



Number 46 of 2012

**HEALTH AND SOCIAL CARE PROFESSIONALS
(AMENDMENT) ACT 2012**

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ACT REFERRED TO

Health and Social Care Professionals Act 2005

2005, No. 27



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**HEALTH AND SOCIAL CARE PROFESSIONALS
(AMENDMENT) ACT 2012**

AN ACT TO AMEND THE HEALTH AND SOCIAL CARE PROFESSIONALS ACT 2005 IN RELATION TO MEMBERSHIP OF THE HEALTH AND SOCIAL CARE PROFESSIONALS COUNCIL, IN RELATION TO THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS OBTAINED OUTSIDE THE STATE, INCLUDING THE IMPLEMENTATION OF CERTAIN PROVISIONS OF DIRECTIVE 2005/36/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 7 SEPTEMBER 2005¹ ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS, AND TO PROVIDE FOR RELATED MATTERS.

[26th December, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Health and Social Care Professionals Act 2005. Interpretation.

2.—Section 3(1) of the Principal Act is amended by inserting the following definitions: Amendment of section 3 of Principal Act.

“ ‘Directive 2005/36/EC’ means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005² on the recognition of professional qualifications, as amended by Council Directive 2006/100/EC of 20 November 2006³ adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania;

‘professional qualification’, in relation to registration of a person in a designated profession, means a document, other than a document referred to in the definition of ‘qualification’ in this section, that attests to the person’s having achieved a standard of proficiency in that profession, whether or not that standard was achieved in part through practical experience in that profession;

‘qualification’, in relation to registration of a person in a designated profession, means a document that attests to the person’s

¹OJ No. L255 30.9.2005, p. 22

²OJ No. L255 30.9.2005, p. 22

³OJ No. L363 20.12.2006, p.141

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having achieved the standard of proficiency required for registration in that profession, and that—

- (a) in the case of registration sought under section 38, has been approved by bye-law of the registration board of the profession concerned,
- (b) in the case of registration sought under section 91(1), is listed in the third column of Schedule 3 opposite the profession concerned, or
- (c) in the case of registration sought under section 91(5), has been prescribed by regulations made by the Minister under section 95;”.

Amendment of section 9 of Principal Act.

3.—Section 9 of the Principal Act is amended—

- (a) in subsection (3)(a), by inserting “(referred to in this Act as a ‘professional member’)” after “person”, and
- (b) by substituting the following for subsections (6) and (7):

“(6) The Minister shall, in the circumstances described in subsection (7), appoint as a professional member for a designated profession, instead of a person who meets the criteria in subsection (3)(a), a person who is engaged—

- (a) in the practice of that profession,
- (b) in the education or training of persons with respect to the practice of that profession, or
- (c) as a member of that profession, in the management of services provided by that profession.

(7) The circumstances in which the Minister shall make an appointment in accordance with subsection (6) are:

- (a) the initial appointment of a professional member to the Council as a result of a health or social care profession being designated by regulation; or
- (b) an appointment of a professional member to the Council when the term of a professional member expires and the registration board of the designated profession in the practice of which those professional members are engaged—
 - (i) has not been established, or
 - (ii) has been established but has not conducted an election for members of that registration board in accordance with section 28(2).”.

Amendment of section 10 of Principal Act.

4.—Section 10(2) of the Principal Act is amended by substituting “a member of the Council or of any committee established by the Council under section 51 may be paid by the Council, out of funds

at its disposal, such remuneration for performing functions under this Act” for “the chairperson may be paid by the Council, out of funds at its disposal, such remuneration for performing the functions of his or her office”.

5.—The Principal Act is amended by inserting the following section after section 27:

“Functions of registration boards: approval of qualifications, etc.

27A.—(1) The registration board of a designated profession is designated, as of and from the day on which its register is established under section 36(1), as the competent authority for the designated profession concerned under Directive 2005/36/EC.

