g) he has not taken and failed the PLAB test set by the General Medical Council;
- (h) he has confirmed in writing that he will leave Gibraltar at the end of his period of employment in Gibraltar;

the Board shall be satisfied that the requirements of section 9(1)(c) have been met, and subject to—

- (i) payment of the prescribed fee; and
- (j) satisfying the Board that he is of good character;

the overseas specialist shall be entitled to be registered in Part IB of the register, such registration to be subject to the conditions imposed by the Board in accordance with section 17, which conditions shall be entered in the register beside the name of the person registered together with the statement that the registration is a limited registration under the provisions of sections 14 to 20, the specialisation or specialisations of the overseas specialist, the teaching hospital or clinic at which the overseas specialist is employed, the date of commencement of the registration and the date until which, unless earlier terminated, the registration is valid.

(3) For the purposes of section 37, proof of the matters set out in paragraphs (b) and (c) of section 15(1) and paragraphs (b), (c) and (d) of section 15(2) may be given by production of the appropriate acceptable overseas qualification or original letter on the official headed notepaper of the university or hospital—

- (a) at which the junior doctor or overseas specialist received his qualification; and
- (b) at which he undertook 12 months post-graduate clinical experience; and
- (c) at which, in the case of an overseas specialist, he carried out at least five years practice in his medical specialisation.

(4) Any junior doctor or overseas specialist aggrieved by the refusal of the Board to approve his application for registration pursuant to sections 14 to 20 may appeal to the Minister and the procedure to be followed and the consequences upon such appeal shall be that set out in sub-sections (2), (3) and (4) of section 48.

Registration subject to compliance with conditions.

16. (1) Limited registration shall be subject to compliance by the junior doctor and by the overseas specialist with the conditions set out in section 17, save that the Board may in its discretion in any individual case waive some or all of those conditions.

(2) If any registered junior doctor or registered overseas specialist fails to comply with any condition of his registration the Board may, after inquiry and if it sees fit, suspend him from practice until the condition is complied with or order his name to be removed from the register.

(3) Where the Board makes inquiry under the provisions of this section the junior doctor or the overseas specialist against whom any non-

compliance with a condition of his registration is alleged shall first be informed of the nature of the allegation and shall be entitled to appear in person before the Board and heard thereon.

(4) Where after due inquiry the Board decides under the provisions of this section to suspend the junior doctor or the overseas specialist from limited registration until the condition is complied with or order his name to be removed from the register, notice of such intention should be served upon the junior doctor or the overseas specialist on the same basis and in the same manner as the notice referred to in section 44(4).

(5) Upon service of a notice under sub-section (4) the provisions of sub-sections (5) and (6) (including the proviso) of section 44 and sections 45 and 46 shall apply in relation to such notice as they apply to a notice served under section 44(4).

Conditions with which the junior doctor and the overseas specialist must comply during the period of his registration.

17. Subject to section 16 the junior doctor shall comply with conditions (a) (b) and (e) of this section and the overseas specialist shall comply with all of the following conditions during the period of his registration—

- (a) he shall work only in the supervised employment offered to him and referred to in section 14(2)(c)(ii) and under the supervision of a medical practitioner registered pursuant to section 9;
- (b) he shall accept and at all times comply with the requirements of his supervisor;
- (c) he shall satisfactorily attend the courses, lectures and seminars of the teaching hospital or clinic at which he is employed;
- (d) at six monthly intervals he shall produce to the Board a letter from a Fellow of the Royal College of the teaching hospital or clinic at which the overseas specialist is employed certifying that the overseas specialist has diligently applied himself to and made satisfactory progress in his training and studies;
- (e) he is and remains in possession of a valid residence permit issued under the Immigration Control Act and the teaching hospital or clinic by which he is employed is and remains in possession of a valid employment permit in respect of the overseas specialist issued under the Employment Act.

Notices.

18. The provisions of section 49 relating to the service of notices shall apply to the service of any notice under sections 14 to 20.

Convictions, malpractice and negligence.

19. For the avoidance of doubt the provisions of sections 44 to 46 inclusive shall apply to any junior doctor and to overseas specialists registered pursuant to the provisions of sections 14 to 20.

Applicability of the Act.

20. The following additional provisions of the Act shall apply in relation to junior doctors and to overseas specialists applying for registration or who are registered in accordance with sections 14 to 20—

- (a) sections 37 and 39;
- (b) section 40, subject to the substitution of a reference to sections 14 to 20 for the reference to Part II of the Act;
- (c) sections 41 to 43 inclusive, sections 50, 51, 75, 79, 87 and 88.

Provisional registration as medical practitioner.

21. (1) Notwithstanding the provisions of section 9 any person who satisfies the Board that—

- (a) he is of good character; and
- (b) is provisionally registered or is entitled to be provisionally registered in the medical register of the United Kingdom or is in possession of such Commonwealth or foreign diploma in medicine as would entitle him to be so registered; and
- (c) is employed by the Authority in a hospital in Gibraltar;

shall be entitled to be provisionally registered in Part IA of the register, without payment of any fee.

(2) Any person who is provisionally registered under the provisions of sub-section (1) shall be deemed to have been registered for the purposes of this Act:

Provided that—

- (a) such person may only practise in a hospital maintained by the Authority;
- (b) the name of such person shall be removed from the register if—
 - (i) he ceases to be employed by the Authority in a hospital; and
 - (ii) at the time of so ceasing he is not entitled to be registered under the provisions of section 9.

(3) Any person who has been provisionally registered shall be entitled to be registered under the provisions of section 9, upon satisfying the Board that he is entitled to be registered under those provisions.

Dentist and pharmacists- requirement to comply with code of ethics.

21A. Where the General Dental Council of the United Kingdom or the Royal Pharmaceutical Society of the United Kingdom subscribes to or promulgates its own code of ethics a registered dentist or pharmacist, as the case may be, shall in his professional conduct comply with that code of ethics subject to such modifications as practise in Gibraltar may require.

Waiver of fees.

21B.(1) A medical practitioner, dental practitioner, pharmacist or Allied Health Professional who at the time he applies for registration proves to the satisfaction of the Board that he is registered with the relevant registering body in the United Kingdom or an EEA State shall not be required to pay the registration fee.

(2) A person who seeks to rely on the waiver in subsection (1) shall remain registered with the relevant United Kingdom or EEA State registering body for the duration of his registration in Gibraltar.

(3) A person who being registered in Gibraltar fails to maintain his registration with the relevant United Kingdom or EEA State registering body shall be liable to payment of the fees prescribed in Schedule 2.

Rules.

22. It shall be lawful for the Minister to make rules providing for –

- (a) regulating the formation and maintenance of the register;

- (b) prescribing categories of specialization for the purposes of registration of any person in any part of the register (subject to the right of persons entitled to practise the specialisations set out in Annex V point 5.1.2 to the Recognition Directive and Schedule 4 to be registered in categories appropriate to such specialisation);
- (c) regulating the proceedings of the Board;
- (d) enabling the Board to constitute committees and for authorising the delegation by the Board to committees of any of the powers of the Board and for regulating the procedure of such committees;
- (e) prescribing and regulating courses of training and the conditions and conduct of examinations in pharmacy;
- (f) regulating the conditions of admission to the register and prescribing the conditions to be observed by applicants for registration and regulating the issue and prescribing the form of the register and of certificates of registration;
- (g) the procedure for removal from and restoration to the register;
- (h) regulating the practice of medical practitioners, dentists, pharmacists and dispensers;
- (i) prescribing the conditions under which and the manner in which any registered person may be suspended from practice by the Board;
- (j) prescribing fees;
- (k) prescribing anything to be prescribed under this Act in relation to the Board and the register;
- (l) generally for carrying into effect the purposes of this Act.

Qualification by appropriate European diploma for registration in Part II containing the list of registered dentists or Part III containing the list of registered pharmacists.

23. (1) Subject to the provisions of this Act any person who is a national of an EEA State and holds an appropriate European diploma shall, on payment of such fee as may be prescribed, be entitled to be registered in Part II (list

of registered dentists) or, as the case may be, Part III (list of registered pharmacists) of the register for which his qualifications entitle him.

(2) *Repealed.*

(3) A person shall not be entitled to be registered in Part II or, as the case may be, Part III of the register under sub-section (1) unless he satisfies the Board as to the following matters, namely—

- (a) his identity;
- (b) that he is of good character; and
- (c) that he is in good health both physically and mentally.

(3A) In relation to a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)) the Board shall accept as sufficient evidence of good character for the purposes of sub-section (3)(b)–

- (a) a certificate issued by the competent authority in the EEA State which awarded the appropriate European diploma, or in which he has subsequently become established, attesting that the requirements of that State in relation to good character for the taking up the relevant profession have been met; or
- (b) where the State does not require proof of good character for taking up of the profession of dentistry, an extract from the judicial record or an equivalent document issued by a competent authority in the State showing that he is of good character.

(4) In relation to a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)) the Board shall accept as sufficient evidence of good health for the purposes of sub-section (3)(b) or (c) the document required in the EEA State which awarded the appropriate European diploma, or in which he has subsequently been established, as proof of good health.

(5) The Board shall not accept any document referred to in sub-section (4) if it is presented more than three months after the date on which it was issued.

(6) Any person to whom section 2(3) applies and who applies to be registered by virtue of sub-section (3) shall produce or send to the secretary of the Board evidence of the enforceable Community right on which he relies.

(7) Where a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)) applies for registration under sub-section (1), the Board shall notify him of the result of his application—

- (a) within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application; or
- (b) within such longer period as is allowed by the Recognition Directive, when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant's right of appeal under section 45(1A).

(8) Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009, failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under sub-section (7).

Qualification by recognised overseas diploma for registration in Part II containing the list of registered dentists.

23A.(1) Subject to the provisions of this Act, any person who holds a recognised overseas diploma shall, on payment of such fee as may be prescribed, be registered in Part II (list of dentists) if he satisfies the Board as to the following matters, namely—

- (a) his identity;
- (b) that he is of good character;
- (c) that he has the requisite knowledge and skill;
- (d) that he is a national of an EEA State (or is treated as such for the purposes of section 2(3)) or has the necessary knowledge of English; and
- (e) that he is in good health, both physically and mentally.

(2) In deciding for the purposes of sub-section (1)(c) whether a person who is a national of an EEA State (or is treated as such for the purposes of section 2(3)) has the requisite knowledge and skill, the Board—

- (a) shall take into account all his dental qualifications, knowledge or experience, wherever acquired which are relevant to that decision;

- (b) if the person holds a dental qualification granted outside the EEA which has been accepted by another EEA State as qualifying him to practice as a dentist in that State, shall take that acceptance into account; and
- (c) may treat a qualification which is not of a kind recognised for the time being by the Board as furnishing sufficient guarantees that he has the requisite knowledge and skill as if it were such a qualification.

