The Law Commission and The Scottish Law Commission

(LAW COM. No. 120)
(SCOT. LAW COM. No. 77)

MEDICAL BILL

REPORT ON THE CONSOLIDATION OF THE MEDICAL ACTS 1956 TO 1978 AND CERTAIN RELATED PROVISIONS

Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
March 1983

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OF
THE LAW COMMISSION
AND
THE SCOTTISH LAW COMMISSION

(LAW COM. No. 120)
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CORRECTION

On front page, the word 'DRAFT' in the line beginning 'Draft Report' should be omitted.

On page 3, the word 'DRAFT' in the line beginning 'Draft Report' should be omitted.

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THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

MEDICAL BILL

REPORT ON THE CONSOLIDATION OF THE MEDICAL ACTS 1956 TO 1978 AND CERTAIN RELATED PROVISIONS

To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain, and

the Right Honourable the Lord Mackay of Clashfern, Q.C., Her Majesty's Advocate.

The Medical Bill which is the subject of this Report seeks to consolidate the Medical Acts 1956 to 1978 and certain related provisions. In order to produce a satisfactory consolidation it is necessary to make a number of recommendations which are set out in the Appendix to this Report.[1]

The recommendations numbered 4 and 6 relate to Northern Ireland and are accordingly made by the Law Commission alone. Otherwise the recommendations are recommendations of both Commissions.

The Department of Health and Social Security, the Scottish Office, the Northern Ireland Office and the General Medical Council have been consulted in connection with the recommendations.

RALPH GIBSON — *Chairman of the Law Commission*

PETER MAXWELL — *Chairman of the Scottish Law Commission*

17th March 1983

[1]One or two of the amendments proposed by these recommendations might have been authorised under the Consolidation of Enactments (Procedure) Act 1949, but the majority could not.

APPENDIX

RECOMMENDATIONS

1. Section 54(1) of the Medical Act 1956 (c.76), as amended by paragraph 49 of Schedule 6 to the Medical Act 1978 (c.12), defines the expression "primary United Kingdom qualification" for the purposes of the 1956 Act as any of the qualifications specified in the second column of Part I of Schedule 3 to that Act granted by a university or other body in the United Kingdom specified in relation to that qualification in the first column of that Part. Qualifications mentioned in Part I of Schedule 3 include a licence or licentiate in medicine granted by any university in England or Wales, Scotland or Northern Ireland and a licentiate of the Society of Apothecaries of London.

A. The qualification of licence in medicine has never been granted by any university in the United Kingdom. It was granted by the Trinity College Dublin but qualifications granted by that University ceased to be within Part I of Schedule 3 to the 1956 Act when a reference to Northern Ireland was substituted for the reference to Ireland in column 1 of the Table in that Part by Article 2(*b*) of the Irish Republic (Termination of 1927 Agreement) Order 1979 (S.I. 1979 No. 289), subject to the preservation by Article 3 of that Order of certain existing rights to registration.

We accordingly recommend that the qualification of licence in medicine granted by any university in the United Kingdom be omitted from Part I of Schedule 3 to the 1956 Act subject to the continuation of the saving in Article 3 of the 1979 Order.

Effect is given to this recommendation in clause 4(3)(*a*) of the Bill and in paragraph 4 of Schedule 6.

B. Licentiates in medicine were awarded only by the Universities of Oxford, Cambridge and Durham. The licentiate granted by the University of Oxford became obsolete in 1909 and was deleted from that University's statutes in 1926. The licentiate granted by the University of Cambridge became obsolete in 1859 when it was abolished by the Statutes of the University and that granted by the University of Durham became obsolete at some time between 1892 and 1895.

We therefore recommend that the qualification of licentiate granted by a United Kingdom university be omitted from Part I of Schedule 3 to the Medical Act 1956.

Effect is given to this recommendation in clause 4(3)(*a*) of the Bill.

C. The Apothecaries Act 1907 (c.xxii) provided for the award by the Society of Apothecaries of London of a licentiate in medicine and surgery instead of the plain licentiate previously awarded by them and the licentiate consequently became obsolete.

We therefore recommend that the qualification of licentiate of the Society of Apothecaries of London should be omitted from Part I of Schedule 3 to the Medical Act 1956.

Effect is given to this recommendation in clause 4(3)(*d*) of the Bill.