Amendment of Principal Act — insertion of section 27A (functions of registration boards: approval of qualifications, etc.).

(2) The registration board of a designated profession shall, on and after the day on which its register is established under section 36(1)—

(a) act as the competent authority for the purposes of all matters referred to in Directive 2005/36/EC which relate to the role of a competent authority for the purposes of the recognition of professional qualifications of persons engaged in the designated profession concerned, and

(b) assess, for the purposes of section 38(2)(c), the professional qualifications of persons referred to in that section in accordance with the procedures (if any) contained in bye-laws (if any) made under section 31(1)(e).

(3) A person who was, immediately before the day on which the register of a registration board of a designated profession is established under section 36(1), the competent authority under Directive 2005/36/EC in relation to the designated profession concerned shall, notwithstanding subsections (1) and (2) but subject to subsection (4), continue to be the competent authority in relation to every application under that Directive in relation to that designated profession if, on or before that day—

(a) a decision has not been made on the application concerned, and

(b) the application has not been withdrawn.

(4) The person referred to in subsection (3) shall continue to be the competent authority in relation to each application referred to in that subsection until a final decision is made on any appeal of that decision, but nothing in this section shall be construed as requiring or permitting that person, where the decision concerned is to require the applicant concerned to undertake a compensation

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measure, to assess that applicant's completion of that compensation measure.”.

Amendment of section 31 of Principal Act.

6.—Section 31(1) of the Principal Act is amended—

(a) by substituting the following for paragraph (e):

“(e) procedures for the assessment of professional qualifications, training, experience, aptitude tests or adaptation periods for the purposes of sections 38(2)(c), 91(1)(c)(i)(II) and 91(5)(c)(i)(II);”.

(b) by inserting the following paragraph after paragraph (f):

“(fa) criteria or conditions, including criteria or conditions as to further education, training or experience, for persons who wish to resume the practice of that profession after not having practised the profession for a period specified in the bye-laws, including criteria or conditions relating to—

(i) the education and training of those persons,

(ii) the manner of verifying that those persons possess the relevant competencies, or

(iii) any other matter where, in the opinion of the registration board concerned, the specification in bye-laws of criteria or conditions relating to that matter is necessary or desirable for the protection of the public;”.

(c) in paragraph (g) by inserting “other than where paragraph (fa) applies” after “profession”, and

(d) by inserting the following paragraph after paragraph (i):

“(ia) the practice of the designated profession, and the period that the registration board considers to be sufficient in the public interest, and that is not less than 500 hours nor more than 4,000 hours, during which that practice is to be engaged in, for persons to be registered under section 91;”.

Amendment of section 38 of Principal Act.

7.—Section 38 of the Principal Act is amended—

(a) in subsection (1), by inserting the following after paragraph (c):

“(ca) where the board has made a bye-law under section 31(1)(fa) and the person has not practised the profession for a period specified in the bye-law, satisfies the board that he or she has met the criteria and fulfilled the conditions specified in that bye-law;”.

(b) in subsection (1)(d), by deleting “in the case of a national of a state other than the State,”,

(c) by substituting the following for subsection (2):

“(2) A person holds an approved qualification in a designated profession if—

(a) the person has been awarded a qualification in the State,

(b) the person is a person to whom Directive 2005/36/EC applies and whose professional qualification in that profession is recognised in the State in accordance with that Directive, or

(c) the person is a person other than a person referred to in paragraph (a) or (b), who is eligible to practise that profession in a state other than a state in relation to which Directive 2005/36/EC applies and who—

(i) holds a professional qualification in that profession that the registration board concerned decides is one that attests to a standard of proficiency corresponding to the standard attested to by the relevant qualification referred to in paragraph (a), or