Visiting EEA dental practitioners.

24. Schedule 7 (which makes provision for persons established in dental practice in an EEA State to render dental services during a visit to Gibraltar without being registered under this Act), shall have effect.

PART IIA
ALLIED HEALTH PROFESSIONALS

Definitions.

24A. In this Part, unless the context otherwise requires—

“Board” means the Medical Registration Board established under section 4;

“protected title” means any of the titles specified in Part 1 of Schedule 13.

Registration.

24B.(1) Subject to the provisions in this Part, a person who satisfies the Board that he is of good character and that he is registered in the United Kingdom, with the relevant professional body listed in Part 2 of Schedule 13, shall be entitled to be registered in the appropriate part of the register.

(2) All registrations under subsection (1) shall expire on 31 October of each year.

(3) The Minister may by notice in the gazette amend the date referred to in subsection (2) and where the date of expiry is amended to a date later than 31 October of that year, a person who is already registered shall be deemed to remain registered up to the amended date.

Renewals.

24C.(1) A person whose registration expires by virtue of subsection (2) may prior to the expiry date apply to register for a further period commencing at the termination of the earlier period of registration.

(2) A person who applies for the renewal of his registration shall be re-registered where he provides to the Board a declaration—

- (a) that there has been no change in the information or evidence upon the basis of which he was registered; or
- (b) setting out the change in the information or evidence upon the basis of which he was registered; and the Board are satisfied that the change is not of the kind or extent that would result in the applicant ceasing to be entitled to registration.

(3) The declaration referred to in sub-section (2) shall be in such form and accompanied by such documentary evidence as may be prescribed by the Board.

Determination of application for registration.

24D.(1) The Board may—

- (a) refuse to grant an application for registration or renewal of registration if, in its opinion, the applicant—
 - (i) is, or has been, engaged in any activity which is likely to reflect discredit on the profession in respect of which that person seeks registration;
 - (ii) is not of good character or reputation;
 - (iii) fails to provide the Board with any information or documentary evidence which the Board has required; or
- (b) attach any condition to the registration or renewal.

(2) Where the Board refuses to grant the application or renewal, or grants the application or renewal subject to conditions, it shall furnish the applicant with a statement in writing of its reasons for so doing.

Mode of registration.

24E. Registration shall be effected by the entry in the appropriate part of the register referred to in section 7 of the particulars of every person entitled to registration under this Part.

Requirement to comply with code of ethics.

24F. Where an allied health professional's United Kingdom registering body subscribes to or promulgates its own code of ethics a registered person shall in his professional conduct comply with that code of ethics subject to such modifications as practise in Gibraltar may require.

Duty to inform about material change.

24G. It shall be the duty of an allied health professional to inform the Board in writing about any material change in the information or evidence upon the basis of which he was so registered.

Registration subject to compliance with conditions.

24H. Where an allied health professional fails to comply with any condition of the registration imposed by the Board, after inquiry and if the Board thinks it proper, the Board may suspend that person from practice in the regulated profession until the conditions are complied with by that person or order the name of that person to be removed from the register.

Removal from the United Kingdom register.

24I. Where an allied health professional is removed from the United Kingdom register, that person must on receiving notification—

- (a) immediately cease to practise in Gibraltar; and
- (b) notify the Board of his removal from the United Kingdom register.

Power to make Regulations.

24J. For the purposes of this Part, the Minister may make regulations—

- (a) providing for the procedure for removal from and restoration to the register;
- (b) regulating the practice of such professionals;

- (c) prescribing the conditions under which and the manner in which any registered person may be suspended from practise by the Board or by any of its committees;
- (d) prescribing the titles that may be used by registered persons.

Amendment of Schedule 13.

24K. The Minister may amend Schedule 13 by notice published in the Gazette.

PART III.

NURSES , MIDWIVES AND HEALTH VISITORS.

Establishment and constitution of Nurses, Midwives and Health Visitors Registration Board.

25. (1) There shall be established a Nurses, Midwives and Health Visitors Registration Board.

(2) The provisions contained in Schedule 8 shall have effect with respect to the constitution and proceedings of the Board.

(3) The Minister may by order alter, add to or amend the provisions of Schedule 8.

Committees.

26. (1) The Board may from time to time, by notice published in the Gazette—

- (a) appoint committees comprising members of the Board, or members of the Board and other persons;
- (b) specify quorums for such committees;
- (c) delegate to any committee any specified functions, powers and duties of the Board; and
- (d) give directions to any committee as to the procedure to be followed by it.

(2) Subject to this Act, and to any directions given to it by the Board, every committee may regulate its procedure in such manner as it may determine.

Secretary to the Board.

27. The Minister may appoint a fit and proper person to be secretary to the Board.

Register of Nurses, Midwives and Health Visitors.

28. (1) Subject to the provisions of this Act the Board shall keep a register in such parts and in such form as may be prescribed in which shall be entered the name (including every other name by which such person may have been known), address, qualifications and date of registration of all persons entitled to registration under sections 29 and 30 or accepted for registration under section 31 or section 32.

(2) Without prejudice to the generality of sub-section (1) there shall be parts of the register in which shall be entered the names and addresses of enrolled nurses being persons who are not entitled to registration under section 29 or 30 or who have not been accepted for registration under section 31 or section 32 but who satisfy such conditions as may be prescribed. Subject to paragraph 1(h) of Schedule 8, none of the rights conferred on registered nurses by this Act shall be conferred on enrolled nurses.

Registration.

29. (1) Any person who satisfies the Board that he is of good character and—

- (a) has undergone the prescribed training in the nursing of the sick, in midwifery or, as the case may be, in health visiting either in an institution approved by the Board in that behalf, or in the service of the Crown; and
- (b) possesses the prescribed experience in the nursing of the sick, in midwifery or, as the case may be, in health visiting;
- (c) has passed such examination applicable to that part of the register to which he seeks admission as may be prescribed;

shall, on payment of such fee as may be prescribed, be entitled to be registered in the appropriate part of the register.

(2) Registration shall be valid for a period of thirty-six months unless earlier terminated in accordance with the provisions of this Act and no fee or part thereof, payable by virtue of sub-section (1), shall be refundable in the event of early termination.

(3) Subject to sub-section (4), where a person has been registered and applies to register for a further period of thirty-six months commencing at the termination of the earlier period of registration, the provisions of this section and sections 30, 31 and 32 shall be treated as satisfied if the applicant provides to the Board together with such fee as may be prescribed, his declaration—

- (a) that there has been no change in the information or evidence upon the basis of which he was registered; or
- (b) setting out the change in the information or evidence upon the basis of which he was registered and the Board are satisfied that the change is not of the kind or extent that would result in the applicant ceasing to be entitled to registration.

The declaration referred to in this sub-section shall be in such form as may be prescribed by the Board.

(4) (a) Any nurse who—

- (i) applies under sub-section (3) to register for a further period of thirty-six months; and
- (ii) has been in practice immediately before such application;

shall satisfy the Board that he has undertaken such courses and training during that practice as may have been prescribed.

- (b) Any nurse who has not practised as such for a continuous period in excess of three years terminating with the date of application for registration shall undertake and complete such refresher course as may be prescribed, prior to registration.

(5) For the purpose of this section “prescribed” other than in relation to the fee payable on registration, means prescribed by the Board.

Admission to register of Nurses, Midwives and Health Visitors trained in the United Kingdom.

30. (1) Any person wishing to be admitted to practise as a nurse, midwife or health visitor in Gibraltar and whose name is registered in any part or parts of the register kept by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting shall make written application to the secretary of the Board.

(2) Every application under sub-section (1) shall be accompanied by a certificate issued and duly authenticated by the Council on whose register the said person is registered to the effect that his name is so registered as a nurse, midwife or, as the case may be, a health visitor.

(3) Upon satisfying the Board of his identity and good character, and upon paying the prescribed fee for ordinary applications for registration under this Act, an applicant under this section shall be entitled to be registered under this Part.

Admission to register of Nurses, Midwives and Health Visitors of countries other than Gibraltar and the United Kingdom.

31. Subject to section 32 any person wishing to be admitted to practise as a nurse, midwife or health visitor in Gibraltar, who—

- (a) proves to the satisfaction of the Board that he has been trained in a country or territory outside Gibraltar or the United Kingdom where the standard of training is not lower than the standard of training and examination required under this Act, either as a nurse, a midwife or, as the case may be, a health visitor; and
- (b) satisfies the Board as to his identity and good character;

may either after examination or without examination, and upon payment of the prescribed fee, be registered in the appropriate part of the register.

Admission to register of Nurses and Midwives who are nationals of EEA States.

32.(1) Any person who is a national of an EEA State, who holds an appropriate European diploma and who satisfies the Board as to his identity and character shall, on payment of such fee as may be prescribed, be entitled to be registered in the appropriate part of the register of nurses and midwives.

(2) *Repealed.*

(3) In any case where—

- (a) an application for admission to be registered as a nurse or midwife is made by an applicant within sub-section (1); and

- (b) the Board has received all the documentary evidence as to his identity, character and qualifications required to enable him to be registered;

he shall be registered within three months of the date on which the Board was in receipt of that evidence or such longer period as may be permitted by the Qualifications (Right to Practise) Act 2009.

(3A) The Board shall be a competent authority for the purposes of the Recognition Directive.

(3B) The Board shall notify the applicant in writing of its decision within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application and when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant's right of appeal under section 45(1A).

(3C) Failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under subsection (3B).

- (4) *Repealed.*

Community documents.

33. A registered nurse or midwife who—

- (a) wishes to practise as a nurse or midwife in any other part of the EEA; and
- (b) requires for that purpose any such documentary evidence relating to his qualification as is referred to in the Recognition Directive;

may apply to the Board for, and the Board shall provide, the necessary documents.

Deemed registration of Visiting Nurses and Midwives from EEA States.

34. (1) A visiting nurse to Gibraltar from an EEA State may, subject to Schedule 10, practise as a nurse responsible for general care during the period specified in his relevant documents and while he is so practising he shall be deemed to be registered as a nurse responsible for general care.

(2) A visiting midwife to Gibraltar from an EEA State shall be deemed to be registered as a midwife during the period specified in her relevant documents.

