

Statutory Registration for Health and Social Professionals

Proposals for the Way Forward

Department of Health and Children
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Introduction

The Department of Health and Children has committed itself to introducing legislation to provide for the statutory registration of certain health and social care professionals. The Minister for Health and Children, Mr. Micheal Martin TD has indicated that delivering on statutory registration is among his key priorities and that he will provide strong support towards achieving this objective.

Against this background, the Department held a series of workshops with the professional bodies to try to reach a consensus on how a system of statutory registration might operate in practice. The workshops were facilitated by the Institute of Public Administration. This document is the culmination of these workshops and it is now being circulated widely to the members of each profession involved for their consideration.

Consultation Process

The Minister for Health and Children launched the consultation process with the professional bodies in Cork on 14 April 2000. He introduced a Discussion Document which formed the basis for subsequent discussions. There followed a series of one-day workshops at the Institute of Public Administration, Dublin on 25 May, 15 June, 6 September, 28 September and 18 October 2000 at which all of the major issues raised by the Discussion Document, and others raised by the professional bodies, were considered in some detail.

From the outset, the Minister emphasised the importance of seeking to build consensus using a highly consultative process with the professions involved. The Minister and his Department would like to acknowledge the vital input of all of the professions involved in this consultation process. The proposals set out in this document emerged from a very positive spirit of co-operation and openness from all parties, without which it would not have been possible to devise the outline scheme below. The Minister and Department would also like to acknowledge the valuable contribution made by the Institute of Public Administration in facilitating the discussions which have led to this document. A list of the professional bodies which participated in the discussions with the Department is contained at Appendix 1.

What is Statutory Registration?

Statutory registration is a system whereby each individual member of a profession is recognised by a specified body as competent to practice within that profession under a formal mechanism that is provided for by law. Unlike systems of voluntary registration, it is a legally binding process: all persons wishing to practice must be registered, and can be prosecuted for practising if not registered.

At present, only five professions are subject to statutory registration in Ireland: doctors, dentists, nurses, opticians and pharmacists. A number of other professions have informal or voluntary systems of registration organised by their respective professional body, but such a system has no basis in law. The Department of Health and Children, in conjunction with the professional bodies involved, is now proposing a system of statutory registration for the professions represented by the professional bodies in Appendix 1. The scheme can be structured to allow for the extension of registration to other health and social care professionals¹ over a period of time.

Why introduce Statutory Registration?

The question of introducing legislation to provide for the registration of certain health and social services professions has been under consideration for some considerable time now, but for various reasons it has not been possible to proceed with legislation in the past. There are several pressing reasons as to why such legislation now should be introduced:

{ Firstly, there is the legitimate concern of members of the public to be guided and protected so that they are confident that the professional providing the service is properly qualified and competent.

1 ¹Registration could also be extended to cover others currently classified as health professionals but with a range of qualifications. These would include physicists, public analysts, analytical chemists, cardiac catheterisation technicians, clinical engineering technicians and ECG technicians. This list is not exhaustive; in fact there are some 35 or so grades in the health services which come within the overall term 'health and social care

{ Secondly, the professions themselves require protection where normal operational and ethical factors make it impossible to exclude unqualified or insufficiently qualified persons from professional activity. This is because, among other reasons, the professions can only apply an ethical code to their own members. The good name and reputation of the majority can be damaged by the actions of a very small minority that bring a profession into disrepute unless there is a mechanism for sanctioning professional misconduct.

{ A proper system of registration can allow for investigation of any allegations of incompetence or misconduct and allow for disciplinary action to be taken. It would also provide a mechanism whereby practitioners compromised by ill-health or addiction can be appropriately dealt with.

{ Registration would provide a legislative framework for the appraisal and approval of education and training courses, examinations, qualifications and institutions, thus ensuring the proper development of education and training across the professions. Some of the professions are already discharging these functions.

{ Registration would provide a more widely informed and participative forum for the administration and implementation of the EU Directives on the Mutual Recognition of Third level Qualifications in EU member states. It will also lead to greater consistency in the application of these Directives.

Voluntary codes of registration, while very useful in themselves, cannot by definition offer the legal protection afforded by a system of statutory registration.

Underlying all of the considerations above must be a strong commitment to ensure that we deliver the best possible service to patients and clients. This must be our primary concern when developing a system of registration for health and social care professionals in Ireland.

Key Elements of a Statutory Registration System

A number of key elements is necessary for a statutory system of registration to work effectively for health and social care professionals. The scheme proposed below is set out with these principles in mind:

{ However designed, the registration system must ensure that we deliver the best possible service to patients, clients and service users.

{ Given the number of professionals involved (approximately 7,500 practitioners) there is clearly no scope for entirely separate registration systems for any individual profession. It is vital to develop an integrated, mutually supportive system of registration across the professions, but with significant autonomy within each Registration Board (described below) on issues affecting that profession.

{ All systems of statutory registration in Ireland, whether in the health services or other sectors, are self-financing i.e. funded from the contributions of registered members. A self-financing mechanism must also operate in relation to health and social care professionals. Again, the relatively small number of professionals involved is an influencing factor here.

{ Registration must be designed with the full development of the professional bodies in mind. Far from any perception that their influence or membership would be diluted, statutory registration should provide a vehicle that enables professional bodies to build greatly upon their existing role.

Proposed Structures of Registration System

It is proposed that the structures for statutory registration would comprise a Registration Board for each individual profession and a Registration Council for the system overall. The system would share a set of common statutory committees relating to protection of the public. Then committees would comprise committees relating to preliminary proceedings in the case of formal complaints, fitness to practice issues and health matters. These are described fully below.

It is vital to have regard to some practical realities when considering the most workable structures for a registration system. An underlying principle of the structures proposed below is to allow for sufficient autonomy within each profession, while also providing for an efficient slim structure, which takes account of the size of the system and the volume of likely registrations. Major benefits would be obtained from common values and approaches, and the formulation of cross-professional policies, as well as from administrative efficiency.

Any proposed structure and legislation must be flexible enough to accommodate various changes, including a significant increase in the number of professions regulated. The legislation must allow for the Council, the Statutory Committees and the Registration Boards to be able to modify structures, make policy and delegate functions as will be necessary.

Registration Boards

One per Profession

Registration Council

Statutory Committee
**Preliminary Pro-
ceedings**

Statutory Committee
**Fitness to Prac-
tice**

Statutory Committee
Health

It is envisaged that there will be a transitional period when the structures are first established. The working procedures can then be reviewed in light of experience and circumstances at that time. For this reason, and to allow for future flexibility, it is envisaged that the governing legislation should not be overly prescriptive.

Registration Council: Role and Composition

- Role of Registration Council

The Registration Council would co-ordinate and oversee the registration system as a whole. It would be a co-ordinating and policy making body rather than an executive one. Its main functions would be:

- { to co-ordinate and assist the activities of the individual registration boards and statutory committees;

- { to supply all necessary administrative support to the individual registration boards and the statutory committees;

- { to serve as a vehicle for promoting and developing common ground among professions and to provide a forum for discussion on issues of common concern; and

- { to represent the professions as a whole and to co-ordinate common responses on issues affecting all or a group of registered professions where common ground exists among the professions.