(ii) holds a professional qualification that is one that the registration board concerned decides is not a professional qualification that attests to such a standard of proficiency, but is the subject of a decision of the registration board that he or she successfully completed, in the State, the aptitude test or adaptation period that the registration board has required of the person.”,

and

(d) by substituting the following for subsection (4)—

“(4) In this section—

‘adaptation period’, in relation to registration of a person in a designated profession, means the practice of that profession, whether or not that practice is accompanied by other training, under the supervision—

(a) subject to paragraph (b), of a registrant in relation to that profession, or

(b) in the case of an adaptation period that takes place during the transitional period, within the meaning of section 90, in relation to that profession, of a registrant in relation to that profession or another person who is practising that profession in the State;

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‘aptitude test’, in relation to registration of a person in a designated profession, means a test (which may include assessment of the knowledge of the professional rules applicable to that profession in the State, and other subjects) to assess the professional knowledge of the person that—

- (a) is essential in order for a person to practise the profession in the State, and
- (b) in the opinion of the registration board concerned, was not required in order for the person to obtain his or her professional qualification.”.

Amendment of section 42 of Principal Act.

8.—Section 42(2)(a) of the Principal Act is amended by inserting “or relates to a decision made by a registration board in the performance of its functions under section 27A(2)(a) or (b),” after “to its register,”.

Amendment of Principal Act — insertion of sections 42A (performance of functions under section 27A) and 42B (right to apply to Council in relation to performance of functions under section 27A).

9.—The Principal Act is amended by inserting the following sections after section 42:

“Performance of functions under section 27A.

42A.—(1) (a) A registration board shall acknowledge receipt in writing of an application by a person for the assessment of his or her professional qualifications under section 27A(2)(a) or (b), not later than on the expiry of the one month period that begins when the application is submitted, and include in that acknowledgement—

- (i) a statement as to whether all documents required for that assessment have been submitted, or
- (ii) a list of one or more than one further document required to be submitted before the assessment may be undertaken.

(b) If one or more than one further document is submitted in compliance with paragraph (a)(ii) (or otherwise), the registration board shall acknowledge receipt in writing of that further document or those further documents not later than on the expiry of the one month period that begins with that submission, and subparagraphs (i) and (ii) of paragraph (a) shall apply to acknowledgements under this paragraph, with all necessary modifications.

(2) The registration board shall, not later than on the expiry of the 4 month period that begins when the application (and, if applicable, the

further document or documents referred to in subsection (1)(b)) is acknowledged, notify the applicant in writing of its decision in relation to the assessment.

Right to apply to Council in relation to performance of functions under section 27A.

42B.—(1) A person may apply to the Council for the cancellation of a decision made by a registration board in the performance of its functions under section 27A(2)(a) or (b), where that decision was a decision—

- (a) not to recognise a professional qualification referred to in section 38(2)(b),
- (b) that a professional qualification is not one that attests to the standard of proficiency required under section 38(2)(c)(i), or
- (c) that there has not been successful completion, in the State, of an aptitude test or adaptation period under section 38(2)(c)(ii).

(2) A person may apply to the Council for a direction by the Council to a registration board—

- (a) to acknowledge receipt of an application made by the person, within such period as the Council may specify, where—
 - (i) the board has not acknowledged receipt of that application before the expiry of the period within which it was required to do so under section 42A(1), and
 - (ii) if applicable, the board has not acknowledged receipt of the further document or documents referred to in section 42A(1)(b) before the expiry of the period within which it was required to do so under that section,

or

- (b) to notify the person of a decision, within such period as the Council may specify, where the board has not notified that person of that decision before the expiry of the period within which it was required to do so under section 42A(2).

(3) The application must be made—

- (a) if the application is an application under subsection (1), within 30 days after the person receives notification of the

decision from the registration board,
or

- (b) if the application is an application under subsection (2), within 30 days after the expiry of the period concerned.