(3) In this Part and in Schedule 10 “relevant documents”, in relation to any person, means—

(a) a written declaration stating—

- (i) that he is intending to practise in Gibraltar as a nurse responsible for general care or, as the case may be, as a midwife; and
- (ii) the address of the place where and the period during which he intends so to practise; and

(b) a certificate or certificates issued, not more than twelve months before the date on which the Board is provided with the relevant documents, by the competent authority of the EEA State in which he is practising as mentioned in paragraph 3(b) of Schedule 10 certifying—

- (i) that he is lawfully practising as a nurse responsible for general care or, as the case may be, as a midwife in that State; and
- (ii) that he holds an appropriate diploma.

(4) Schedule 10 (which makes provision for a person lawfully practising as a nurse or midwife in an EEA State, visiting Gibraltar to provide services), shall have effect.

Relief from fees.

35.(1) Notwithstanding anything contained elsewhere in this Part the Board may waive the fees of any person who at the time of registration is in the service of the Government, the Authority or the Ministry of Defence in Gibraltar, as it thinks fit.

(2) Where any person who is not required to pay a fee by reason of the provisions of sub-section (1) leaves the service of the Government, the Authority or the Ministry of Defence, he shall, if he wishes to remain on the register, pay the prescribed fee within thirty days of leaving such service.

Regulations.

36. It shall be lawful for the Minister to make regulations providing for—

- (a) regulating the conditions of admission to the register and prescribing the conditions to be observed by applicants for registration, and regulating the issue and prescribing the form of the register and certificates of registration;
- (b) regulating the practice of nurses, midwives and health visitors;
- (c) regulating the conduct of any examinations which may be prescribed as a condition of admission to the register and any matters ancillary to or connected with any such examinations;
- (d) prescribing the conditions under which and the manner in which any registered person may be suspended from practice by the Board;
- (e) the procedure for removal from and restoration to the register;
- (f) regulating the proceedings of the Board;
- (g) the titles which may be used and the uniforms or badges which may be worn by nurses, midwives and health visitors registered under this Act;
- (h) regulating the practice and providing for the registration in an appropriate part of the register of nursing assistants and nursing auxiliaries;
- (i) prescribing anything to be prescribed under this Act in relation to the Board and the register; and
- (j) generally for carrying this Act into effect.

PART IV.

GENERAL PROVISIONS ON REGISTRATION AND DISCIPLINE.

Evidence of qualification to be given before registration, etc.

37. (1) No person shall be registered, and no additional qualification shall be inserted in the register under section 39 in respect of any person, unless the Board is satisfied by the proper evidence that the person claiming such registration or qualification is entitled to be registered or have such additional qualification added; and any entry which shall be proved to the

satisfaction of the Board to have been fraudulently or incorrectly made may be erased from the register by the Board.

(2) Upon the registration of a person under this Act there shall be issued to him a certificate under the hand of the secretary to the appropriate Board stating that he has been registered on the date specified in the certificate and that certificate shall reproduce any entry in the appropriate register against that person's name.

(3) The Board shall, in respect of a national of an EEA State accept for the purpose of establishing that the person is of good character a certificate issued by a competent authority in the EEA State where he is entitled to practise attesting that the requirements of that EEA State as regards good character have been met by that person:

Provided that if the EEA State does not require proof of good character the Board shall accept in place of such certificate referred to above, an extract from the judicial record of that EEA State or an equivalent document issued by the competent authority in that State.

(4) The Board shall have a duty where it considers it appropriate to inform the competent authority in the EEA State from which a migrant originates of information about that migrant in the Board's possession which is of a serious nature and which in the opinion of the Board that competent authority ought to know.

Examinations.

38. (1) It shall be the duty of the Board to make such arrangements as may be necessary for the holding or recognition of examinations for the purposes of this Act, to appoint examiners therefor, and to determine the time when and the place where any such examination shall be held.

(2) Such fee as may be prescribed shall be paid by every person who presents himself for any such examination as is mentioned in sub-section (1) and all such fees shall be paid into the Consolidated Fund.

Registered person may have subsequent qualification inserted.

39. Any registered person who may have obtained any degree higher than, or any qualification other than the qualification in respect of which he may have been registered, shall be entitled on proof to the satisfaction of the Board of such degree or qualification to have such higher degree or additional qualification inserted in the register in substitution for or in addition to any qualification previously registered.

Registration to be gazetted.

40. Upon registering any person under Part II or Part IIA of this Act the Board shall as soon as may be convenient cause the name and address of such person and the qualifications in respect of which he is registered, to be notified in the Gazette.

Correction of register.

41. (1) The Board shall cause to be inserted in the register from time to time any alteration which may come to its knowledge in the name or address of any registered person.

(2) The Board may cause to be erased from the register the name of any deceased person and the name of any person whose registration has lapsed pursuant to, or as otherwise provided by, this Act .

Inspection of register.

42. The register shall be open to the inspection of any person on payment of such fee as may be prescribed, during the usual office hours.

Evidence.

43. A certificate purporting to be a certificate under the hand of the secretary to the Board that any person is or was at any date or is not, or was not at any date, duly registered, or stating that any particulars are or were at any date, or are not, or were not at any date, contained in the register kept by such Board, with respect to any person, shall be prima facie evidence in all courts of law of the facts stated in the certificate.

Persons convicted of certain offences, etc. may be suspended etc. or struck off register.

44. (1) If any registered person—

- (a) shall be convicted of an offence punishable with imprisonment for two years or more, or of an offence under section 75; or
- (b) shall after due inquiry be judged by the Board to have been guilty of malpractice, negligence or infamous conduct in any professional respect;
- (c) is an allied health professional and is judged by the Board to have breached any provision in Part IIA; or

(d) has been flagged up via IMI by way of an alert,

the Board may, if it sees fit, caution or censure such registered person or suspend him from practice, or order his name to be removed from the register.

(2) Where the Board is satisfied that a decision has been made by responsible authorities in an EEA State (including the United Kingdom) to the effect that any person ceases to be registered or otherwise officially recognised to practise medicine, dentistry, pharmacy or, as the case may be, nursing, midwifery or an allied health profession or is prohibited from practising medicine, dentistry, pharmacy or, as the case may be, nursing, midwifery or an allied health profession there and the decision is expressed to be made on the grounds that the person has committed a criminal offence or has been guilty of any misconduct in a professional respect, the Board shall be entitled to exercise its powers under sub-section (1) in relation to that person on the assumption that the grounds on which the decision was expressed to be made constitutes a criminal offence or malpractice, negligence or infamous conduct in a professional respect rendering that person unfit to have his name on the register as would (apart from this sub-section) justify the exercise of that power.

(3) Where the Board makes any inquiry under the provisions of this section the person against whom any offence is alleged shall be first informed of the nature of the allegation, and shall be entitled to appear in person before the Board and be heard thereon.

(4) Where after due inquiry the Board decides under the provisions of this section to order the removal of the name of, caution, censure or suspend any person from the register, notice of the intention of the Board so to do shall be served on such person by the secretary to the Board either personally or, if such person cannot be found, by leaving it at the place stated to be his address in the register.

(5) The Board shall not put into effect such caution, censure, suspension or removal until one month has elapsed since the date of the service of the notice referred to in sub-section (4) and it has been ascertained that no appeal under the provisions of section 45 has been lodged, or, if an appeal has been lodged, until the determination thereof.

(6) Any person whose name has been removed from the register by the Board or has been suspended under the provisions of sub-section (1) shall, within fourteen days after the service on him of such removal, surrender his certificate of registration to the Board, and if he fails so to do is guilty of an offence:

Provided that if, on appeal from the decision of the Board cautioning, censuring or suspending him or removing his name from the register, such decision shall be reversed, his certificate of registration shall thereupon be restored to him and the Board shall cause to be placed in any record or register containing any note or reference to such caution, censure, suspension or removal that the decision noted has been reversed on appeal to the Supreme Court.

(7) The Board may issue an alert under the IMI for a professional who has been convicted, suspended or struck off a register in Gibraltar.

Appeal from decision of the Board.

45. (1) Any person whose name has been ordered by the Board to be removed from the register or has been cautioned, censured or suspended from practice by the Board under the provisions of section 44 may, within twenty one days of the date of the service upon him of the notice of the decision of the Board (or within such further period as the Court may allow), appeal in the manner provided by the rules of court to the Supreme Court, and upon any such appeal the Court may confirm or reverse the order appealed against and the decision of the Supreme Court thereon shall be final and conclusive.

(1A) Where the Board refuses an application for registration, readmission, renewal, or for the recognition of specialist or other qualifications, the person aggrieved may appeal in the manner provided by the rules of court to the Supreme Court and upon any appeal the Court may confirm or reverse the decision appealed against; and the decision of the Supreme Court thereon shall be final and conclusive.

(1B) No appeal shall lie to the Supreme Court where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner in accordance with this Act.

(2) The Chief Justice may make rules of court for prescribing forms and fees and generally regulating appeals under this section.

(3) A person who has lodged an appeal under section 79 of the Qualifications (Right to Practise) Act 2009 may not lodge a further appeal under this section.

Restoration to the register.

46. Any person who has been suspended or whose name has been removed from the register under the provisions of section 44 may apply to the Board

for the lifting of the suspension or for the restoration of his name to the register, and the Board, in their absolute discretion and after such inquiry as they may deem expedient, may allow or refuse to allow the lifting of the suspension and the name of such person to be restored to the register.

Suspension of registration of midwives.

47. (1) Without prejudice to the provisions of section 44 the Public Health Director may in his discretion suspend a certificate of registration of a midwife for a period not exceeding two months if he is satisfied that—

- (a) she is liable to spread infection; or
- (b) to his knowledge such midwife has contravened any directions approved by the Board for the use of disinfectants or for the employment of proper safeguards against the spread of infection.

(2) Where the Public Health Director proposes to take action against any person under sub-section (1) such person shall first be informed of the nature of the allegation and shall be entitled to appear before the Public Health Director and to be heard thereon.

(3) The Public Health Director shall as soon as possible inform the Board of the fact that he has suspended the certificate of registration of any midwife in pursuance of sub-section (1) and shall transmit for the information of the Board a statement of the reasons for such suspension.

(4) Any midwife whose certificate of registration is suspended by the Public Health Director may appeal to the Board in the manner prescribed and the decision of the Board thereon shall be final and conclusive.

Appeal against refusal to approve institution.

48. (1) Any person aggrieved by the refusal of the Board to approve any institution for the purpose of section 29(1)(a) (relating to prescribed training) may appeal against the refusal to the Minister, and the Minister may give such directions therein as he thinks proper and the Board shall comply with any directions so given.

(2) Every appeal under this section shall be by means of a written petition and such petition, unless otherwise provided, shall be presented within fourteen days of the date of service of the decision of the Board.

(3) With any petition presented under sub-section (2) there may be presented to the Minister any written reply of the Board to such petition.