The Registration Council would not have a formal supervisory role over the Registration Boards in relation to their operational policy functions. The Council would not dilute the functions or importance of the Registration Boards. It would however, be the first source of appeal in certain specified circumstances against the decision of a Registration Board in disciplinary matters (discussed below under the proposed fitness to practice scheme) and it would also have a statutory role where either a Registration Board or a Statutory Committee failed to perform specific duties or functions required of them by law. This might include, for example, ensuring that a Registration Board has met specific deadlines for supplying statistics, for publishing an annual report, or for implementing other specific provisions of the legislation. Subject to these powers, the intention will be that each Registration Board has autonomy in relation to issues affecting its own profession.

The legislation would empower the Council to establish such committees as it saw fit for particular functions.

The Registration Council would provide administrative support to the other registration bodies. The Registrar of the Council would also act as Registrar of the Registration Boards. This approach would be convenient, ensure efficiency in the context of a relatively small volume of numbers registered (about 7,500 initially) and offer continuity and expertise across all boards.

-Composition of Registration Council

It is proposed that the composition of the Council would be as follows:

- { An independent chairperson;
- { One nominee from each profession registered under the system. (One nominee from any profession subsequently added to the registration system would also be made);
- { One representative from the public health sector (e.g. health boards or other employing agency);
- { One representative from the private health sector;
- { One representative from the education sector;
- { One consumer representative.

Under the proposed legislation, the Minister would formally appoint the Registration Council. In the case of the professional, health and education representatives, he/she would do so on the nomination of the relevant parties. For the professions, the professional bodies would nominate the first members, while for the health and education sectors, the nominations could be through particular groups such as the Chief Executives of health boards or the Directors of Personnel.

The method of nomination of one professional from each registered profession would be a matter for that profession. For example, an election could be held, or the profession might choose to use some other method of selection, such as nomination of a specific officer/post-holder within the profession. It is proposed that the Registration Council would hold office for four years, with half of the members leaving office after two years. Members could be re-appointed for not more than one consecutive additional four-year term.

The Registration Council (or the Registration Boards discussed below) may decide that in addition to the elected and nominated members above, there may be a need for expertise or a perspective not represented on the Council or Board at that time. It is proposed that both be enabled to bring in additional members who would be advisory in nature to deal with specific issues. These members would not have voting rights.

Registration Boards: Role, Composition and Status

- Role of Registration Boards

It is proposed that there would be an individual Registration Board in respect of each registered profession. The main functions of each Registration Board would be:

- { to maintain a register of all persons deemed eligible to practice within the profession;
- { to determine, in consultation with the relevant professional bodies, the criteria for registration, including approved qualifications, education, training and practice experience;²
- { to oversee, for the purposes of registration, the operation of a 'grandparenting' clause in respect of certain existing practitioners;³
- { to maintain details, to be updated annually, of each registered professional's employer, position held, or place of private practice;
- { to record and maintain all post-registration qualifications held by registered members;
- { to adopt and if necessary revise as appropriate a Code of Conduct and Ethics for the profession, in consultation with the relevant professional body/bodies⁴;
- { to nominate titles⁵ that would be protected under the legislation. (It would be an offence for an unregistered person to use a protected title or to give an indication that they are entitled to use a protected title);

2 ²The functions relating to accreditation of courses could be 'subcontracted' by the Board to the relevant professional

3 ³This issue is considered further

4 ⁴Since most professional bodies already have a code of ethics, it is likely that the Registration Board would simply adopt that existing code. Alternatively it could add to or vary the existing

5 ⁵The timing of the introduction of these functions will be carefully taken into account when the legislation is being drafted. For example, the provisions relating to protection of title will have to reflect the timetable for completion of 'grandparenting' arrangements in some

{ to set the scope of, and limits to, the type of clinical/professional practice to be carried out by the profession. This would be done in consultation with the relevant professional body/bodies.

{ to remove, or suspend practitioners from the register of the profession, or otherwise to discipline them. (This would be on the advice of the fitness to practice committee or health committee, as described later in this document);

{ to issue a formal warning or similar notice to a registered professional following a formal investigation. (Again, this is discussed later in the context of fitness to practice); and

{ to remove a professional's name from the register on the request of that professional.

In carrying out certain functions, including areas in which the relevant professional bodies have a particular expertise, it would be open to the Registration Board to:

{ carry out the function itself, in consultation with the professional body/bodies;

{ establish a sub-committee to carry out the function, with scope for external membership;
or

{ formally delegate the function to a third party, such as the relevant professional body.

Each Registration Board would be required to publish an annual report on its activities, and to submit it to the Registration Council for information. As discussed earlier, while the Council is not intended to be a supervisory body over the Boards, it would have a statutory role where a Board failed to perform a function required of it by law.

- Composition of Registration Boards

It is proposed that the professions should have a majority of membership (in the ratio of about 2:1) on each Registration Board. In order to ensure reasonable representation of members of the professional bodies, and to agree on details of nomination/selection procedures, consultation will be necessary between the Department of Health and Children and the professional bodies before the first Registration Board for each profession is established. Depending on the size of the profession involved, the Boards would comprise:

- { Between five and seven members of the relevant profession⁶;
- { Either one or two representatives of the public and/or private health sector;
- { One representative of other sectors (e.g. the education sector, if appropriate); and
- { One consumer representative, not being a current or former member of the profession.

Each Board would establish its own procedures in accordance with the legislation. The chairperson of the Registration Board would be elected by the Board at its first meeting. The Board would be empowered (but not required) to establish sub-committees for specific functions. Not all members of the sub-committees need be members of the Registration Board, although it would be desirable that a number of them would be members. Registration Boards would be empowered to co-opt additional expert members for specific purposes to the Board. Their role would be purely advisory and they would not have voting rights.

When the first Registration Boards are being established, it would be necessary to define a system for nomination or election, in which the relevant professional body/bodies have a substantial input. For subsequent periods there would be a pool of registered members, who would elect the (five to seven) members of their profession to the Registration Board. As in the case of the Registration Council, each Registration Board's term of office would be four years, with half of the members leaving office after two years. This would result in an election to half of the places on the Board every two years, promoting continuity over the period. Each member of the Registration Board would be limited to not more than two consecutive (four year) terms of office.

-Status of Registration Boards

It is important to strike the correct balance between the professional bodies and the Registration Board for their profession. During the discussions between the professional bodies and the Department of Health and Children, it was suggested that one approach might be to make the relevant professional body the Registration Board for that profession. There are some significant difficulties with this proposal, and it is worth setting them out here:

6 ⁶Some professions of smaller size may find that having even five members would be impractical. It is proposed that the legislation would allow for a lower number of professionals in these cases, while tak-

- (i) There could be a conflict of interest between the aims of the professional body, which must be concerned (at least in part) with the interests of its members, and the Registration Board which is responsible for protecting the public. This is *not* to suggest that professional bodies would be unconcerned about members of the public. However, public perception of, and confidence in, the registration system would be promoted if the professional bodies and registration boards were seen as separate, distinct entities.
- (ii) If the professional body and registration board were one and the same, there could be legal difficulties associated with the concept of a 'closed shop'. Case law in the area of trade unions suggests that it is not permissible to require (or effectively to require) a person to join a particular organisation or body in order to work. If the registration entails (effective) compulsory membership of a professional body because it is identical to the registration board, this requirement may offend against Constitutional rights of freedom of association. (Legal advice is being sought on this issue).
- (iii) One of the functions of the Registration Board would be, in consultation with the relevant professional body/bodies, to set the scope of, and limits to, the type of professional practice to be carried out by the profession. It might, for example, prescribe specific interventions or techniques which are within or outside the expertise of that profession. If a registered professional is answering a case against him/herself in this regard, it is possible that the professional body would wish to defend the case. If so, there would be a significant potential conflict of interest in the professional body defending its own member where the body itself is also the registration board.
- (iv) Finally, there would be a practical difficulty in conferring powers of statutory registration on a professional body where there is more than one such body representing that profession. Already one of the professions proposed for registration has three professional bodies, and there is nothing to prevent additional bodies establishing themselves in other professions. In these cases it would be difficult to determine with fairness which professional body should become the registration body for that profession. There can be no question of more than one Registration board per profession.