(4) On hearing the application or on receipt of appropriate submissions, the Council may—

- (a) if the application is an application under subsection (1)—

(i) if satisfied that the registration board's decision was properly made, confirm that decision, or

(ii) if not so satisfied, cancel that decision and do one of the following:

(I) direct the registration board to recognise the professional qualifications of the person;

(II) direct the registration board to make a new decision;

(III) give such other directions to the registration board as the Council considers appropriate,

or

- (b) if the application is an application under subsection (2)—

(i) if satisfied that the registration board did acknowledge receipt of the application (and, if applicable, the document or documents referred to in section 42A(1)(b)) before the expiry of the period within which it was required to do so under section 42A(1), refuse to direct the registration board to acknowledge receipt of the application (and any such document or documents),

(ii) if satisfied that the registration board did make the decision and notify the applicant of that decision, before the expiry of the period within which it was required to do so under section 42A(2), refuse to direct the registration board to make the decision and notify the applicant of that decision,

(iii) direct the registration board to acknowledge receipt of the application (and any such documents) or to make the decision and notify the applicant of that decision, as the case may be, within such period as the Council specifies,

(iv) give such other directions to the registration board as the Council considers appropriate.

(5) As soon as practicable after making a decision under this section, the Council shall notify the applicant of the decision.

(6) For the avoidance of doubt, a person who applies to the Council under this section, whether or not he or she also appeals to the Court under section 44, is not entitled to an appeal of the decision made by the registration board in the performance of its functions under section 27A(2)(a) to which he or she might otherwise be entitled under Regulation 23 of the Recognition of Professional Qualifications (2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008) or any similar appeal.”.

10.—The following is substituted for section 44(1) of the Principal Act: Amendment of section 44 of Principal Act.

“(1) A person may appeal to the Court against a decision made by the Council under section 42B(4)(a)(i), 42B(4)(b)(i) or (ii), or 43(3)(a).”.

11.—The following is substituted for section 59(7) of the Principal Act: Amendment of section 59 of Principal Act.

“(7) A person guilty of an offence under this section is liable on summary conviction to a class A fine.”.

12.—Section 79 of the Principal Act is amended by substituting the following for subsection (4): Amendment of section 79 of Principal Act.

“(4) A person shall not use a title referred to in any of subsections (1) to (3) unless—

(a) the person is entitled by virtue of this section to use that title, or

(b) the person is a service provider who is pursuing, on a temporary and occasional basis, the profession concerned and his or her professional qualifications have been assessed within the meaning of Article 7.4 of Directive 2005/36/EC.”.

13.—The following is substituted for section 80(5) of the Principal Act: Amendment of section 80 of Principal Act.

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“(5) A person guilty of an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.”.

Amendment of
section 90 of
Principal Act.

14.—Section 90 of the Principal Act is amended—

- (a) in the definition of “corresponding qualification”, by substituting “means a professional qualification that”, for “means a qualification that has been awarded in another member state and that”,
- (b) by deleting the definitions of “directive”, “member state” and “relevant measure”, and
- (c) by inserting the following definitions:

“ ‘directive’ means a directive adopted by an institution of the European Communities or the European Union for the recognition of professional education and training;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol done at Brussels on 17 March 1993;

‘relevant measure’ means—

- (a) a measure or decision taken by the Joint Committee under the EEA Agreement having an effect corresponding to that of a directive, and
- (b) a measure that is in force by virtue of the Agreement between the European Community and the Swiss Confederation on the Free Movement of Persons, done at Luxembourg on 21 June 1999;”.

Amendment of
section 91 of
Principal Act.