(4) The decision of the Minister on any appeal under this section shall be final and conclusive.

Service of notice.

49. Any notice directed to be served on any person under the provisions of this Act or any rules or regulations made thereunder shall be deemed to have been served on such person if such notice has been posted by registered post to his address given in the register or, if the name of such person is not registered, then to the address furnished by him or as known to the Board.

PART V.

EFFECT OF REGISTRATION.

Practice of medicine.

50. Every medical practitioner registered under this Act and every visiting EEA medical practitioner shall be entitled to practise medicine, surgery and midwifery and shall be entitled to take or use the description of medical practitioner or registered medical practitioner.

Recovery of fees in relation to medical or dental services.

51. (1) Every medical practitioner and dentist registered under this Act and every visiting EEA medical or dental practitioner entered in the list of such practitioners shall be entitled to demand, sue for and recover in any court with full costs of suit, reasonable charges for professional aid, advice and visits, and the value of any medicine or of any medical or surgical appliance rendered or supplied by him to his patients.

(2) No person shall be entitled to recover any charge in any court for any medical or surgical aid, advice or attendance or for the performance of any operation as a medical practitioner or dentist or for any medicine which he shall have prescribed or supplied within Gibraltar unless he was at the time of rendering such aid, advice or attendance registered under this Act or was a visiting EEA medical or dental practitioner entered in the list of such practitioners.

Use of description of Dentist, etc.

52. A person registered under this Act as a dentist or who is a visiting EEA dental practitioner entered in the list of such practitioners shall, by virtue of being so registered or such a visitor, be entitled to practise and to take or use the description of dentist, registered dentist or dental practitioner.

Use of description of Pharmacist and Dispenser.

53. A person registered in the register established under section 7—

- (a) as a pharmacist shall, by virtue of being so registered, be entitled to practise pharmacy and to take or use the description of pharmacist or registered pharmacist;
- (b) as a dispenser shall, by virtue of being so registered, be entitled to prepare, mix, compound or dispense any drug or supply any poison, under the supervision of a registered pharmacist.

Use of description of Nurse, Midwife or Health Visitor.

54. A person registered under this Act as a nurse (other than as an enrolled nurse), midwife or health visitor shall, by virtue of being so registered, be entitled to practise nursing, midwifery or as a health visitor and to take or use the description of registered nurse, registered midwife or registered health visitor, as the case may be.

Use of protected titles: allied health professions.

54A. (1) An allied health professional shall, by virtue of being so registered, be entitled to practise the profession for which that person is registered and to take or use the protected title appropriate to the profession as mentioned in Part 1 of Schedule 13.

(2) The Minister may by notice in the Gazette, amend, alter or modify any protected title or the name of any allied health profession specified in Part 1 of Schedule 13, and in the event of such amendment, alteration or modification, an allied health professional shall use the protected title as amended, altered or modified.

Registration as a Nurse, Midwife, Health Visitor or Allied Health Professional not to confer rights of medical practitioner.

55. Registration as a nurse, midwife, health visitor or allied health professional shall not confer upon any person so registered any right—

- (a) to be registered in the register established under section 7 (except that that this paragraph shall not apply to allied health professionals);
- (b) to take or use any name, title or addition implying a qualification to practise medicine or surgery;

- (c) to grant any medical certificate or any certificate of birth, still-birth or death; or
- (d) to take charge of cases of abnormality or disease in connection with parturition.

Saving of specialist consultants.

56. Subject to section 13(6), nothing in this Act shall be deemed to prevent the occasional practice of medicine, midwifery or surgery—

- (a) by any consultant or specialist practitioner who is in possession of any of the qualifications by virtue of which he is entitled to be registered and who does not within Gibraltar open or use any office or place wherein to meet patients or receive calls; or
- (b) by any consultant or specialist who is not in possession of such qualification and who practises his specialisation in medicine, midwifery or surgery in a Government or Authority hospital only and with the consent of the Board.

Saving for medical practitioners in regard to dentistry.

57. Nothing in the Act shall prohibit—

- (a) the practice of dentistry or midwifery or the dispensing of medicines by a registered medical practitioner; or
- (b) the recovery of any fee or charge made in respect of such practice.

PART VI.

HOSPITALS AND NURSING HOMES.

Interpretation.

58. In this Part—

“hospital” includes any institution provided it is maintained for the reception and treatment of persons suffering from illness including any maternity departments and clinics, dispensaries and out-patients’ departments and including any health centre or isolation hospital maintained by the Authority;

“maternity home” means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth;

“nursing home” means any premises used or intended to be used for the reception of, and the providing of nursing for, persons suffering from any sickness, injury or infirmity, and includes a maternity home, but does not include any hospital or other premises maintained or controlled by the Authority;

“premises” includes land and buildings.

Rules.

59. The Minister may make rules providing for—

- (a) specifying the persons or class or description of persons who may be admitted to or receive medical attendance at any hospital;
- (b) prescribing the conditions subject to which any person may be admitted to or permitted to remain in or receive medical attendance at any hospital;
- (c) prescribing the fees to be paid in respect of any person or class or description of persons for accommodation in hospitals or the provision of medical attendance thereat, and providing for the time and the manner of payment, the giving of security for payment, and the recovery, remission and reduction of such fees;
- (d) the registration, regulation, conduct, good management and inspection of nursing homes, and the fees to be paid in respect of accommodation therein;
- (e) generally the better regulation and management of hospitals and nursing homes.

PART VIA
PREVENTION OF SHARP INJURIES

Interpretation.

59A. In this Part—

“Council Directive 91/383/EEC” means Council Directive of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (91/282/EEC) as amended from time to time;

“employee” has the meaning assigned to it by section 2 of the Employment Act and for the purposes of this Part, “employee” includes-

- (a) trainees and apprentices in the hospital and healthcare sector and directly related services and activities; and
- (b) workers who are employed by temporary employment business within the meaning of Council Directive 91/383/EEC;

“healthcare contractor” means an employer whose main activity is not the management, organisation or provision of healthcare, but who provides services under contract to a healthcare employer;

“healthcare employer” means an employer whose main activity is the management, organisation and provision of healthcare;

“injury” includes infection;

“medical sharp” means an object or instrument used for the exercise of healthcare activities and which are able to cut, prick or cause injury and is considered as work equipment as defined in regulation 2 of the Factories (Provision and Use of Work Equipment) Regulations, 1999;

“safer sharp” means a medical sharp that is designed and constructed to incorporate a feature or mechanism which prevents or minimizes the risk of accidental injury from cutting or pricking the skin.

Application of requirements to employers.

59B. (1) The requirements imposed by this Part on an employer apply to—

- (a) a healthcare employer; and
- (b) a healthcare contractor whose employees, or other persons who work under the healthcare contractor’s supervision and direction, are exposed to a risk of injury from medical sharps in relation to the provision of services to a healthcare employer.

(2) A requirement imposed by this Part on an employer that applies in relation to that employer's employees also applies, so far as is reasonably practicable, in relation to any other person who is not an employee of that employer but who works under than employer's supervision and direction.

Application of requirements to healthcare contractors.

59C.(1) The requirements imposed by this Part on a healthcare contractor apply only in relation to work—

- (a) on a healthcare employer's premises; or
- (b) under the authority of a healthcare employer.

(2) The requirements imposed by this Part on a healthcare contractor apply only to the extent that the healthcare contractor controls—

- (a) a person who uses, supervises or manages the use or disposal of medical sharps; and
- (b) the activities which give rise to the risk of injury from medical sharps.

Risk Assessments.

59D.(1) The procedure for risk assessments under this Part shall be conducted in accordance with regulation 7 of the Management of Health and Safety at Work Regulations, 1996, and regulation 4 of the Factories (Protection of workers from risks related to exposure to biological agents at work) Regulations 2006.

(2) Risk assessments referred to in subsection (1) shall—

- (a) include an exposure determination, understanding the importance of a well resourced and organized working environment;
- (b) cover all situations where there is injury, blood or other potentially infectious material; and
- (c) take into account technology, organization of work, working conditions, level of qualifications, work related psycho-social factors and the influence of factors related to the working environment in order to—
 - (i) identify how exposure could be eliminated; and

- (ii) consider possible alternative systems;
- (d) consider the use of personal protective equipment.

Use and disposal of medical sharps.

59E.(1) An employer must ensure that—

- (a) use of medical sharps at work is avoided so far as is reasonably practicable;
- (b) when medical sharps are used at work, safer sharps are used so far as is reasonably practicable;
- (c) needles that are medical sharps are not capped after use;
- (d) in relation to the safe disposal of medical sharps that are not designed for reuse—
 - (i) written instructions for employees; and
 - (ii) clearly marked and secure containers,are located close to where medical sharps are used at work.

(2) An employer must review at suitable intervals the policies and procedures in place to meet the requirements of subsection (1) so as to ensure that those policies and procedures remain up to date and effective.

Information and training.

59F. (1) An employer must provide each employee of that employer who is exposed to a risk of injury at work from medical sharps with information on the following matters—

- (a) the risk of injury from medical sharps;
- (b) legislative requirements relating to the protection of persons at work from the risk to health and safety from medical sharps, including duties on employers and employees;
- (c) good practice in preventing and reporting injury from medical sharps;

- (d) the benefits and drawbacks of vaccination and non-vaccination in respect of blood-borne diseases; and
- (e) the support provided by the employer to an employee who is injured at work by a medical sharp;

(2) In complying with subsection (1) the employer must cooperate with representatives in that employer's undertaking in developing and promoting the information specified in that subsection.

(3) In subsection (2), "representative" shall be interpreted in accordance with regulation 2 of the Management of Health and Safety at Work Regulations, 1996.

(4) In addition to any provision in any other enactment requiring an employer to train its employees, an employer must provide each employee who is exposed to a risk of injury at work from medical sharps with training on the following matters to the extent that those matters are relevant to the type of work carried out by that employee—

- (a) the safe use and disposal of medical sharps;
- (b) the correct use of safer sharps;
- (c) induction for all new and temporary staff;
- (d) the risk associated with blood and body fluid exposures;
- (e) preventive measures including standard precautions, safe systems of work, the correct use and disposal procedures, the importance of immunisation, according to the procedures at the workplace;
- (f) the reporting, response and monitoring procedures and their importance;
- (g) what employees should do if they are injured at work by a medical sharp; and
- (h) the health surveillance and other procedures to be conducted by the employer where an employee is injured by a medical sharp.

Arrangements in the event of injury.

59G. (1) Where an employer is notified of an incident at work in which an employee has suffered an injury from a medical sharp, the employer must—

- (a) record the incident;
- (b) investigate the circumstances and cause of the incident; and
- (c) take any necessary action to prevent a recurrence.

