

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4275 of 23 June, 2016

LEGAL NOTICE NO.136 OF 2016.

MEDICAL AND HEALTH ACT, 1997

INTERPRETATION AND GENERAL CLAUSES ACT

**MEDICAL AND HEALTH ACT, 1997 (AMENDMENT)
REGULATIONS 2016**

In exercise of the powers conferred upon him by sections 24J and 36 of the Medical and Health Act, 1997, section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purposes of partly transposing into the law of Gibraltar 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, the Minister has made the following Regulations–

Title.

1. These Regulations may be cited as the Medical and Health Act, 1997 (Amendment) Regulations 2016.

Commencement.

2. These Regulations come into operation on the date of publication.

Amendments to the Medical and Health Act, 1997.¹

3.(1) The Medical and Health Act, 1997 (“the principal Act”) is amended in accordance with the provisions of these Regulations.

(2) In the long title of the principal Act for the words appearing after “AND ITS AMENDING PROVISIONS,” substitute–

“TO TRANSPOSE, IN PART, INTO THE LAW OF GIBRALTAR
COUNCIL DIRECTIVE 2013/55/EU OF THE EUROPEAN

¹ Amendments to this Legal Notice by Notice of Corrigenda LN.2016/163

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.”.

(3) Section 2 of the principal Act is amended as follows–

(a) after the definition of “EEA Agreement” insert–

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

(b) delete the definition of “European Primary and Specialist Dental Qualifications Regulations 1998”;

(c) delete the definition of “European Specialist Medical Qualifications Order 1995”;

(d) for the definition of “General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003” substitute–

““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);”;

(e) after the definition of “General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003” insert–

““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;”;

- (f) after the definition of “recognised overseas diploma” insert–

““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;”;

- (g) delete the definition of “Vocational Training for General Medical Practice (European Requirements) Regulations 1994”;
- (h) in subsection (3) for “Article 11 of Council Regulation (EEC) 1612/68” substitute “Regulation (EU) No 492/2011 on freedom of movement of workers within the Union”.

- (4) Section 8 of the principal Act is amended as follows–

- (a) for subsection (4B) substitute–

“(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).”;

- (b) in subsection (6) for “applicable provisions of any relevant legislation of an EEA State.” substitute “the Qualifications (Right to Practise) Act 2009.”.

- (5) Delete section 8A of the principal Act.

- (6) Section 9 of the principal Act is amended as follows–

(a) in subsection (2A)(b) for “Medical Directive” substitute “Qualifications (Right to Practise) Act 2009”;

(b) for subsection (2B) substitute—

“(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).”;

(c) in subsection (3)(c) for “Part I of Schedule 3” substitute “Annex V point 5.1.1 to the Recognition Directive”;

(d) in subsection (3A)(a) for “2003” substitute “2010”;

(e) for subsection (3A)(b) substitute—

“(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”;

(f) subsection (3A)(c) is amended as follows—

(i) for subparagraph (i) substitute—

“(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) for subparagraph (ii) substitute—

“(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.”;

(g) subsection (4) is amended as follows–

(i) for paragraph (b) substitute–

“(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;”;

(ii) delete paragraph (c);

(iii) for paragraph (d) substitute–

“(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”;

(iv) for paragraph (e) substitute–

“(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.”;

(h) in subsection (4B)(b) for “Medical Directive” substitute “Qualification (Right to Practise) Act 2009”;

(i) for subsection (4C) substitute—

“(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).”;

(j) in subsection (6)(b) after “section 19” insert “or 19A”;

(k) in subsection (9)(b) after “Medical Directive” insert “Qualification (Right to Practise) Act 2009”;

(l) for subsection (10) substitute—

“(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).”.

(7) Section 10 of the principal Act is amended as follows—

(a) delete subsection (2);

(b) in subsection (3) for “sub-section (1).” substitute “the Qualifications (Right to Practise) Act 2009.”;

(c) in subsection (4) for “sub-section (1)(a).” substitute “the Qualifications (Right to Practise) Act 2009.”;

(d) in subsection (8)(c)(ii) for “Part II of Schedule 3” substitute “Annex V point 5.1.2 to the Recognition Directive”.

(8) For section 12 of the principal Act substitute—

“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.”.

(9) Section 13 of the principal Act is amended as follows—

(a) for subsection (1) substitute—

“(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.”;

(b) delete subsections (2) and (3);

(c) for subsection (4) substitute—

“(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.”;

(d) in subsection (5)(b) for “sub-section (2)(a).” substitute “the Qualifications (Right to Practise) Act 2009.”.

(10) In section 22(b) of the principal Act for “Part II of Schedule 3” substitute “Annex V point 5.1.2 to the Recognition Directive”.

(11) Section 23 of the principal Act is amended as follows—

(a) delete subsection (2);

(b) for subsection (7)(b) substitute—

“(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).”;

(c) for subsection (8) substitute-

“(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).”.

(12) Section 32 of the principal Act is amended as follows–

(a) delete subsection (2);

(b) in subsection (3) for “article 10 of the First Nursing Directive or article 11 of the First Midwifery Directive.” substitute “the Qualifications (Right to Practise) Act 2009.”;

(c) for subsection (3A) substitute-

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

(d) delete subsection (4).

(13) In subsection 33(b) of the principal Act for “First Nursing Directive or, as the case may be, the First Midwifery Directive;” substitute “Recognition Directive;”.

(14) In subsection 34(1) of the principal Act after “EEA State may” insert “, subject to Schedule 10,”.

(15) Subsection 44 of the principal Act is amended as follows–

(a) in subsection (1)(b) delete “or”;

(b) in subsection (1)(c) after “Part IIA” insert “; or”;

(c) after subsection (1)(c) insert-

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

(d) after subsection (6) insert–

“(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.”.

(16) After section 45(2) of the principal Act insert–

“(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.”.

(17) Delete Schedules 3, 5 and 6 of the principal Act.

(18) Schedule 7 of the principal Act is amended as follows–

(a) substitute paragraph 1(1) for–

“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.”;

(b) delete paragraph 1(3);

(c) substitute paragraph 2(1) for–

“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.”;

(d) delete paragraph 2(2);

(e) paragraph 4 is amended as follows–

(i) in subparagraph (a) delete “or”;

(ii) in subparagraph (b) after the semi-colon insert “or”;

(iii) after subparagraph (b) insert-

“(c) he is subject to an alert via the IMI.”.

(19) Delete Schedule 9 of the principal Act.

(20) Schedule 10 of the principal Act is amended as follows-

(a) paragraph 1 is amended as follows-

(i) for the definition of “the appropriate diploma” substitute-

““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;”;

(ii) for the definition of “competent authority” substitute-

““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;”;

(iii) delete the definition of “the First Nursing Directive and the First Midwifery Directive”;

(b) for paragraph 2 substitute-

“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.”;

(c) paragraph 3 is amended as follows-

- (i) in subparagraph (c) for “diploma” substitute “EEA qualification”;
- (ii) after subparagraph (e) insert-
 - “(f) meets the relevant requirements of the Qualifications (Right to Practise) Act 2009.”.
- (d) paragraph 5 is amended as follows-
 - (i) in subparagraph (a) delete “or”;
 - (ii) in subparagraph (b) after the semi-colon insert “or”;
 - (iii) after subparagraph (b) insert-
 - “(c) is subject to an alert under the IMI,”.

Dated 23rd June, 2016.

DR J CORTES,
Minister with responsibility for health.

EXPLANATORY MEMORANDUM

These Regulations amend the Medical and Health Act, by transposing 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.

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