Legal advice is being sought in relation to point (ii) above, but in any event, the other three points underline the serious difficulties associated with a professional body itself taking on the role of a statutory Registration Board. However, while the issues above illustrate the potential legal and practical difficulties of conferring registration powers on individual bodies,

there is no reason why the members (and views) of the professions could not be strongly represented on the relevant Registration Board. The proposals above would give the professions a significant majority on each Board.

The professional bodies referred to throughout this document are those that are currently in existence, many of whom are affiliated to their own international grouping of professional bodies. It is not envisaged that the number of professional bodies for these professions should increase in the future without just cause.

Statutory Committees: Outline of Functions

It is proposed that the registration system would be supported by three statutory committees common to all registered professions. The relatively small number of registered professionals means that it would be impracticable to have separate statutory committees for each Registration Board. There are strong arguments for establishing a set of committees for such critical functions as preliminary proceedings in relation to complaints, fitness to practice, and health. Given that the nature of their work would be far-reaching, it would be important to place each committee on a statutory basis. The advantages of the committees would be:

{ A pool of expertise would be established which could be drawn upon for all cases;

{ A consistent approach to these important issues would be guaranteed;

{ Expertise in these issues can be more easily be shared among the professions;

{ Members of the statutory committee will be indemnified on a personal basis from any action resulting from an investigation or decision of that committee.

It is proposed that the statutory committees should be structured in a flexible way that enables them to provide services as required to all professional disciplines that are registered. Briefly, the purpose of each committee would be as follows:

{ **Preliminary Proceedings Committee:** This would screen, investigate and deal with all initial complaints received, be they relating to health, professional conduct or ethical issues. It would determine whether complaints should be referred to the Fitness to Practice Committee or Health Committee, or whether there was any basis for investigating them further.

{ **Fitness to Practice Committee** - This committee would investigate complaints referred to it by the Preliminary Proceedings Committee and recommend a course of action to the relevant Registration Board.

{ **Health Committee** - This committee would deal with lifestyle issues or where a registered practitioner is alleged to be compromised by addiction or physical or mental ill health. Cases would be referred to it by the Preliminary Proceedings Committee.

Members of the particular profession under review would be co-opted to the committees when a case involving a member of that profession is under consideration. These representatives would sit alongside a number of permanent members of the statutory committee. The exact functions and composition of the statutory committees are discussed below in the context of the section on fitness to practice procedures.

Registration of Professionals

It is proposed that the system of statutory registration will essentially be operated by the professions themselves through the mechanisms to be provided for under the legislation. The Registration Council and Registration Boards would determine their own procedures, and the legislation would be framed in as flexible a manner as possible to facilitate improvements to the system in light of experience. When fully operational, the system of registration should operate smoothly and be a valuable resource for helping to promote the standards of professionals in conjunction with the various professional bodies.

In order to ensure that the proposed system of registration has the best possible effect, it is important to set out a number of key principles and operational issues. The approach proposed in this document reflects the workshop discussions held between the professional bodies and the Department of Health and Children on these issues.

- Coverage of Statutory Registration

There was a strong consensus at the workshop discussions that in order to be effective, statutory registration must:

- { be compulsory for all practitioners in each registered profession;
- { extend to practitioners in all forms of practice, whether public or private;
- { apply to all sectors in which a profession operates (e.g. health, social services, education, industry).

The Department strongly endorses this view, and believes that where a profession is subject to statutory registration it must be applicable in all circumstances. Failure to do so could reduce significantly the value of introducing a statutory registration scheme.

- Basic Registration Procedures

Before considering other wider issues, it is useful to deal with the basic procedures for registering professionals for the first time. The proposals below will of course be affected by the later discussion of such areas as registration of those already practising, procedures for 'grandparenting', and other procedures for assessing eligibility for registration. Underpinning

the entire system of statutory registration must be a fundamental concern with protecting the patient/client/service user, and with providing a high quality service to all. All aspects of the registration system must have these principles at the forefront.

It will be important for the relevant Registration Board, as the body with responsibility for registrations, to be able to process new applications for registration as speedily and efficiently as possible. In the great majority of cases this process should be straightforward. For example, accredited colleges would be in a position to pass the details of those who pass exams⁷ to the relevant registration board. Registration could then be processed without delay, upon receipt of an application form, registration fee and verification of all other required information. It must be emphasised, of course, that the system of registration would involve a thorough checking and assessment of each application.

Only in a very small number of cases are potential difficulties likely to arise, such as in the case of allegations of criminal wrongdoing, conviction of a criminal offence or refusal by the Registration Board to register a particular applicant. To address these issues, the following approach is proposed:

{ All new potential registrants will have to be asked about previous criminal convictions or accepted cautions. The Registration Board will be entitled to take these into account.

{ The circumstances of the offence will be as important as the offence itself; the Registration Board will be obliged to take these factors into account. The balance between the rights of the individual to see his/her conviction spent must be balanced against the protection of the public.

{ All those refused registration will have a right of appeal to the High Court. The Court will be empowered to assess the circumstances of a previous conviction assessed and to overturn the decision of the Registration Board.

{ A criminal conviction or caution is not in itself an automatic bar to registration but failure to disclose it could be.

{ The making of a fraudulent application will result in the application being refused and the applicant being denied admission to the list of registrants held by the Registration Board.

Finally, for the purposes of convenience and to promote continuity of registration, it is proposed that payment of second and subsequent fees should be by way of Direct Debit to the Registration Board.

Registration of Existing Professionals

A number of important issues regarding existing practitioners must be dealt with before the proposed system of statutory registration can be brought into operation. For those entering the system as newly qualified personnel, the registration system would be clear, as described briefly above. The issues below relate to those already practising in a pre-registration context.

- Position of practitioners currently employed in the Public Sector

Most, but not all health and social care professionals working in the public health sector are employed under the qualifications formally declared in law by the Minister for Health and Children under the Health Act, 1970. However, there was consensus at the discussions with the professional bodies that those in the public sector should not be included *automatically* on the register. They should only be registered if:

- { they hold qualification(s) as declared by the Minister at the time of their recruitment and
- { they have signed their formal agreement to the code of ethics as set out by the Registration Board for their profession.

In some cases it will be necessary for the Department of Health and Children to update the qualifications declared by the Minister, in consultation with the professional bodies, so as to include all appropriate qualifications, including those from more recently established courses. The Department will carry out any such updating that is required, in consultation with the professional bodies.

As discussed below, it will be necessary to develop a mechanism for assessing applications for registration from practitioners who do not meet the criteria above. This will also arise in the case of persons working solely in the private sector.

- Position of members of the relevant professional body

It is proposed, in line with the views expressed at the workshop discussions, that members of the relevant professional body should *not* be included automatically on the register unless they hold an appropriate category of membership. Others would have to be assessed for entitlement to registration. This issue arises because, in the case of some persons working in the public sector, they are not entitled to membership of the relevant professional body by virtue of their qualification.