(2) Where an employer is notified of any incident at work in which an employee has suffered an injury caused by a medical sharp that exposed, or may have exposed, the employee to a biological agent, the employer must—

- (a) take immediate steps to ensure that the employee receives medical advice;
- (b) ensure that any treatment advised by a registered medical practitioner, including post-exposure prophylaxis, is made available to the employee; and
- (c) consider providing the employee with counselling and guaranteed medical treatment.

(3) An employer must, in addition to any other duty imposed by law, respect the employee's confidentiality regarding the injury, diagnosis and treatment.

(4) In this section—

- (a) “biological agent” means a micro-organism, cell culture or human endoparasite, whether or not genetically modified, which may cause infection, allergy, toxicity or otherwise create a hazard to human health;
- (b) “post-exposure prophylaxis” means a course of treatment of medicine administered to a person after exposure or suspected exposure, to a biological agent in order to prevent infection or development of disease caused by that biological agent.

Notification of injuries.

59H.(1) Person “A”, who is an employee or other person working under the supervision and direction of a healthcare employer or a healthcare contractor, must—

- (a) as soon as practicable, notify A's employer, or any other employee of that employer with specific responsibility for the health and safety of persons at work, of any incident at work in which A has suffered an injury from a medical sharp; and

- (b) provide when requested by that employer sufficient information as to the circumstances of the incident to enable the employer to comply with section 59G.

(2) In the case of an employee or other person working under the supervision and direction of a healthcare contractor, this section only applies to incidents which take place—

- (a) on a healthcare employer's premises; or
- (b) under the authority of a healthcare employer.

(3) An person who wilfully—

- (a) withholds information in respect of an injury required to be notified under this section; or
- (b) makes any notification under this section or provides information in respect of such a notification that he knows to be untrue in any material respect;

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Penalties.

59L(1) An employer who—

- (a) fails to discharge a duty to which he is subject by virtue of this Part;
- (b) contravenes a requirement or prohibition imposed under this Part;

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence is committed by an employer and it is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the employer commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (2) “officer”, in relation to an employer, means a director, manager, secretary or other similar officer of the employer, or a person purporting to act in any such capacity.

(4) If the affairs of the employer are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the employer.

PART VII. **PHARMACY AND MEDICINES.**

Interpretation.

60. (1) In this Part, unless the context otherwise requires—

“administer” means administer to a human being or an animal, whether orally, by injection or by introduction into the body in any other way or by external application, whether by direct contact with the body or not; and any reference in this Part to administering a substance or article is a reference to administering it either in its existing state or after it has been dissolved or dispersed in or diluted or mixed with some other substance, used as a vehicle;

“advertisement” includes every form of advertising, whether in a publication, or by the display of any notice, or by means of any catalogue, price list, letter (whether circular or addressed to a particular person) or other document, or by words inscribed on any article, or by means of a photograph, film, sound recording, broadcast or cable programme, or in any other way, and any reference to the issue of an advertisement shall be construed accordingly except that “advertisement” does not include spoken words other than—

- (a) words forming part of a sound recording; and
- (b) words broadcast or included in a cable programme service;

“animal” includes any bird, fish or reptile;

“assemble” in relation to a medicinal product, means enclosing the product (with or without other medicinal products of the same description) in a container which is labelled before the product is sold or supplied, or, where the product (with or without other

medicinal products of the same description) is already enclosed in the container in which it is to be sold or supplied, labelling the container before the product is sold or supplied in it, and “assembly” has a corresponding meaning;

“composition”, in relation to a medicinal product, means the ingredients of which it consists and the proportions, and the degree of strength, quality and purity, in which those ingredients are contained in it respectively;

“container” in relation to a medicinal product, means the bottle, jar, box, packet or other receptacle which contains or is to contain it, not being a capsule, sachet or other article in which the product is or is to be administered, and where any such receptacle is or is to be contained in any other such receptacle, includes the former but does not include the latter receptacle;

“dentist” means any person registered as a dentist in Part II of the register established under section 7;

“disease” includes any injury, ailment or adverse condition, whether of body or mind;

“dispenser” means any person registered as a dispenser in Part IIIA of the register established under section 7;

“export” means export from Gibraltar whether by land, sea or air, and includes re-export; and “import” has a corresponding meaning;

“general sale list” means a list specifying the descriptions or classes of medicinal products, prescribed by regulations made under section 63 which can with reasonable safety be sold or supplied other than in premises registered as a dispensary;

“health prescription” means a prescription issued by a medical practitioner or dentist or as the case may be under the Medical Group Practice Scheme;

“hospital” means a hospital as defined in Part VI;

“ingredient” in relation to the manufacture or preparation of a substance includes anything which is the sole active ingredient of that substance as manufactured or prepared;

“label” in relation to a container or package of medicinal products, means a notice describing or otherwise relating to the contents;

“manufacture” in relation to a medicinal product includes any process carried out in the course of making the product, but does not include dissolving or dispersing the product in, or diluting or mixing it with some other substance used as a vehicle for the purpose of administering it and does not include the incorporation of the product in any animal feeding stuff;

“medical practitioner” means any person registered as a medical practitioner in Part I, Part IA or Part IB of the register established under section 7;

“medicinal product” means any substance or article (not being an instrument, apparatus or appliance) which is manufactured, sold, supplied, imported or exported for use wholly or mainly in either or both of the following ways, that is to say—

- (a) use by being administered to one or more human beings or animals for a medicinal purpose;
- (b) use in any of the following circumstances—
 - (i) in a pharmacy or hospital;
 - (ii) by a practitioner; or
 - (iii) in the course of a business which consists of or includes the retail sale or the supply in circumstances corresponding to retail sale, of herbal remedies;

as an ingredient in the preparation of a substance or article which is to be administered to one or more human beings or animals for a medicinal purpose;

“medicinal product” does not include—

- (a) substances used in dental surgery for filling dental cavities;
- (b) bandages and other surgical dressings, except medicated dressings where the medication has a curative function which is not limited to sterilising the dressing;
- (c) substances and articles of such other descriptions or classes as may be specified by an order made by the Minister for the purposes of this sub-section;

“medicinal purpose” means any one or more of the following purposes, that is to say—

- (a) treating or preventing disease;
- (b) diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
- (c) inducing anaesthesia;
- (d) otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily, and whether by way of terminating, reducing or postponing or increasing or accelerating the operation of that function or in any other way;

“pharmacist” means any person registered as a pharmacist in Part III of the register established under section 7;

“practitioner” means a medical practitioner, dentist or veterinary practitioner;

“proprietary designation” in relation to the sale of a medicinal product, means a word or words used or proposed to be used in connection with the sale of medicinal products for the purpose of indicating that they are the goods of a particular person by virtue of manufacture, selection, certification, dealing with or offering for sale; and the expression “proprietor”, in relation to such designation means the person whose goods are indicated or intended to be indicated as aforesaid by the designation;

“representation” means any statement or undertaking (whether constituting a condition or a warranty or not) which consists of spoken words, other than words forming part of a sound recording or embodied in a soundtrack associated with a cinematograph film and words broadcast by way of sound broadcasting or television or transmitted to subscribers to a diffusion service, and any reference to making a representation shall be construed accordingly;

“sale by retail” means selling a substance or article to a person as being a person who buys it otherwise than for—

- (a) selling or supplying it; or
- (b) administering it or causing it to be administered to one or more human beings;

in the course of a business carried on by that person;

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour;

“substance recommended as a medicinal product” in relation to the sale of an article consisting of or comprising a substance so recommended, means a substance which is referred to—

- (a) on the article, or on any wrapper or container in which the article is sold, or any label affixed to or in any document or advertisement enclosed in, the article or such a wrapper or container;
- (b) in any placard or advertisement or document exhibited or representation made at the place where the article is sold; or
- (c) in any document or advertisement published or representation made by or on behalf of the manufacturer of the article, or the person carrying on the business in the course of which the article was sold or, in a case where the article was sold under a proprietary designation, the proprietor of the designation;

in terms which are calculated to lead to the use of the substance for a medicinal purpose not being terms which give a definite indication that the substance is intended to be used as, or as part of, a food or drink, and not as, or as part of, a medicinal product;

“treating” in relation to disease, includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of cure or not;

“veterinary practitioner” means any qualified veterinary surgeon and any person appointed as a Government veterinary surgeon for the purposes of the Animals and Birds Act.

(2) For the purposes of this Part—

- (a) an article shall be deemed to be sold under a designation or title if, but not unless, the designation or title is used for naming the article or the substance which it consists of or comprises—
 - (i) by any person in connection with the sale; or

- (ii) on the article, or on any wrapper or container in which the article is sold, or on any label affixed to, or in any document or advertisement enclosed in the article or such a wrapper or container;
 - (b) a reference to an edition of the British Pharmacopoeia or the British Pharmaceutical Codex published before a certain date shall be construed as a reference to that edition as amended by any addendum thereto published before that date;
 - (c) a reference to a description set out at the head of any monograph contained in an edition of the British Pharmacopoeia or the British Pharmaceutical Codex shall be construed as including a reference to any synonym or abbreviation of that description being a synonym or abbreviation set out at the head of that monograph.
- (3) (a) In this Part any reference to selling anything by way of wholesale dealing is a reference to selling it or supplying it to a person lawfully conducting a retail pharmacy business being a person who buys it for one or more of the purposes specified in paragraph (b);
- (b) the purposes referred to in paragraph (a) in relation to a person lawfully conducting a retail pharmacy business to whom anything is sold, are the purposes of selling or supplying it, or administering or causing it to be administered to one or more human beings, in the course of a retail pharmacy business carried on by that person;
 - (c) in this Part any reference to selling by retail, or to retail sale, is a reference to selling a substance or article to a person as being a person who buys it otherwise than for a purpose specified in paragraph (b), provided that the provision of any substance or article by any person registered in Part I, Part 1A, Part 1B, or Part II of the register in the course or for the purpose of any medical treatment of any patient shall not be treated as a retail sale;
 - (d) in this Part any reference to supplying anything in circumstances corresponding to retail sale is a reference to supplying it otherwise than by way of sale to a person as being a person who receives it otherwise than for a purpose specified in paragraph (b).

(4) In this section references to the sale of an article include references to the supply of an article as a sample for the purpose of inducing persons to buy by retail the substance of which the article consists or which it comprises.

Import of medicinal products not on general sale list.

61.(1) No person other than the owner of a registered pharmacy or a medical practitioner registered in Part I, Part IA or Part IB of the register shall import or procure the importation of any medicinal product, other than a medicinal product specified on a general sale list, for the purposes of sale, whether by retail or wholesale, except in accordance with a licence granted for the purpose of this Act by the Public Health Director.