2. Section 7 of the Medical Act 1956 provides for full registration of persons who hold primary United Kingdom qualifications and have the required experience and of persons who hold primary European qualifications. (These primary qualifications are basically those granted after completion of undergraduate medical studies.) Section 17 of the 1956 Act provides for provisional registration of persons who need to be so registered before they can obtain the experience necessary for registration under section 7.

The Medical Act 1978 provides for the registration of practitioners by virtue of qualifications obtained outside the United Kingdom which are of a primary level. There are four sorts of registration: full registration of the person who holds recognised overseas qualifications and has the necessary experience (sections 18 and 20 of the 1978 Act); provisional registration of the person who holds recognised overseas qualifications and needs to be registered to obtain the experience to enable him to be fully registered (section 21 of the 1978 Act); limited registration of persons who hold acceptable overseas qualifications, have some experience and have been selected for employment in the United Kingdom (section 22 of the 1978 Act); and full registration of persons who have previously been registered with limited registration (section 25 of the 1978 Act).

There are a variety of provisions concerning which qualifications of a primary or more advanced level persons registered in these ways may have registered. It is considered that several of the differences between the entitlements to registration of qualifications cannot be justified and should be removed. In formulating the recommendations regarding the removal of these differences we have been guided by the principle that where qualifications have been determined as fit to be registered with reference to some practitioners of a general class those qualifications should be registrable with reference to any practitioner of that class.

A. Under sections 7, 8 and 17(2) of the 1956 Act persons fully registered under section 7 of that Act or provisionally registered under section 17 of that Act may each have registered the primary United Kingdom qualifications, additional United Kingdom qualifications, recognised overseas qualifications and further qualifications held by them at the time of registration or obtained later. They may both have registered certain primary European qualifications obtained after registration, but whereas the fully registered person may have registered the primary European qualifications which he holds at the time of registration, the provisionally registered person may not.

It is considered that this discrepancy arose unintentionally because of amendments made by the Medical Act 1978. Originally the scheme of the Medical Acts was to divide registration into registration under Part II of the 1956 Act by virtue of United Kingdom qualifications and registration under

Part III of that Act by virtue of recognised qualifications obtained in Commonwealth countries or foreign countries to which Part III of the 1956 Act had been applied by Order in Council. The Medical Act 1978 altered this scheme so that registration is now divided into registration under Part II of the 1956 Act by virtue of United Kingdom or other EEC member state qualifications and registration under the 1978 Act by virtue of qualifications granted outside the United Kingdom.

Before 1977 a person being registered under section 17 of the 1956 Act was entitled by virtue of section 8(4) of that Act to have registered the recognised qualifications by virtue of which he might have been registered under Part III of that Act. These might have included qualifications granted in EEC countries by virtue of which he might now be registered under Part II of the 1956 Act. Under section 8(4) of the 1956 Act, as substituted by paragraph 13 of Schedule 6 to the Medical Act 1978, the person being registered under section 17 of the 1956 Act may still have registered any recognised overseas qualifications held by him at the time of registration or obtained later but the scheme of the Medical Acts is now such that primary European qualifications will not necessarily be recognised overseas qualifications because persons holding them will not be expected to seek registration under the 1978 Act but under Part II of the 1956 Act.

Section 8(3) of the 1956 Act, as substituted by paragraph 32 of Schedule 6 to the 1978 Act, allows the qualifications specified in Part II of Schedule 3 to the 1956 Act to be registered but these do not exactly match the definition of primary European qualifications which entitle registration under section 7.

It is considered that it is illogical that a person should be able to register primary European qualifications obtained after registration but not those held on registration, especially since those qualifications will become registrable when the provisionally registered person is fully registered under section 7.

Accordingly, we recommend that persons registered under section 17 of the 1956 Act should be entitled to have registered primary European qualifications held by them at the time of registration.

Effect is given to this recommendation in clause 16(1) of the Bill.