It is recognised that requirements of this kind could cause considerable difficulty for the practitioners concerned. For those in the public sector who are found, following assessment, not to be eligible for registration, it raises the prospect of unemployment (and also legal issues about the right to earn a living). The consensus at the workshop discussions with the professional bodies was that this issue might best be handled through a system of provisional or temporary registration. This would be applicable for a specified period to allow those affected sufficient time to bring their qualifications up to the level required for statutory registration.

- Position of practitioners working in the private sector only

As in the case of those in the public sector, there can be no automatic registration of practitioners working solely in the private sector. In order to qualify for registration, they would have to meet the same criteria as proposed in relation to the public sector, i.e. holding the required qualification(s) as declared by the Minister and signing up to the code of ethics set out by the relevant Registration Board. As in the case of those in the public sector, persons in the private sector who do not meet these criteria would have to be subject to a formal system of assessment for registration. The mechanism of assessment is discussed later in this paper.

- What if Existing professionals refuse to register?

It might be expected that the great majority of professionals would regard it as an essential part of good practice to register as soon as a system of statutory registration for their discipline is introduced. However, it is still conceivable that a currently serving health service employee might challenge a new legal requirement to register, perhaps on the basis that it did not constitute part of his/her original contract. The legal implications of this issue are com-

plex, particularly given that compulsory registration is proposed. Questions also arise about the right of an employer to make statutory registration a new condition of continuing employment. The legal issues surrounding this area are being investigated at present.

Similar questions arise in relation to the compulsory registration of private practitioners. Some legal questions are being investigated at present, but subject to these the Department believes that the same rules of registration should apply to both the public and private sectors. An important question arises in relation to the right of a private practitioner to continue to earn a living if deprived of the right to practice once a title is protected and the practitioner does not qualify for registration. Again, the Department is taking legal advice on the matter, as part of its preparations for the introduction of statutory registration. It is clear that the right of a person to earn a living must be balanced against the vital need to protect the public. The Department is committed to ensuring that statutory registration will have as its core the need to protect the public.

- Registration of Professionals who have not recently practised

There are many persons who, though qualified, have not practised for some time and may not be up to date with the latest developments in their profession. It is proposed that persons in these circumstances should not be allowed to take up employment immediately if seeking to return following the introduction of statutory registration for their profession.

Each Registration Board should set a timeframe within which the professional must have been in practice before registration can be allowed. The time period might, for example, be five of the previous seven years. If persons are outside this time limit, a form of assessment to be determined by the Registration Board would be required so that the practitioner can prove his or her competence. This might be by means of interview, written examination, practical examination, a period of supervised experience or a combination of any of the above. In the case of supervised experience, a system of probationary or temporary registration should apply.

It is clear that this requirement will have implications for training colleges and for the availability of clinical placements. It is, however, in line with the recommendations of the *Expert*

Group Report on Various Health Professions. It might be noted that Bord Altranais already operates a successful 'back to work' course for nurses wishing to return to the profession.

- Registration to practice within specialties of a Profession

The increasing specialisation within some professions means that persons working in one sector or specialty of their profession may not be fully up to date with developments elsewhere. Further specialist registration within a profession may be an appropriate approach to take account of this factor in the future. Similarly, where professionals are employed in a variety of environments (such as health and education) it might be valuable to provide for a register of all qualified practitioners, but then to issue a licence to practice within a specific sector.

At the workshop discussions with the professional bodies, there was general consensus that these approaches might be desirable in the future, but that there would be a number of complexities to overcome. Accordingly, the Department proposes that the Registration Council and individual Registration Boards should be empowered to establish specialist registers and/or licensing arrangements in the future, but that it would be a matter for each Board to determine if and when it was appropriate to introduce such a system.

- Levels of Registration

The Department proposes a similar approach in relation to another area of discussion - that of introducing different levels of registration to take account of those engaged in non-clinical activities such as lecturing, management or other ancillary activities. In accordance with the consensus reached at the workshop discussions, it should be a matter for each Registration Board to determine if a different level or type of registration was warranted in the case of certain professionals engaged in activities ancillary to clinical practice. Boards would be legally empowered (but not required) to introduce such types of registration at a later date.

The same would apply in relation to the question of associate registration for persons who, though qualified, have less than, for example, two years experience and might not yet (at least in some professions) be practising autonomously. Again Boards would be empowered to

provide for a form of associate registration at a future date to meet the profession's requirements.

Practitioners not immediately qualified for Registration

The Department recognises that a number of practitioners currently working in both the private and public sectors do not possess the required level of qualifications for immediate statutory registration. This applies only to some of the professions now being considered for registration, but where it arises it is a major issue, and it must be addressed before statutory registration of the profession can proceed.

There are two main ways in which this issue can be addressed: adopting a system of *acquired rights* or introducing an assessment system known commonly as *grandparenting*.

{ *Acquired Rights*

One possible system is to allow for the automatic registration of practitioners who can prove that they have a number of years experience in practice. This is known as accumulating *acquired rights* to registration. No proof of qualification is required, nor is any examination undertaken to establish competency. The argument in favour of this approach is that the practitioners in question have been in practice for many years, usually without complaint from the public, and that they have effectively acquired the right to continue practising. The right to earn a living, previously mentioned, is also cited.

At the workshop discussions, there was a general consensus that a system such as this would be unacceptable. It was considered that acquired rights would devalue the registration process for all practitioners who were formally qualified and that public confidence in a statutory registration process would be reduced if it was known that no formal standards (other than a period of time practising) existed for initial registration. The Department of Health and Children endorses this view and would not propose its use.

{ *Grandparenting*

The alternative to acquired rights is a system of *grandparenting* under which existing practitioners are considered for registration on the basis of an agreed system of, for example, written examinations, practical examinations, and/or interviews, or a combination of all three. Practitioners may also have to show that they have been in practice for a certain number of years prior to their application for registration. They may also have to present a portfolio, based on selected cases handled to date. It is important to emphasise that a grandparenting system would operate only for those already in practice prior to the introduction of statutory registration. Its purpose is to establish whether the position of existing practitioners can be regularised; there would be no question of using the system indefinitely for those without adequate qualifications.

A key principle of any such system of grandparenting would be that the standard for assessment would have to be in line with that currently applied to that profession, i.e. the standard to which current graduates are educated. It could not be a lower (or higher) standard. The standard would be set by the relevant Registration Board.

As noted earlier, a grandparenting provision is required only in the case of certain professions. Where it applies, it is proposed that its exact operation would be a matter for each profession through the relevant Registration Board. It is proposed that an agreed system of grandparenting should apply both to private practitioners and to those in the public sector who do not have the required level of qualifications for immediate statutory registration. The implications of 'grandparenting' for the education system must be noted and planned for in advance: there will be a significant demand for appropriate education and training from existing practitioners who will need to achieve the standards required for statutory registration.

Further details of the main elements of a grandparenting system are proposed below. The main issues relate to time limits for assessment and establishing fulfilment of the criteria for assessment.

- Eligibility for assessment and time limits

In accordance with the discussions with the professional bodies, the Department proposes that not all existing practitioners should automatically be eligible for assessment under grandparenting. This provision should be designed for those who can demonstrate that they have been operating competently within the scope of the profession. For this purpose, each Registration Board dealing with the grandparenting system would specify a minimum period for which applicants have been working within the scope of the profession. A minimum period of five to seven years on the date of statutory registration would be desirable, but the Department recognises that some professions (e.g. child care workers) would have a difficulty with this period because of the relatively high turnover rate in the area.