(2) For the purpose of subsection (1) the term “medicinal product” does not include any controlled drug as defined in the Drugs (Misuse) Act² unless it is a product which is a Schedule 5 controlled drug as specified in the Drugs (Misuse) Regulations 2005³.

Sale or supply of medicinal products not on general sale list.

62. (1) No person shall sell by retail, offer or expose for sale by retail, or supply in circumstances corresponding to retail sale, any medicinal product other than a medicinal product on a general sale list, unless—

- (a) the product is sold, offered or exposed for sale, or supplied on premises which are a registered pharmacy; and
- (b) that person, or, if the transaction is carried out on his behalf by another person, then that other person, is or acts under the supervision of a pharmacist.

(2) No medicinal product, other than a medicinal product on the general sale list, shall be offered or exposed for sale in a manner which will make it easily accessible to the general public.

Sale or supply of medicinal products on general sale list.

63. No person shall sell by retail, or offer or expose for sale by retail or supply in circumstances corresponding to retail sale, any medicinal product on a general sale list elsewhere than at a registered pharmacy unless the conditions specified in any regulations made under this Act and relating to the general sale list are complied with.

² 1973-06

³ 2005/106

Provisions as to export.

64. (1) No person shall, other than under a licence issued by the Public Health Director export or procure the exportation of a medicinal product specified or of a description falling within a class specified in any regulations relating to medicinal products which may only be supplied on the prescription of a medical practitioner.

(2) The provisions of sub-section (1) shall not apply to the supply of medicinal products to the master of a ship in port in Gibraltar, by a pharmacist, against a requisition signed, in the case of a ship carrying a doctor on board as part of her complement by that doctor, or, if the ship does not carry a doctor as part of her complement, by the master of the ship.

(3) The requisition referred to in sub-section (2) shall specify the medicinal products required and shall contain a statement to the effect that such medicinal products are necessary for the equipment of the ship.

(4) In sub-sections (2) and (3) the expression “ship” does not include a harbour craft or a pleasure yacht or any vessel of less than 100 gross tons:

Provided that nothing in this section shall apply to the supply of a medicinal product prescribed by a practitioner for the treatment of a person residing in a ship under a permit of residence issued under the provisions of the Immigration Control Act.

(5) The provisions of this section shall not apply to a person who, on leaving Gibraltar, takes with him medicinal products which are for his personal use and which have been prescribed for him under the provisions of this Act.

Disclosure of composition of medicines.

65. (1) No person shall—

- (a) sell by retail any article consisting of or comprising a substance recommended as a medicinal product; or
- (b) supply any such article as a sample for the purpose of inducing persons to buy by retail the substance of which it consists or which it comprises;

unless there is written so as to be clearly legible on the article or a label affixed thereto, or, if the article is sold or supplied as aforesaid in a container, on the container or a label affixed thereto, or if the article is sold

or supplied as aforesaid in more than one container, on the inner container or label affixed thereto, the appropriate designation and composition of the substance so recommended, or of each of the active constituents thereof, or of each of the ingredients of which it has been compounded:

Provided that this sub-section shall not apply to any article made up and supplied for the use of a particular person, being an article prescribed by reference to the needs of that person.

(2) In sub-section (1) the expression “appropriate designation”, in relation to a substance, constituent or ingredient, means—

- (a) in a case where the substance, constituent or ingredient is described in any of the monographs contained in the edition of the British Pharmacopoeia or the British Pharmaceutical Codex which was last published before the date on which the article was sold or supplied, the description set out at the head of that monograph;
- (b) in a case where the substance, constituent or ingredient is not so described, the accepted scientific name, or other name descriptive of the true nature of the substance, constituent or ingredient.

Regulations.

66. The Minister may make regulations—

- (a) prescribing the substances which are poisons within the meaning of this Part;
- (b) providing for the registration of premises selling medicinal products or poisons whether by retail or wholesale;
- (c) prescribing the forms and books to be used by pharmacists, and other persons and the particulars to be registered therein;
- (d) specifying the description or classes of medicinal products, as being products which can with reasonable safety be sold or supplied otherwise than by or under the supervision of a pharmacist;
- (e) specifying the description or classes of medicinal products as being products which subject to such exemptions, if any, as may be specified in such regulations, shall not be sold or

supplied except in accordance with a prescription given by a medical or other practitioner;

- (f) prescribing the conditions under which medicinal products and poisons may be imported, exported, stored or sold wholesale whether under licence or not;
- (g) regulating the issue of advertisements and representations relating to medicinal products;
- (h) prohibiting the sale, supply or importation of medicinal products or poisons of any description;
- (i) specifying the description or class of articles or substances in respect of which the provisions of this Part applicable to medicinal products and to poisons shall apply to such articles or substances;
- (j) prescribing the shape and colour of the container in which a medicinal product or a poison may be supplied;
- (k) for regulating the issue of prescriptions containing medicinal products which shall not be sold or supplied except in accordance with a prescription given by a medical practitioner, and the supply of such medicinal products on prescription and for requiring persons issuing or dispensing prescriptions containing such medicinal products to furnish to the Chief Executive such information relating to those prescriptions as may be prescribed;
- (ka) providing that certain nurses who have undertaken approved relevant training may have prescribing rights appropriate to such training in relation to repeat prescriptions for the management of specified chronic diseases where the original therapy has been initiated or is followed by a GHA employed medical practitioner or visiting consultant contracted to provide clinical services;
- (kb) providing that optometrists who have undertaken approved relevant training may have prescribing rights appropriate to such training in relation to specified medications;
- (l) providing for the issue, suspension and revocation of licences issued for the purpose of section 61 and section 64 and the terms and conditions of such licences;

- (m) notwithstanding the provisions of section 67, for regulating the ownership of a business registered as a pharmacy;
- (n) generally for carrying into effect the purpose of this Part.

Ownership of registered pharmacies.

67. (1) No person other than a person registered as a pharmacist shall own any business registered as a pharmacy notwithstanding that the manager or person in charge thereof is registered under the provisions of this Act:

Provided that such prohibition shall not apply to any business which is owned by a company incorporated under the provisions of the Companies Act in any case where a registered pharmacist is the bona fide owner of at least fifty-one per cent of the share capital.

(2) Notwithstanding anything contained in sub-section (1) the Minister may, in his discretion, authorise any person or company to own a business registered as a pharmacy if it is considered in the public interest to do so.

Conditions imposed on carrying on a retail pharmacy business.

68. No business registered as a pharmacy shall be under the control of a person who is a pharmacist registered by virtue of section 23 if the pharmacy has been registered in Gibraltar for less than three years.

Restriction on use of premises.

69. No premises shall be used for the sale by retail of any medicinal product (other than a medicinal product specified in the general sale list) or poison unless the premises have been registered as a pharmacy by the Board.

Register of prescriptions to be kept and produced.

70. (1) No person other than a pharmacist or any other person under the supervision of a pharmacist shall manufacture or assemble any medicinal product.

(2) A pharmacist and dispenser shall number consecutively every medical prescription which shall be made up in his establishment and shall also register in a book, to be called the “register of prescriptions”, such particulars as may be prescribed.

(3) The register of prescriptions shall be produced whenever required by any person appointed by the Minister or by any court in the course of any judicial enquiry or investigation.

Articles to be deemed poisons.

71. Such articles as may from time to time be prescribed by the Minister under section 66(a) shall be deemed to be poisons within the meaning of this Part.

Regulations to be observed in the sale of poisons.

72. (1) No person shall sell any poison, either by wholesale or retail, unless the container in which such poison is contained be distinctly labelled with the name of the article and the word “poison” and with the name and address of the seller of the poison.

(2) Where the poison is in the form of a liquid supplied for external application such bottle or vessel shall be of such shape and colour as may be prescribed.

(3) It shall be unlawful to sell any article prescribed as a poison to any person unknown to the seller, unless introduced by some person known to the seller, and on every sale of any such article the seller shall, before delivery, make, or cause to be made, an entry, in a book to be kept for that purpose, stating in such form as may be prescribed the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person (if any) who introduced him shall be affixed.

(4) For the purposes of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller, but the provisions of this section shall not apply to any article when forming part of the ingredients of any medicines dispensed on the prescription of any registered medical practitioner, provided such medicine be labelled in the manner aforesaid with the name and address of the seller, and provided also that the prescription be duly entered as required by section 66.

Power of inspection and seizure.

73. The Board may authorise in writing any person to enter any premises registered under this Part at any reasonable time and such person may inspect any book or register required to be kept by this Part and any medicinal product or poison, and may seize and hand over to the authority to be prescribed any article in respect of which he considers any offence to have been committed.

Saving.

74. Nothing in this Part shall prejudice any civil remedy to which any person may be entitled.

**PART VIII.
OFFENCES.**

Procuring registration by false pretences.

75. A person who procures or attempts to procure himself to be registered by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, is guilty of an offence and on summary conviction is liable to imprisonment for six months and to a fine up to level 4 of the scale.

Misleading title, unqualified practice, etc.

76. (1) A person who—

- (a) wilfully and falsely takes or uses any name, title or addition implying a qualification to practise medicine, surgery or dentistry, or (subject to the provisions of section 56) not being registered or entitled to the privileges of persons so registered under this Act, or of a visiting EEA medical or dental practitioner entered in the list of such practitioners, practises or professes to practise or publishes his name as practising medicine, surgery or dentistry;
- (b) not being registered in accordance with the provisions of this Act practises as a medical practitioner, dentist or pharmacist, whether or not he may be entitled to registration under the provisions of this Act; or
- (c) is a person other than a person duly registered as a pharmacist under this Act who—
 - (i) in the course of any trade or business prepares, mixes, compounds or dispenses any medicinal product or supplies any poison except such person or category of person as may be prescribed acting under the supervision of a registered pharmacist;
 - (ii) assumes the use of the word “pharmaceutist chemist”, “pharmacist” or “chemist or “druggist” or “dispenser” or any similar combination of such words, or takes or uses in connection with the sale of goods by retail, any such

title or otherwise represents himself as being a pharmacist;

- (iii) uses in connection with any business any title, emblem or description reasonably calculated to suggest that he or anyone employed in the business possesses any qualification with respect to the selling, dispensing or compounding of medicinal products or poisons other than the qualification which he in fact possesses;

is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine up to level 4 of the scale.

(2) For the purposes of sub-section (1) the use of the description “dispensary” or “pharmacy”, or any of the words or combination of words mentioned in sub-section (1) in connection with a business carried on on any premises, shall be deemed to be reasonably calculated to suggest that the owner of the business or the manager or person in charge of such business on those premises is registered as a pharmacist under the provisions of Part II.