B. Under sections 18(2), 19 and 21(4) of the Medical Act 1978 persons who are fully registered under section 18 of that Act or provisionally registered under section 21 may each have registered, in addition to the recognised overseas qualifications by virtue of which they are registered, further qualifications granted outside the United Kingdom and additional United Kingdom and EEC qualifications, in each case whether held at the time of registration or obtained later. Whereas, however, a person registered under section 18 is entitled to have registered the recognised overseas qualifications he obtains after registration, a person registered under section 21 is not. This is anomalous because once a person provisionally registered under section 21 obtains sufficient experience to be registered under section 18 those qualifications will be registrable. Also, the position contrasts with that under Part II of the 1956 Act which allows persons registered under section 7 or 17 to have registered

later-acquired primary qualifications of the same type as those by virtue of which they are registered.

We therefore recommend that a person registered under section 21 of the 1978 Act should be entitled to have registered any recognised overseas qualification which he obtains after registration.

Effect is given to this recommendation in clause 26(1)(*a*) of the Bill.

C. Persons who are registered under section 18 or 21 of the 1978 Act are not entitled to have registered the primary qualifications by virtue of which a person may be registered under Part II of the 1956 Act, although many such persons do in fact obtain primary United Kingdom qualifications after being so registered. (In theory, primary European qualifications may be registered if they are also recognised overseas qualifications for the purposes of section 18, but that is now unlikely.) Their position contrasts with that of persons registered under section 7 or 17 of the 1956 Act who may have registered any recognised overseas qualifications they hold at the time of registration or obtain later. It may be regarded as particularly anomalous that registration under sections 18 and 21 does not entitle registration of the qualifications which are most widely known in the United Kingdom.

We therefore recommend that persons registered under section 18 or 21 of the Medical Act 1978 should be entitled to have registered any qualifications by virtue of which they would be entitled to registration under Part II of the 1956 Act.

Effect is given to this recommendation in clause 26(1)(*d*) of the Bill.

D. Where a person is registered with limited registration under section 22 of the Medical Act 1978 by virtue of holding acceptable overseas qualifications, he is entitled under section 22(5) to have those qualifications registered. If he is subsequently fully registered under section 18 of the 1978 Act by virtue of section 25, subsection (2) of that section provides that he may have registered any primary United Kingdom qualifications which are held by him at the time of registration. A person who is registered under section 18 of the 1978 Act by virtue of section 25 of the 1978 Act will also have the rights of registration given in respect of persons registered under section 18 and so as a result of recommendation C above would be entitled to have registered primary United Kingdom and primary European qualifications obtained before or after registration.

As a consequence of recommendation C above, it is therefore recommended that section 25 of the 1978 Act be amended so that there is no specific right for such persons to have registered United Kingdom qualifications held at the time of registration under section 18.

Effect is given to this recommendation in clause 26(2) of the Bill.

E. There is also a large overlap between the right under section 19(3) of the Medical Act 1978 for a person registered under section 18 to have regis-

tered additional qualifications (within the meaning of the 1956 Act) which the General Medical Council determine ought to be registrable (which applies to both existing and later-acquired qualifications) and the right under section 25(2)(*c*) of the 1978 Act for the person who is registered under section 18 by virtue of section 25 to have registered any qualifications held by him at registration which are for the time being registrable as additional qualifications under the 1956 Act. (By virtue of section 8(1) of the 1956 Act this means any additional qualifications which the Educational Committee of the General Council determine ought to be registrable by virtue of that section.) It is therefore considered that the specific provision in section 25(2)(*c*) serves no useful purpose.

Accordingly, we recommend that the right under section 25(2)(*c*) should cease, subject to a saving for existing registrations.

Effect is given to this recommendation in clause 26(2) of the Bill and in paragraph 5 of Schedule 6.

3. Section 31 of the Medical Act 1956 makes it an offence for any person wilfully and falsely to take or use any name, title, addition or description implying that he is registered under any provision of that Act. Following the passing of the 1956 Act, all registration of medical practitioners was effected under that Act (except for rare registrations under the increasingly obsolete and now repealed Medical Practitioners and Pharmacists Act 1947 (c. 11)).

The Medical Act 1969 (c.40) amended the 1956 Act and introduced, by means of a substituted section 25 inserted into the 1956 Act, temporary registration for persons who had been offered employment in the United Kingdom as medical practitioners. As the amendment was textual, section 31 applied in respect of registration under the new section 25.