The Department is conscious that legal questions could be raised about the precise time limits that might be set in legislation or by individual Registration Boards. A practitioner who had been in practice for, perhaps six months short of the time limit might challenge this criterion. Legal advice has been sought on this issue, but it should not be impossible to devise a time-related criterion that would be considered reasonable in the courts.

In addition to a specific time requirement relating to length of practice (such as five years, as described above) each Registration Board would be entitled to set a time limit within which all applications for assessments for grandparenting would have to be received. A period of twelve to eighteen months after the commencement of statutory registration would seem reasonable. After that time limit, no applications would be entertained unless the applicant could show the Registration Board good cause as to why he/she had not applied within the time limit. A decision on these cases would be a matter for the Registration Board.

The position of practitioners from other countries who come to live in Ireland (e.g. some years following the introduction of statutory registration) would also have to be addressed. However, such cases would involve a question of recognising qualifications rather than a provision relating to grandparenting.

- Establishing Fulfilment of Criteria for Assessment

It is proposed that those applying for grandparenting could establish that they fulfilled the criteria to be assessed for grandparenting (i.e. the five-year or other time limits suggested above) by way of:

- (i) a self declaration attested by a state registered practitioner from that profession;
and
- (ii) income tax returns; and/or
- (iii) a reference from an employer; and/or
- (iv) a declaration by an accountant.

A false declaration would be an offence punishable by law. A false attesting declaration by an existing registered professional would be grounds for striking the practitioner off the register.

Persons not deemed eligible for registration

It will be important to deal with the case of those who, though working in the public or private sector, are not deemed eligible for statutory registration due to insufficient qualifications or experience. The consensus at the workshop discussions with the professions was that such persons might appropriately be offered probationary or temporary registration for a specified period during which they would be required to take all necessary steps to gain the required qualification or experience. Where they failed to meet the requirements for registration within a specified period, it would be a matter for the Registration Board to consider their position in the first instance, and for their employer (if they were not self-employed) also to address the issue in the context of their responsibilities to the public.

It has to be noted that ultimately such persons would no longer be permitted to work within the profession. It might be possible to offer them employment at a lower level of responsibility, perhaps subject to supervision, but they could not be permitted to continue working as an

independent practitioner within the scope of the profession. However, this would occur only after the practitioner had been given a reasonable opportunity to update their qualifications and experience to the level required for registration. It is only after the person has failed to do this within a reasonable time period that they would no longer be permitted to work within the profession. This is a difficult area, with significant implications for some existing practitioners, and legal advice has been sought on the best way forward.

On a related issue, it is clear that the education system would have to be alerted to the fact that some courses being offered in Ireland would not be of the standard required for a qualification leading to statutory registration. There would be significant implications for the Department of Education and Science and the education sector generally, in Ireland and elsewhere, which would be clearly signalled while the legislation on statutory registration was being prepared. These problems may be more acute for the private schools.

Registration of Additional Professions

As noted earlier, the discussions on devising a scheme of statutory registration took place with the thirteen professions listed in Appendix 1. If the proposed scheme is acceptable to the professions, the Minister proposes to introduce legislation covering these professions initially. However, under the legislation, there will be scope to expand the number of health and social care professions being registered by way of Statutory Instrument (a form of Ministerial Order). A profession would make an application to the Registration Council, or the Minister might propose specific additional professions for inclusion in consultation with the Registration Council. The Minister, upon receipt of a positive recommendation from the Registration Council and confirmation that all necessary preparatory arrangements had been completed, could then sign the necessary Order.

Persons practising within the scope of a registered profession

One of the potential advantages of statutory registration is that the scope of registered professions could be safeguarded within a legal framework. Registration Boards would be entitled to pursue prosecutions against persons who, though not registered, were practising within the scope of a registered profession. However, the details of how this might best be done would

have to be considered carefully; it must be acknowledged that there could be difficulties in pursuing such cases successfully unless clear evidence can be put forward.

The relevant Registration Board could also take action against a registered member who was alleged to be practising outside the scope the profession. This would probably be less complex, since the professional would be subject to the requirements of registration, including the Code of Ethics. However, the recognised scope of practice of many professions is changing rapidly. This will again make it a challenging issue for all concerned.

Fitness to Practice and Health Issues

Questions regarding fitness to practice arise only in a tiny minority of cases each year. In some instances they are related to competence, while in others they have more to do with personal health issues. In order to protect the public and to ensure the good name of the profession, it is vital to have a system for dealing with these issues that is fair, consistent and transparent. All procedures must adhere to the principles of fairness and natural justice. The paragraphs below set out the suggested approach to addressing this important area.

The three statutory committees proposed earlier would play a key role in maintaining a quality service to the public and in ensuring that all professionals continue to provide a service of the highest standard. The role, composition and procedures of the three Committees involved - the Preliminary Proceedings Committee (PPC), the Fitness to Practice Committee (FPC) and the Health Committee (HC) - are discussed below.

- Preliminary Proceedings Committee

Not all complaints received will deserve equal attention and some may well be of a frivolous or vexatious nature. It is therefore proposed to have a Preliminary Proceedings Committee that would screen all initial complaints and decide whether or not to refer them to the Fitness to Practice Committee or to the Health Committee. This Committee may decide that a complaint is without foundation and that no further action is necessary. Alternatively, it may refer a matter to the relevant professional body where it finds that it is a matter for that body.

Membership of the Preliminary Proceedings Committee would be separate from the other two committees, since it would be referring cases for formal consideration to these committees. It is proposed that the Committee should comprise five persons as follows:

- { two persons from the relevant profession drawn from a standing panel⁸ nominated by the profession;
- { one person from another profession, drawn from a standing panel nominated by each registered profession;
- { one other person with appropriate legal qualifications;

8 ⁸Each Registration Board would be empowered to specify in its Standing Orders the criteria that it considers appropriate for membership of the panel. These criteria might include factors such as length of time within the profession and experience within

{ an independent chairperson.

Discussions on the detailed arrangements for constituting all three statutory committees, including the PPC, would be held between the Department of Health and Children and the professional bodies before the committees are established. In particular it would be important to ensure the selection of an effective independent chairperson and adequate representation for the professional bodies.

The composition of the Preliminary Proceedings Committee proposed above takes account of the need to constitute a committee quickly following a complaint, and to ensure that the practitioner's rights to natural justice and fairness under the law are protected. It is also designed to assure the public that the investigation process is fair and transparent.

The purpose of the panels of professionals referred to above is to ensure a supply of professionals upon which to draw without delay. It would be vital for a properly constituted committee to consider whether there is a case to answer as soon as possible. Depending on the nature of the complaint, the PPC should meet within 21 days of receipt of a complaint by the Registrar, but it would have to meet within a much shorter period in some circumstances, particularly in the case, for example, of allegations of abuse. The proceedings would have to have regard to action taken arising from a Garda investigation or employer investigation.

Legal advice is being obtained on whether it is permissible to have a majority of professionals on the PPC. Another approach would be to have just one professional on the PPC, but this might leave that person in a difficult position since they are being asked to deal with the case of a colleague. The suggestion for two professionals from the profession involved and for one professional from another profession emerged from the workshop discussions emerged in this light. In any event, the principle of having some permanent members (the chairperson and a person with appropriate legal qualifications) and a panel from which to draw members of the profession appears to be a reasonable approach.