Use of title and description by dentists.

77. (1) A person registered under this Act as a dentist or a visiting EEA dental practitioner entered in the list of such practitioners shall not take or use, or affix to or use in connection with the premises any title or description reasonably calculated to suggest that he possesses any professional status or qualification other than such which he in fact possesses and which is indicated by particulars entered in the register in respect of him or, as the case may be, the particulars of diplomas entered against his name in the list of visiting EEA dental practitioners kept by the Board in compliance with paragraph 3 of Schedule 7 of this Act.

(2) A person who contravenes the provisions of sub-section (1) is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine up to level 3 of the scale.

Penalties for unlawful assumption of title of Nurse, Midwife or Health Visitor.

78. A person who—

- (a) not being a person duly registered under this Act takes or uses the title of registered nurse, enrolled nurse, midwife or health visitor or its equivalent in any other language, either alone or in combination with any other words or letters, or uses any name,

title, addition, description, uniform or badge implying that he is registered under this Act or is recognised by law as a registered nurse, enrolled nurse, midwife or health visitor, or uses any title, uniform or badge prescribed for the use of nurses, midwives or health visitors registered under this Act; or

- (b) being neither a person registered in Part I, Part IA or Part IB of the register kept under section 7 nor a registered nurse or midwife, attends a woman in childbirth other than in a case of sudden or urgent necessity;

is guilty of an offence and is liable on summary conviction to a fine up to level 3 of the scale:

Provided that the provisions of paragraph (b) shall not apply in the case of a person who, while undergoing training with a view to becoming a registered midwife, attends a woman in childbirth as part of a course of training prescribed by the Board.

Restriction on engaging in an allied health profession.

78A.(1) No person shall, without being registered under Part IIA of this Act—

- (a) engage in an allied health profession; or
- (b) use or permit to be used in connection with that profession any protected title, other title or name, emblem, addition or description implying that the person is—
 - (i) registered in respect of that profession, or
 - (ii) qualified to engage in that profession.

(2) A person who contravenes subsection (1)(a) is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine up to level 4 on the standard scale.

(3) A person who contravenes the provisions of subsection (1)(b) is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine up to level 3 on the standard scale

Offences relating to the register.

79. (1) A person who—

- (a) being a person whose name is included in any part of the register, uses any name, title, addition, description, uniform or badge, or otherwise does any act of any kind, implying that his name is included in some other part of the register in which it is not included; or
- (b) with intent to deceive makes use of any certificate of registration issued under this Act to him or to any other person; or
- (c) knowing that some other person is not registered, makes any statement or does any act calculated to suggest that that other person is registered;

is guilty of an offence and is liable on summary conviction, in the case of a first offence, to a fine as provided by level 2 of the scale and, in the case of a second or any subsequent offence, to a fine as provided by level 3 of the scale.

(2) A person who wilfully makes or causes to be made any falsification in any matter relating to the register is guilty of an offence and is liable on summary conviction to imprisonment for six months and to a fine as provided by level 4 of the scale.

Employing unregistered substitute.

80. A registered nurse, midwife or health visitor who employs an unregistered person as his or her substitute is guilty of an offence against this Act.

Penalty for sale in contravention of section 62.

81. A person who sells or supplies a medicinal product in contravention of section 62(1) is guilty of an offence and, subject to the provisions of this Part, is liable on summary conviction—

- (a) in the case of a first conviction, to a fine as provided by level 4 of the scale; and
- (b) in the case of a subsequent conviction, to imprisonment for three months and to a fine as provided by level 5 of the scale.

Defences.

82. It shall be a defence for a person charged with selling or supplying in contravention of any of the provisions of sections 62 and 65, an article

consisting of or comprising a substance recommended as a medicinal product to prove—

- (a) that he did not know, and had no reason to believe that the article consisted of or comprised such a substance; or
- (b) that, in relation to the matter in respect of which he is charged, he acted in the course of his employment as a servant or agent of another person on the instructions of his employer or of some other specified person.

Penalty relating to section 64.

83. A person who contravenes the provisions of section 61 or 64 is guilty of an offence and is liable on summary conviction to a fine as provided by level 3 of the scale and in the case of a continuing offence, a further fine as provided by level 4 of the scale for every day subsequent to the day on which he is convicted of the offence during which the contravention continues, and in addition to such penalty the court before which a person is so convicted may order any articles in respect of which the offence has been committed to be forfeited.

Penalty for refusing to produce or for not properly keeping the register of prescriptions.

84. If a person other than a pharmacist or dispenser makes up a medical prescription or if any pharmacist or dispenser refuses or neglects to produce his register of prescriptions kept under section 70 when lawfully required to do so, or if, on being produced, it appears and it is the case that the register of prescriptions has not been kept by the pharmacist or dispenser as required by that section, such person is guilty of an offence and is liable on summary conviction to a fine as provided by level 3 of the scale and for a second and any subsequent offence to a fine as provided by level 4 of the scale.

Penalty relating to section 72.

85. A person who sells poison otherwise than as provided by section 72 is guilty of an offence and is liable on summary conviction to a fine as provided by level 4 of the scale and for the second and any subsequent offence is liable to imprisonment for three months and to a fine as provided by level 5 of the scale.

No commission on prescriptions to be paid.

86. It is unlawful for any person who retails, dispenses or compounds any medicinal product or compound thereof to make any agreement with any medical practitioner or dentist to pay or allow to such medical practitioner

or dentist any fee or commission in respect of any prescription and any person so offending is liable on summary conviction to a fine as provided by level 3 of the scale.

General penalty.

87. A person who commits an offence against this Act or any rule or regulation made thereunder for which no special penalty is provided is liable on summary conviction to a fine as provided by level 3 of the scale.

Legal proceedings.

88. A prosecution for an offence against this Act shall not be instituted without the consent of the Attorney General.

PART IX.
GENERAL AND SUPPLEMENTARY.

Saving.

89. Nothing in this Act shall apply to any dispensary maintained by the Crown or to any person employed therein and acting in the course of his duties.

Continuity of the Law.

90. (1) The substitution of this Act for the repealed enactments does not affect the continuity of the law.

(2) Any instrument in force before the commencement of this Act and made or having effect as if made under any enactment repealed by this Act, and, anything whatsoever done under or by virtue of any such enactment, shall be deemed to have been made, or done, as the case may be, under or by virtue of the corresponding provision of this Act; and anything begun under such enactment may be continued under this Act as if begun under this Act.

(3) Save where the provisions of this Act or any subordinate legislation made thereunder specifically so direct or indicate, anything lawfully done or carried out or having effect as if lawfully done or carried out under the provisions in force immediately before the coming into force of this Act shall not be deprived of such effect by virtue of the provisions of this Act.

(4) Any reference, whether express or implied, in any enactment instrument or document to a provision of the repealed enactments shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of this Act.

(5) “The repealed enactments” means the enactments repealed by this Act.

Repeals and minor and consequential amendments.

91. (1) The enactments mentioned in Schedule 11 to this Act are repealed.

(2) The enactments mentioned in Schedule 12 to this Act shall have effect with the amendments there specified (being minor and consequential amendments).

SCHEDULE 1.**MEDICAL REGISTRATION BOARD**

Section 4(2)

1. The Board shall consist of—

- (a) The Public Health Director, who shall be the Chairman of the Board;
- (ab) one registered medical practitioner appointed by the Minister;
- (b) four other members who shall be appointed by the Minister, of whom one shall be a registered dentist, one shall be a registered pharmacist, one shall be a person possessing legal qualifications which would entitle him to be admitted as a barrister or solicitor of the Supreme Court of Gibraltar, and one shall be an independent person;
- (c) one member of such professions or occupations supplementary to medicine as the Minister may determine.

2. The members of the Board shall hold office for three years and shall be eligible for re-appointment.

3. The Board shall meet at least once every three months in every calendar year at such time and place as the Chairman shall appoint.

4. If the place of any member of the Board becomes vacant before the expiration of his term of office the Minister may appoint another person of the same description to fill the vacancy for the unexpired portion of the term of the vacating member.

5. The Minister may in his discretion terminate the appointment of any member of the Board.

6. If any member of the Board be temporarily absent from Gibraltar and occasion arises which in the opinion of the Chairman necessitates a meeting of the full Board, the Minister may, upon the request of the Chairman, appoint some other person of the same description temporarily to fill the vacancy.

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7. The powers of the Board may be exercised notwithstanding any vacancy in their number.
8. Three members of the Board shall form a quorum, except at the investigation of any complaint made against a person registered under Part II of the Act, when the quorum shall be five.
9. The Board may, subject to rules made under section 22(c) make standing orders regulating the proceedings of the Board.

SCHEDULE 2

Sections 8(4) and 14(2)

FEES

1. Full registration under Part I of the register—

1st registration for each 12 month period or part thereof .. £50.00

2nd or subsequent registration for each 12 month period or
part thereof £30.002. Limited registration under Part IB of the register under
sections 14 to 20 for each 12 month period or
part thereof. £100.00**Dentists.**3. Registration under Part II of the register for each 12
month period or part thereof. £50.00**Pharmacists.**4. Registration under Part III of the register for each 12
month period or part thereof. £50.00**Dispensers.**5. Registration under Part IIIA of the register for each 12
month period or part thereof. £25.00

SCHEDULE 3*Repealed*

SCHEDULE 4.

Section 15(2)(d)

MEDICAL SPECIALISATIONS

1. General medicine, pediatrics and their sub-specialisations.
2. Surgery.
3. Psychiatry.
4. Obstetrics and Gynaecology.
5. Ophthalmology.
6. Radiology.
7. Anaesthetics.

SCHEDULE 5

Repealed

SCHEDULE 6

Repealed

SCHEDULE 7

Section 24

Visiting EEA Dental Practitioners**Preliminary.**

1. (1) This Schedule has effect for the purpose of enabling a person who wishes to render dental services in Gibraltar temporarily without first being registered under this Act, provided that an application is made via the IMI and that application meets the requirements of the Qualifications (Right to Practise) Act 2009.

(2) This Schedule applies to any national of an EEA State who is established in dental practice in an EEA State other than Gibraltar or the United Kingdom.

(3) *Repealed.*

Declarations and certificates to be provided by visiting EEA Dental Practitioners.

2. (1) A person to whom this Schedule applies who intends to render dental services as mentioned in paragraph 1(1) above shall provide the Board with any information and documents required under the Qualifications (Right to Practise) Act 2009

(2) *Repealed.*

List of Visiting EEA Dental Practitioners.