In 1977 the Medical Qualifications (EEC Recognition) Order 1977 (S.I. 1977 No. 827) enabled practitioners who are nationals of member States of the EEC to be registered on the principal list of the register of medical practitioners by virtue of recognised European qualifications and, as this was achieved by means of textual amendments to the 1956 Act, such registration is within section 31. The Order also established a new list for visiting EEC practitioners intending to render medical services in the United Kingdom. This was done by a free-standing provision, Article 7 of the Order. The Order made no provision, however, applying section 31 in the case of persons pretending to be registered in the new visiting EEC practitioners list.

The Medical Act 1978 repealed Part III of the 1956 Act which made provision for the registration of Commonwealth and foreign practitioners and replaced it with a new system of registration by virtue of overseas qualifications covering similar cases. It replaced the temporary registration system with a system of limited registration. In both cases the replacement was effected not by textual amendment but by new free-standing provisions in sections 18 to 21 and 22 to 26 of the 1978 Act. This means that only persons with United Kingdom or EEC qualifications may now be registered under the 1956 Act.

No consideration seems to have been given in 1978 to the application of section 31 of the 1956 Act in respect of registration under the new systems. There is no provision in the 1978 Act for its construction as one with the 1956 Act (as there is in section 21(3) of the 1969 Act) and therefore it is not an offence under section 31 to pretend registration under the 1978 Act by virtue of overseas qualifications or limited registration, although until 1978 it was an offence to pretend registration under Part III of the 1956 Act by virtue of Commonwealth or foreign qualifications or temporary registration. It is considered that this change was an inadvertent consequence of the form which the establishment of the new systems of registration took as independent sections in the 1978 Act instead of amendments of the 1956 Act which would automatically have attracted section 31.

Under the present law it is therefore an offence for a person wilfully and falsely to use any name, title, addition or description implying that he is registered by virtue of United Kingdom or EEC qualifications under section 7 or 17 of the 1956 Act. It is not an offence under section 31 for a person to use any name, title, addition or description implying that he is registered by virtue of overseas qualifications under section 18, 21, 22 or 26 of the 1978 Act or as a visiting EEC practitioner under Article 7 of the Medical Qualifications (EEC Recognition) Order 1977. It is considered, however, that the mischief the offence under section 31 is aimed at is deception of potential patients by persons who are not properly qualified doctors leading to the patients unwittingly submitting themselves for treatment by the unqualified. This mischief is as likely to result from a person falsely implying that he is registered by virtue of overseas qualifications or as a visiting EEC practitioner as from a person falsely implying that he is registered under section 7 or 17 of the 1956 Act.

We accordingly recommend that no distinction should be drawn between a person who falsely implies that he is registered under section 7 or 17 of the Medical Act 1956 and one who falsely implies that he is registered by virtue of overseas qualifications or as a visiting EEC practitioner and that each of these things should be an offence.

Effect is given to this recommendation in subsection (1) of clause 49 of the draft Bill.

4. Under section 31 of the Medical Act 1956 as originally enacted a person guilty of an offence under that section was liable throughout the United Kingdom to a penalty not exceeding £500. This maximum penalty was increased to £1,000 for England and Wales and Scotland by general penalty-raising provisions contained in the Criminal Justice Act 1982 (c.48). Section 38(6) of the 1982 Act raised the penalty to £1,000 for England and Wales and section 289F(8) of the Criminal Procedure (Scotland) Act 1975 (c.21) (which was added to the 1975 Act by section 54 of the Criminal Justice Act 1982) raised the penalty to £1,000 for Scotland. The Criminal Justice Act 1982 also contained provisions which converted references to the amounts of fines or maximum fines to references to levels on the standard scale of fines for offences triable only summarily which was created by that Act. Section 46(1) of the 1982 Act effects this conversion for England and Wales and section 289G(4) of the Criminal Procedure (Scotland) Act 1975 (which was added to that Act by

section 54 of the 1982 Act) makes the change for Scotland. No corresponding provision has yet been made for Northern Ireland. The result is that the penalty for the offence under section 31 is now level 5 on the standard scale in England and Wales and Scotland (£1,000), but it is still £500 in Northern Ireland.

It is considered anomalous that a different maximum penalty should obtain in Northern Ireland from that obtaining in the rest of the United Kingdom and accordingly we recommend that the maximum penalty for an offence under section 31 of the Medical Act 1956 should be the same in Northern Ireland as it is in England and Wales and Scotland, namely level 5 on the standard scale.