The exact procedures to be adopted by the PPC are discussed below. The role and composition of the FPC and the HC are considered first.

- Fitness to Practice and Health Committees

It is proposed that the FPC would deal with disciplinary issues and that the HC would deal with lifestyle issues, including the case of practitioners whose practice may have been compromised by ill health or addiction. There are strong reasons for distinguishing between disciplinary and health-related issues, and for establishing two separated but complementary committees to deal with them:

{ Practitioners affected by health problems are not accused of misconduct and should not be dealt with in a fashion that implies that this is the case.

{ If the Health Committee is seen as separate from the Fitness to Practice Committee, then professionals are more likely to come forward voluntarily to report their own problems, or even those of a colleague.

{ The potentially adversarial nature of the Fitness to Practice environment is not suitable for the majority of health-related matters.

{ Health procedures should have the additional aim of enabling practitioners to return to work as soon as is possible.

{ The Health Committee would be in a position to make recommendations in relation to treatment and management of problems, with the scope for rehabilitation and a resumption of professional practice. This would be more difficult if the problem has been dealt with at an official level by a Fitness to Practice Committee.

- Health Committee: Role

It is proposed that the Health Committee's remit would be broad enough to deal with all cases where a practitioner may be compromised by lifestyle or by any form of illness which is likely to affect his or her competence as a practitioner. Lifestyle issues would include alcohol or drug addiction. Ill health could include such areas as mental health, episodic psychoses and degenerative conditions such as Multiple Sclerosis, or Alzheimer's Disease.

It is recognised, however, that some of these cases might be best handled through staff welfare policies, in the context of employers' duty to their employees. Either the Preliminary Proceedings Committee or the Health Committee would therefore be empowered to refer the matter back to the employer. In some instances this might not be possible, particularly where the practitioner was self-employed in private practice.

The Health Committee would be empowered to make recommendations relating to a practitioner's future practice. In the case of addiction, for example, it could recommend a specific course of treatment, followed perhaps by a period of supervised practice. It might recommend a period of re-training and/or re-education, following which an assessment of the practitioner would take place. In some cases involving ill health, the HC would draw upon the medical advice available to it to determine whether the practitioner was fit to continue practising or whether a temporary or permanent cessation of practice was warranted.

The HC would also be in a position to monitor the progress being made by practitioners who had agreed to abide by its recommendations as to future action. The HC would have power to refer the matter to the FPC if the practitioner was not adhering to the recommendations, or if the practitioner refused to abide by the recommendations.

- Health Committee: Composition

It is proposed that the Health Committee should comprise five members, two of whom would be drawn from the profession of the practitioner involved. There would be an independent chairperson with legal qualifications, as well as an employer representative and a consumer representative. The latter would represent both service users and members of the public generally.

The Health Committee would have a panel of medical practitioners available to it. It could also have other health professionals such as a psychiatrist, if it saw fit. The Committee could then invite a practitioner to attend for medical examination by two medical practitioners chosen from a panel held by the Committee. The practitioner would also have the option to have an independent examination by his/her own medical practitioner and have that report submitted to the Committee.

- Fitness to Practice Committee: Role

The function of the Fitness to Practice Committee would be to investigate complaints referred to it by either the PPC or the HC. The legislation would provide that the Fitness to Practice Committee shall regulate its own procedures. The Committee will have to be given sufficient flexibility to ensure that it conducts its procedures in a manner most appropriate to each indi-

vidual case. It will of course have to balance flexibility with a clearly defined set of recognised procedures that are based on fairness and consistency.

Having investigated the matter fully, the FPC would make a recommendation to the relevant Registration Board on the course of action to be followed. This would include the type of sanction, if any, that should be imposed. The procedures to be followed and the courses of action open to the FPC and Registration Boards are discussed below.

- Fitness to Practice Committee: Structures

It is proposed that the Fitness to Practice Committee would have the same structure as the Health Committee, i.e. five members, with an independent legally qualified chairperson, two members of the relevant profession, an employer representative, and a consumer representative for service users and the general public. The membership of the FPC could not overlap with that of the PPC or the HC, since the FPC would be reaching conclusions about cases referred to it by those committees.

At the workshop discussions on this area, the question of the need for or advisability of having a consumer representative on a Fitness to Practice Committee was raised, particularly given that there would be one on the Registration Council. While it was accepted that a consumer representative could not make a judgement based on the knowledge of a health professional, they would be valuable for their ability to use the objective judgement of the 'reasonable person' on the basis of the facts before them. In addition to their practical contribution, their presence would help to emphasise the impartiality of the fitness to practice system. It is proposed that such a person should be drawn from members of the public and/or service users (as in the case of the Health Committee), but the process for selecting them have to be carried out carefully to ensure that the consumer representative forms a valuable part of the FPC.

It is proposed that the term of office of the permanent members (as opposed to that of the professionals drawn from the panels) would be four years for each of the statutory committees. No permanent member should serve more than two consecutive terms.

Health and Fitness to Practice System: How would it work?

The mechanics of how a health and fitness to practice system would work was discussed in some detail at the workshops between the professional bodies and the Department. The paragraphs below describe what is proposed as a result of these discussions.

- Initiation of a Complaint

It is proposed that the legislation would specify the circumstances in which an investigation may be initiated, first by the PPC and then, if appropriate, by the FPC. The indicators that would trigger an investigation would include:

- { Conviction of a criminal offence;
- { Any action considered by the Registration Board to bring the profession into disrepute;
- { A complaint by a member of the public;
- { An official complaint by a registered colleague;
- { A report by an employer to the Registration Board regarding alleged misconduct;
- { A complaint against a practitioner by a professional body; and

The Registrar would also have the statutory power to initiate an investigation for reasons which to him/her seem sufficient.

- Making a Complaint: Statutory Declarations

All persons wishing to lodge a formal complaint, including registered professionals, would have to do so by way of a statutory declaration. This requirement would help to guard against frivolous or vexatious complaints and to underline the serious nature of the process. It is recognised that some vulnerable clients, depending on their physical or mental state, might find this requirement very difficult if not impossible. At the very least they would need assistance in making such a declaration. It will be vital to strike a balance between fairness to a client/service user and fairness to a professional. The practice in other countries where a statutory declaration operates will be researched, with a view to ensuring a sensitive approach that meets the requirements of fairness to all parties involved.

- Notification of Allegations/Complaints

An important issue arises in relation to notification of allegations or complaints. The first question is whether the Preliminary Proceedings Committee should notify an employer where a serious complaint had been received, such as in the case of alleged abuse. The PPC would be required to determine very quickly whether a case should be referred for investigation by the FPC, but in serious cases which might put clients at further risk, it could be vital that the PPC inform an employer immediately, in advance of even a preliminary investigation. At the workshop discussions, it was accepted that informing an employer of an as yet un-investigated allegation could be unfair to a health professional but that in cases of alleged serious offences or malpractice this might be necessary. It might be appropriate to leave such a decision to the PPC on the basis of each individual case, but this places a significant additional responsibility on the Committee. If so it would be important for the registration system to develop clear guidelines to assist the PPC in deciding when and in what circumstances to notify employers of an allegation or complaint.

A similar issue arises in the case of the FPC, if an employer has not been informed at the PPC stage. By then, however, the arguments for informing an employer are considerably stronger, given that the PPC will have concluded that there is at least a case to answer. Again, however, it would be important to develop appropriate guidelines to assist the FPC in this regard.