3. (1) The Board shall keep a list known as the list of visiting EEA dental practitioners.

(2) Where a person to whom this Schedule applies complies with the requirements of paragraph 2(1), the Board shall, subject to paragraph 4, enter his name, together with particulars of any diplomas held by him, in the list of EEA dental practitioners.

(3) Subject to paragraph 4, that entry shall have effect for the period specified in the list against the entry, being the period which appears to the Board to be appropriate having regard to the particulars given in the declaration referred to in paragraph 2(1)(a).

Persons not entitled to be included in the list of visiting EEA Dental Practitioners.

4. A person to whom this Schedule applies shall not be entitled to have his name included in the list of visiting EEA dental practitioners if—

- (a) he is subject to a decision within the meaning of section 44(2) of this Act taken in relation to him in an EEA State;
- (b) he is subject to a prohibition imposed on him under paragraph 5; or
- (c) he is subject to an alert via the IMI,

and any entry in the list relating to a practitioner shall not have effect or shall cease to have effect if he is or becomes subject to such a decision or prohibition or if he becomes established in dental practice in Gibraltar or renders, save in cases of urgency, dental services which fall outside those specified in the declaration made by him under paragraph 2(1)(a).

Disciplinary provisions affecting dental practitioners who render services while visiting Gibraltar.

5. (1) If a person who is or has been entered in the list of visiting EEA dental practitioners—

- (a) has been convicted of a criminal offence, whether in an EEA State or elsewhere; or
- (b) has been guilty of serious professional misconduct;

the Board may, if it thinks fit, impose on him a prohibition in respect of the rendering of dental services in Gibraltar in future.

(2) A prohibition imposed under this paragraph shall be for an indefinite period.

(3) A person may apply to the Supreme Court for termination of a prohibition imposed on him under this paragraph and the court may, on any such application, terminate the prohibition; but no application shall be made under this paragraph—

- (a) earlier than ten months from the date on which the prohibition was imposed; or

- (b) in the period of ten months following a decision made on an earlier application.

SCHEDULE 8

Section 25(2)

**NURSES, MIDWIVES AND HEALTH VISITORS REGISTRATION
BOARD**

1. The Board shall consist of –

- (a) a person possessing legal qualifications which would entitle him to be admitted as a barrister or a solicitor of the Supreme Court of Gibraltar, appointed by the Minister and who shall be chairman of the Board;
- (aa) a registered medical practitioner appointed by the Minister;
- (b) a non-executive Member of the Gibraltar Health Authority;
- (c) the Director of Nursing Services;
- (d) a lecturer or tutor in nursing of the School of Health Studies of the Gibraltar Health Authority;
- (e) four registered nurses appointed by the Minister to, as far as practicable, represent different nursing specialties;
- (f) two nurses elected from among those persons appearing on the Register kept by the Board under section 28;
- (g) an independent member appointed by the Minister.

(1A) The Minister may appoint an alternate member to substitute for each member, the alternates for the elected members under paragraph 1(f) to be likewise elected from among those persons appearing on the Register kept by the Board under section 28.

2. The members of the Board (other than the ex officio members) shall hold office for two years and shall be eligible for re-appointment.

3. If the place of any member of the Board (other than an ex officio member) becomes vacant before the expiration of his term of office the Minister may appoint another person of the same description to fill the vacancy for the unexpired portion of the term of the vacating member.

4. The Minister may in his discretion terminate the appointment of any member of the Board (other than an ex officio member).
5. If any member of the Board be temporarily absent from Gibraltar and occasion arises which in the opinion of the Chairman necessitates a meeting of the full Board the Minister may, upon the request of the Chairman, appoint some other person of the same description temporarily to fill the vacancy.
6. The powers of the Board may be exercised notwithstanding any vacancy in their number.
7. Three members of the Board shall form a quorum, except at the investigation of any complaint made against a person registered under Part III of the Act, when the quorum shall be five.
8. The Board may, subject to any regulations made under section 36, make standing orders regulating the proceedings of the Board.

SCHEDULE 9

Repealed

SCHEDULE 10.

Sections 32(4) and 34(3) and (4)

VISITING NURSES AND MIDWIVES FROM EEA STATES

1. In this Schedule—

“the appropriate EEA qualification” means an EEA qualification or other evidence of formal qualifications which EEA States are required to recognise under the Recognition Directive;

“competent authority” in relation to an EEA State means the authority or body designated by that EEA State as competent for the purposes of the Recognition Directive in relation to the professions of nursing and midwifery;

2. This Schedule has effect for the purpose of enabling a person who wishes to render nursing or midwifery services in Gibraltar temporarily without first being registered under this Act, provided that an application is made via the IMI and that application meets the requirements of the Qualifications (Right to Practise) Act 2009..

3. In this Act “visiting nurse from an EEA State” and “visiting midwife from an EEA State” means a person who—

- (a) is a national of an EEA State; and
- (b) is lawfully practising in an EEA State other than Gibraltar or the United Kingdom as a nurse responsible for general care or, as the case may be, as a midwife; and
- (c) holds the appropriate EEA qualification; and
- (d) is temporarily in Gibraltar as a visitor; and
- (e) provides the Board with the relevant documents.
- (f) meets the relevant requirements of the Qualifications (Right to Practise) Act 2009.

4. A visiting EEA nurse and a visiting EEA midwife shall provide the Board with the relevant documents before he provides any services as a nurse or midwife in Gibraltar except that, in a case of sudden or urgent necessity, a

nurse, or as the case may be, a midwife, may provide the documents as soon as possible after he has provided his services as a nurse, or as the case may be, a midwife.

5. (1) If a visiting EEA nurse or a visiting EEA midwife—

- (a) has been convicted of a criminal offence, whether in an EEA State or elsewhere;
- (b) has been guilty of serious professional conduct; or
- (c) is subject to an alert under the IMI,

the Board may, if it thinks fit, impose on him a prohibition to provide any services of a nurse or, as the case may be, a midwife in Gibraltar in future.

(2) A prohibition imposed under this paragraph shall be for an indefinite period.

(3) A person may apply to the Supreme Court for termination of a prohibition imposed on him under this paragraph and the Court may, on any such application, terminate the prohibition; but no application shall be made under this paragraph—

- (a) earlier than ten months from the date on which the prohibition was imposed; or
- (b) in the period of ten months following a decision made on an earlier application.

SCHEDULE 11.

Section 91(1)

REPEALS

Act No. /Legal Notice No.	Short Title	Extent of Repeal
Act 1973-05	Medical and Health Act, 1973.	The whole Act.
Act 1976-13	Medical and Health (Amendment) Act, 1976.	The whole Act.
Act 1976-31	Miscellaneous Amendments Act, 1976.	Sections 10 and 12.
Act 1983-34	Medical and Health (Amendment) Act, 1983.	The whole Act.
Act N 1983-48	Law Revision (Miscellaneous Amendments)(No.2) Act, 1983.	Section 35.
Act 1987-34	The Medical (Gibraltar Health Authority) Act, 1987.	Paragraphs 11, 11A, 11B, 11C, 12, 13, 14, 15 and 16 of the Schedule relating to the Medical and Health Act.
Legal Notice 1991/111	Medical and Health Act (Amendment to Schedules) Order, 1991.	The whole Order.
Legal Notice 1993/184	Medical and Health Act (Amendment to Schedules) Order, 1993.	The whole Order.

SCHEDULE 12.

Section 91(2)

Minor and consequential amendments**THE MEDICAL (GIBRALTAR HEALTH AUTHORITY) ACT***Paragraph 1 substitutes definitions in section 2.**Paragraph 1A substitutes words in section 3(1)(b).**Paragraph 2 substitutes words in sections 3(1)(c), 4(2), 5(4), the heading to section 10 and sections 10(1), (2), (3), (4), 11(1)(a) and (2), 12(2) and 14(2).**Paragraph 3 substitutes words in sections 6(2)(b)(ii) and 11(1)(b).**Paragraph 4 substitutes words in section 11(1)(g).***THE EDUCATION ACT***Paragraph 5 substitutes definitions in section 2(1).**Paragraph 6 substitutes words in sections 54(1), 56(1) and (5), 58(1) and 59.***THE FOOD AND DRUGS ACT***Paragraph 7 substitutes definitions in section 2.**Paragraph 8 substitutes words in sections 18A and 20.***THE MENTAL HEALTH ACT***Paragraph 9 substitutes definitions in section 2.**Paragraph 10 substitutes words in sections 13(2)(i), 73 and paragraph 1(b) of the Schedule.***THE PUBLIC HEALTH ACT***Paragraph 11 substitutes definitions in section 2.**Paragraph 12 substitutes words in sections 144, 149, 150, 162, 163, 168, 173(3), 174, 196, 203, 204 229 and 230.*

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THE QUARANTINE ACT

Paragraph 13 substitutes definitions in section 2.

THE SUPREME COURT ACT

Paragraph 14 substitutes words in section 20(q).

SCHEDULE 13

Sections 2, 24A, 24K, 54A

PART 1
REGULATED PROFESSIONS AND PROTECTED TITLES

<i>Regulated profession</i>	<i>Protected title</i>
Arts Therapist	Art Therapist Art Psychotherapist Drama Therapist Music Therapist
Biomedical Scientist	Biomedical Scientist
Chiropodist and podiatrist	Chiropodist Podiatrist
Chiropractor	Chiropractor
Clinical Scientist	Clinical Scientist
Dental Hygienist	Dental Hygienist
Dental Technician	Dental Technician Clinical Dental Technician
Dental Therapist	Dental Therapist
Dietitian	Dietician Dietitian
Dispensing Optician	Dispensing Optician
Hearing Aid Dispenser	Hearing Aid Dispenser
Occupational Therapist	Occupational Therapist
Operating Department Practitioner	Operating Department Practitioner
Optometrist	Optometrist Ophthalmic Optician Optician
Orthodontic Therapist	Orthodontic Therapist

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Orthoptist	Orthoptist
Orthotist and Prosthetist	Prosthetist Orthotist
Osteopath	Osteopath
Paramedic	Paramedic
Physiotherapist	Physiotherapist Physical Therapist
Practitioner Psychologist	Clinical Psychologist Counselling Psychologist Educational Psychologist Forensic psychologist Health Psychologist Occupational Psychologist
Radiographer	Radiographer Diagnostic Radiographer Therapeutic Radiographer
Speech and Language Therapist	Speech and Language Therapist Speech Therapist

PART II

UNITED KINGDOM REGISTERING BODY

General Chiropractic Council
 General Dental Council
 General Optical Council
 General Osteopathic Council
 Health and Care Professionals Council