Effect is given to this recommendation in subsection (1) of clause 49 of the draft Bill.

5. Under the Medical Act 1956 the election of elected members of the General Council was provided for under paragraph 3 of Schedule 2 by regulations made by the Privy Council and the Privy Council's power to make regulations included the implied power to amend the regulations by virtue of section 32(3) of the Interpretation Act 1889 (c.63). Section 17 of the Medical Act 1969 replaced Schedule 2 to the 1956 Act with new provisions concerning the election of the elected members of the General Council. Subsection (1) of section 17 provided that the election of elected members should be conducted in accordance with a scheme made by the Council and approved by the Privy Council and under subsection (3) of that section such a scheme could be amended in the same way.

The Medical Act 1978 repealed section 17 of the 1969 Act and replaced it with the provisions in section 1 of the 1978 Act. Under section 1(4) of the 1978 Act elections of the elected members of the General Medical Council are to be conducted in accordance with an electoral scheme and section 1(5) imposes a duty on the General Council to make such a scheme with the approval of the Privy Council and after consultation with such bodies as appear to the General Council to be representative of medical practitioners. No provision was included in section 1 of the 1978 Act providing for the amendment of an electoral scheme made under the section and no power to amend is implied by virtue of section 14 of the Interpretation Act 1978 (c.30). Such a power is, however, clearly most desirable where a small amendment is wanted which does not warrant the making of an entire new scheme.

It is considered that the omission of an amending power from section 1(5) of the 1978 Act was an unintentional oversight which may have arisen because a power to amend Orders in Council made by the Privy Council under section 1 of that Act was included in section 2(5). This power does not, however, enable electoral schemes to be amended as they are made by the General Council and although the schemes are subject to the approval of the Privy Council that approval does not have to be given by Order in Council.

We therefore recommend that section 1 of the Medical Act 1978 be amended to include a power to amend electoral schemes made under subsection (5) of that section, the power being subject to the same requirements of approval by the Privy Council and prior consultation with representative bodies as the power to make the original electoral scheme.

Effect is given to this recommendation in paragraph 2(3) of Schedule 1 to the Bill.

6. Paragraph 2(2) of Schedule 4 to the Medical Act 1978, as amended by Schedule 5 to the Supreme Court Act 1981 (c.54), applies section 36 of the 1981 Act to proceedings before the Professional Conduct Committee or the Health Committee of the General Medical Council which take place in England or Wales or Northern Ireland as it applies to proceedings before the High Court. Section 36 provides that where it appears to the court that it is proper to compel the personal attendance at any trial of a witness who may not be within the jurisdiction of the court a writ of subpoena ad testificandum or duces tecum may be issued in special form commanding the witness to attend the trial wherever he is in the United Kingdom. Therefore, when the proceedings of those Committees take place in Northern Ireland, it is necessary to make an application to the High Court in England and Wales before such writs may be issued.

Since 1978 section 67 of the Judicature (Northern Ireland) Act 1978 (c.23) has provided a corresponding procedure enabling the High Court in Northern Ireland to order the issue of the writs of subpoena ad testificandum and duces tecum in special form so as to be in force throughout the United Kingdom. Schedule 5 to the Judicature (Northern Ireland) Act 1978 amended paragraph 2(2) of Schedule 2 to the Professions Supplementary to Medicine Act 1960 (c.66) and paragraph 4(2) of Schedule 2 to the Veterinary Surgeons Act 1966 (c.36) (which make similar provision to paragraph 2(2) of Schedule 4 to the Medical Act 1978 in relation to proceedings before the disciplinary committees of the various boards controlling the professions supplementary to medicine and the disciplinary committee of the Council of the Royal College of Veterinary Surgeons respectively) so that, in addition to section 36 of the Supreme Court Act 1981, section 67 of the Judicature (Northern Ireland) Act is applied to the proceedings before those Committees. This enables application to be made to the High Court in Northern Ireland when the proceedings of these Committees are taking place there.

We recommend that section 67 of the Judicature (Northern Ireland) Act 1978 should also be applied to proceedings before the Professional Conduct Committee and the Health Committee of the General Medical Council so that application may be made to the High Court in Northern Ireland when the proceedings of those Committees are conducted in Northern Ireland.

Effect is given to this recommendation in paragraph 2(2) of Schedule 4 to the Bill.

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