- Reference of Cases by PPC

It is proposed that where the Preliminary Proceedings Committee finds that an issue is outside its competence or responsibilities, it should be empowered to refer the matter to the appropriate quarter. This might, for example, be relevant professional body where the matter falls within that body's remit. This might arise in relation to an alleged breach of a Code of Conduct relating to such areas as advertising or 'poaching' clients. In this case, the PPC would refer the matter to the professional body and would take no further part in the issue.

Similarly, the PPC may find that a health-related case might be best handled through staff welfare policies, in the context of employers' duty to their employees. Either the Preliminary Proceedings Committee or the Health Committee might therefore refer the matter back to the

employer. It is recognised that might not be possible in certain instances, particularly where the practitioner is self-employed in private practice.

- Role of FPC and Registration Boards regarding sanctions

It is important to clarify the respective roles of the FPC and Registration Boards in relation to implementing any sanction or other course of action determined by the FPC. It is proposed that the FPC would formally recommend a course of action (such as suspension or de-registration or other course discussed below) to the relevant Registration Board rather than imposing the sanction itself. This approach would help to underline the importance of the Registration Boards as well as the FPC in the process. Under the legislation, the Registration Board would

- { be required to act upon an FPC recommendation within a specified period of time and

- { in the unlikely event of not implementing an FPC recommendation, be legally required to satisfy itself that there were good reason(s) for any such decision.

- Sanctions in FPC Cases

It would be important that the sanctions open under the fitness to practice system should not be confined to de-registration. In addition to temporary or permanent de-registration (the latter will require advice as to its legality), the following other sanctions are also proposed:

- { A formal warning or reprimand

- { A fine as considered appropriate by the Committee, with a maximum limit to be set by law.

- { Limiting the scope of a professional's practice for a specified period, pending the satisfactory completion of a course of training;

- { Working under the supervision of a designated health professional;

- { Following a course of training or education in order to bring the professional to a certified standard of practice.

- Appeal Mechanism

At the workshop discussions, there was consensus about the value of avoiding the need for an immediate appeal to the courts in all cases. However, it was recognised that some appeals would have to be heard there. Accordingly it is proposed that the Registration Council would be the first source of appeal against a decision of the FPC (or Health Committee) only on two specific grounds:

{ that correct procedures or due process had not been followed by the FPC or HC or the relevant Registration Board or

{ that the decision was demonstrably inconsistent with the evidence available, or

{ that relevant new evidence has become available since the decision was taken.

If the Registration Council found in favour of the appellant on either of the above grounds, the case would be referred back to the FPC/HC and relevant Registration Board as appropriate for a re-hearing.

The legislation would provide that all other grounds of appeal would be to the High Court.

At the workshop discussions, there was a general concern to avoid the expense of High Court hearings (hence the provision for appeal on the two grounds above) but it was recognised that there would have to be an appeal to the Court in other cases.

- Issuing of Interim Suspension of Registration

The question of the Registration Council or the relevant Registration Board issuing an interim suspension of registration to practice, pending an investigation, is an important issue. In the case of those in employment, it would be open for the employer such as a health board or other health agency to suspend the person, but this would not automatically prevent the person from practising privately. The mechanism for any such suspension will require careful consideration. The first question is whether the relevant Registration Board (or possibly the Registration Council) could or should be empowered to issue such a suspension in serious cases, or whether it would be necessary to obtain a High Court Order. The Department will obtain legal advice on this issue and would propose to frame the legislation in accordance with this advice.

A related issue also arises: whether a Registration Board should publish the fact of an interim suspension. The consensus at the workshop discussions with the professions was that it

should be a matter for each Registration Board to decide on the basis of individual cases, having regard to the nature of the allegation or complaint which gave rise to the interim suspension. The Department endorses this view and proposes that it should be provided for in the legislation.

- Conducting of Parallel Investigations

An FPC case will not always be the only investigation of an allegation that is taking place. For example, the Department's document *Children First* sets out procedures for the investigation of allegations of abuse against children. In the case where such allegations are made, there will be employer and Garda investigations. Sections 22-24 of the 1970 Health Act deal with the suspension and removal from office of an officer of the Health Board. Where a Health Board is dealing with a case of this nature, it is usual for a parallel Garda investigation to take place.

Any of these scenarios will give rise to at least three investigations, and it is essential that none of the investigations is compromised by the other. If considered appropriate from a legal perspective, the legislation will specifically recognise the right and duty of employers to pursue an investigation and, if necessary to refer a complaint or their findings to the Registration Council. The structure of the three Statutory Committees dealing with this issue will have to be such that delays in investigation of allegations are kept to a minimum and the practitioner's rights under natural justice are protected. Similar issues could arise where an employee is the subject of a complaint about a matter not directly linked to professional competence, such as an allegation of bullying. In these cases, the employer may require legal advice about whether to report such an allegation to the relevant Registration Board.

The Department has sought legal advice as to how to proceed in relation to cases of parallel investigations, and will also investigate current procedures in use by other regulatory bodies in similar situations.

- Publication of findings of FPC and HC

It is important to identify the best mechanisms for informing the public if sanctions are to be taken against a professional. If a practitioner is to be struck off, especially if that person is in private practice, there will be an onus on the Registration Board to ensure that the public is made aware of the situation. It was proposed that all appeal mechanisms must firstly be exhausted before such a decision was publicised. If a published decision is later revised, then that revision should be published in the same manner as the original notice. Legal advice may be required by the Registration Board if it considers a case to be sufficiently urgent as to warrant publication of striking off between the time the FPC has recommended removal from the register and the Registration Board takes a formal decision on it.

It is proposed that the Registration Council will have a website and that the details of all of those struck off, or denied continuing registration, will be published. It is also proposed that each Registration Board should have a website on which it would publish a full list of its registered members. Employers would be advised that the checking of the website should become an integral part of their recruitment procedure.

The exchange of details of those struck off with registration boards in other countries should also be considered, although each board will always ask if the applicant has registration in his/her place of birth or last country of employment.

- Liability of Individuals in Disciplinary Matters

Given the serious quasi-judicial decisions that may be taken by the PPC, FPC and HC, and by the members of the Registration Council and Registration Boards, it is proposed that individual members of these should be legally protected from being held personally liable for the lawful decisions of these bodies. In order to protect individuals (whether members of a profession, a service user or a member of the public) who feel they have a genuine cause for complaint, they too would be subject to similar legal protection from personal liability.

Registration and Disciplinary Issues

- Offences relating to Registration Procedures

It is proposed that some offences would be deemed to result in an automatic striking off the register with no recourse of appeal to the Registration Council. These offences are as follows:

- { Fraudulently obtaining or purporting to have obtained an initial qualification;
- { Attempting to subvert the application or staff, such as a bribe offered or threat made;
- { Impersonation.

In addition, failure to pay the registration fees required by law within a specified period would be grounds for temporary removal from the register. It would be enforced only until such time as the registration fee and a late fee had been paid.

It is also proposed that the following would be offences under the legislation:

- { Failure to provide the Registration Council or Registration Board with an up-to-date address within six weeks of changing address;
- { Failure to notify the Registration Council or Registration Board of a change of name;
- { Failure to reply to correspondence from the Registration Council, an individual Registration Board, or a Statutory Committee within six weeks where requested to do so.