15.—(1) Section 91 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) by substituting “during the period of 5 years ending on the relevant date, was engaged in the State in the practice of the designated profession, within the meaning, where the registration board concerned has specified such a meaning in bye-laws, of those bye-laws, for a period (or periods which, when taken together, amount to such period) of not less than 2 years or such other period as may be specified in those bye-laws” for “at any time during the period of 5 years ending on the relevant date, was engaged in the practice of that profession”, and
 - (ii) by substituting the following for paragraph (c)(i)(II):

“(II) a professional qualification that, in the opinion of the board, is sufficiently relevant to that profession and attests to a standard of proficiency corresponding to a

qualification listed opposite the profession
in the third column of that Schedule,”

and

(b) in subsection (5)—

(i) by substituting “during the period of 5 years ending on the relevant date, was engaged in the State in the practice of the designated profession, within the meaning, where the board has specified such a meaning in bye-laws, of those bye-laws, for a period (or periods which, when taken together, amount to such a period) of not less than 2 years or such other period as may be specified in those bye-laws” for “any time during the period of 5 years ending on the relevant date, was engaged in the practice of the designated profession”, and

(ii) by substituting the following for paragraph (c)(i)(II):

“(II) a professional qualification that, in the opinion of the board, is sufficiently relevant to that profession and attests to a standard of proficiency corresponding to a qualification prescribed under section 95 for that profession,”.

(2) Notwithstanding any other provision of this Act, section 91(1) of the Principal Act shall apply, in relation to applications for registration in the register of a designated profession where the register concerned was established before the commencement of subsection (1) and section 14, as though “a person who, at any time during the period of 5 years ending on the relevant date, was engaged in the practice of that profession and” were substituted for “a person who, during the period of 5 years ending on the relevant date, was engaged in the State in the practice of the designated profession, within the meaning, where the registration board concerned has specified such a meaning in bye-laws, of those bye-laws, for a period (or periods which, when taken together, amount to such period) of not less than 2 years or such other period as may be specified in those bye-laws, and”.

16.—The Principal Act is amended by inserting the following after section 91 but in Part 9:

“Use of
professional
titles.

91A.—Section 79(4) shall not apply to the use of a title referred to in section 79(1), (2) or (3) for a designated profession—

(a) during the period that begins when section 79(4) is commenced and ends at the end of the transitional period in relation to the profession concerned, and

(b) where an application is made under section 91, during any period after the end of the transitional period concerned during which—

(i) the application is being determined, or

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- (ii) by virtue of section 91(6), an application or appeal relating to the application is being determined.”.

Amendment of
Schedule 1 to
Principal Act.

17.—Schedule 1 to the Principal Act is amended—

- (a) in paragraph 3(1), by substituting “not more than 4 years specified by the Minister at the time of the appointment” for “4 years from the date of his or her appointment”,
- (b) in paragraph 7(c), by substituting “as a professional member” for “under section 9(3)(a)”, and
- (c) by substituting the following for paragraphs 8(1) and (2):

“8.(1) If a casual vacancy occurs among the members (other than those appointed as professional members)—

- (a) the Council shall notify the Minister as soon as practicable, and
- (b) the Minister, after consulting any body or organisation that he or she considers appropriate, shall, within 8 weeks after being notified of that vacancy, appoint a person to fill the vacancy.

(2) If a casual vacancy occurs among the ordinary members appointed as professional members, the Council shall co-opt a person to fill the vacancy, and the Minister shall appoint that person, so long as the person—

- (a) where the circumstances described in section 9(7) obtain, is a person who would be eligible to be appointed under section 9(6), or
- (b) in any other case, is a person who would be eligible to be elected and nominated for appointment under section 9(3)(a).”.

Amendment of
Schedule 2 to
Principal Act.

18.—Paragraph 3(1) of Schedule 2 to the Principal Act is amended by substituting “not more than 4 years specified by the Minister at the time of the appointment” for “4 years from the date of his or her appointment”.

Amendment of
Schedule 3 to
Principal Act.

19.—The third column of item 9 of Schedule 3 to the Principal Act is amended by substituting “Diploma of the College of Radiographers, London,” for “Diploma of the College of Radiographers.”.

Short title and
commencement.

20.—(1) This Act may be cited as the Health and Social Care Professionals (Amendment) Act 2012.

(2) This Act comes into operation on such day or days as the Minister for Health may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.