These requirements would be important in relation to fitness to practice and health issues. Where these requirements are not met by an individual, the Council, Boards and (where a case is before them) the FPC and HC, would have the power to decide on a suitable redress within specified parameters set by the legislation.

- Voluntary De-registration and Fitness to Practice

It was proposed that the scheme could provide for voluntary de-registration, such as in the case of professionals who reach retirement age, cease to practice or who are leaving the country. However, it would be important to provide legal scope for the statutory registration mechanisms to pursue an investigation within a specified period (e.g. five years) of voluntary de-registration. This would counter cases where a professional de-registered in the knowledge that he/she was about to be investigated.

Future Role of The Professional Bodies

The Department of Health and Children has always enjoyed a useful and productive relationship with the professional bodies representing health and social care professionals and would wish for this to continue. There may be a concern that a system of statutory registration will diminish the importance of the professional bodies, and that individual practitioners will allow their professional membership to lapse rather than pay two membership fees.

These concerns are understandable. However, the Department believes that the introduction of statutory registration provides the professional bodies with a valuable opportunity to redefine their role and to focus on developmental issues which will be to the enormous benefit of their profession.

- Current Role of Professional Bodies

Based on the information provided at the workshop discussions on this issue, the present role of professional bodies may be summarised as below. Not all of the functions are carried out by all of the professional bodies, but there was a significant degree of commonality between the major functions involved. These include:

Professional Issues

- v Representing the views of the profession;
- v Developing and promoting a code of ethics among its members;
- v Protecting and maintaining particular standards of practice;
- v Operating a system of voluntary (non statutory) registration;
- v Holding periodic conferences – normally annual or biennial;
- v Publishing a newsletter for members;
- v Publishing a regular academic journal;
- v Maintaining a website;

- v Facilitating special interest groups on areas of particular concern to members;
- v Having formal representation on other professional bodies;
- v Maintaining links with the European and International communities;
- v Encouraging and facilitating student membership;
- v Maintaining links with the IMPACT Vocational Group; and
- v Negotiating professional indemnity insurance for members.

Education and Training

- v Co-ordination of clinical placements for undergraduates;
- v Curriculum development;
- v Accreditation of undergraduate courses
- v Accreditation of post graduate courses;
- v Running certain post graduate training schemes; and
- v Running schemes of research awards.

Continuing Professional Development (CPD)

- v Running or arranging educational workshops for members;
- v Developing or already providing CPD;

EU Directives on the Free Movement of Professionals

- v Acting as the Designated Authority, with the approval of the Minister for Health and Children, in relation to issues under the EU Directives;
- v Acting as the Competent Authority to advise the Minister for Health and Children on applications received under the EU Directives; and
- v In most cases, acting as the Competent Authority to advise the Minister on non-EU cases on request.

Links to Department of Health and Children

- v Preparing formal responses to policy documents such as Green Papers and working party reports; and
- v Holding an annual meeting with Department.

-Professional Bodies in the future

The Department of Health and Children strongly believes that the many and varied tasks carried out by the professional bodies described above would and should continue in the context of any scheme of statutory registration. The Department is committed to ensuring that the registration scheme does not dilute the extent of the professional bodies' work. The only areas in which changes are likely to arise are those directly affected by the statutory registration scheme itself. Even then, there is considerable scope for 'subcontracting' some of the functions (particularly in relation to education and accreditation) from the registration board to the relevant professional body.

It is suggested that among the key roles for professional bodies, many of which are already discharged by them already, will be:

- { Promoting the profession in the eyes of the public
- { Acting as a learning society, publishing journals and promoting further expert understanding of developments in treatments;
- { Advising the Registration Board on what the profession is, including the question of whether a particular activity or treatment constitutes part of the work or treatment of that profession;
- { Defending individual members in cases where appropriate;
- { Contributing to debate on the future changes and scope of the profession;
- { Developing a programme of Continuous Professional Development in partnership with the Statutory Committees and the Registration Boards and, where appropriate, delivering this education and training;
- { Participating in the appraisal and approval of education and training courses, examinations, qualifications and institutions in consultation with the relevant professional body/bodies;
- { Providing an important input to Curriculum development; and
- { Promoting student membership so that the values and principles of the profession are imbued from the beginning of training.

For its part, the Department of Health and Children will offer support in whatever new and developed roles the professional bodies choose to take on. As noted earlier, the Department acknowledges that a number of these roles are already carried out by the professional bodies. Others would benefit from their introduction or further development.

The Department is also aware that some of the functions proposed for the individual Registration Boards are already carried out by the relevant professional body. These include accreditation of education and training courses and examinations and implementation of the EU Directives on Mutual Recognition of Qualifications. As suggested above, it may be possible and indeed desirable for certain activities of the statutory committees or the registration boards to be 'subcontracted' to the professional body on an agreed basis. This would ensure a close communication between the professional bodies and the structures responsible for statutory registration, and would underline the Department's wish to guard against any perception that the importance of the professional bodies will be diluted by the introduction of registration.

It is the Department's intention that the Professional Bodies would work in partnership with the proposed new structures, rather than seeing them as a mechanism for diminishing or minimising the responsibilities and role of the Professional Bodies. While the Professional Bodies and the Registration Council and Boards will have different functions and roles, the functions and roles should be complementary.

Finally, the Department is committed to ensuring that proposed registration fees will be kept as low as possible so as to allow practitioners to continue with their professional body subscription. It is possible that tax relief would be allowed against registration fees, thus making the cost lower again, but this would ultimately be a decision for the Minister for Finance and the Revenue Commissioners.

Continuous Professional Development

Continuous professional development (CPD) has not been discussed previously in the context of statutory registration, but in recent years it has come to be seen as essential to any successful registration scheme. It has been embraced by a number of the professions taking part in the discussions on statutory registration and has been seen to work quite successfully. While few had a very formalised system, a number of professional bodies indicated during the course of the discussions that they had plans to introduce and/or develop structured systems of CPD.

CPD has now become important in the context of statutory registration because of a growing concern about the need continually to *retain* competence within a profession rather than merely to *attain* competence at the beginning of one's professional life. There is a danger that, without a recognised, structured means of updating skills, statutory registration would amount to 'registration for life'. Without CPD there would be no formal requirement on the practitioner to keep abreast of developments in the profession and to upgrade and maintain skills. The role of CPD in relation to statutory registration is therefore an important one, which was explored during the workshops with the professional bodies.

- What is CPD?

CPD encompasses a wide range of processes aimed at ensuring that professionals maintain and update their skills and experience in their chosen field and that they keep fully abreast of developments. CPD can comprise formal training and education, attendance at courses organised for the purpose, experiential learning, part-time 'off-site' training, and other structured methods of maintaining and updating skills. It may or may not be formally examined. CPD is normally recorded officially, whether by the professional body or the professional him/herself, or both. It can be accredited by the professional body and can include a points system whereby professionals aim to (or are required to) accumulate a specified number of points per period of time.

A key distinction can be made between two main categories of CPD. One form of CPD aims to maintain and update professional competence, and is therefore usually specific to an individual profession. The other focuses on areas of personal development such as management

skills, financial skills, personal effectiveness, leadership and facilitation skills. It may therefore be common to a large number of professionals.

- CPD and Statutory Registration

At the workshop discussions with the professional bodies, it was agreed that for the purposes of statutory registration, the concern should be with the first type of CPD above, i.e. that which aims to maintain the professional competence of a registered practitioner and updates them on all relevant developments in their field. The strong view of the professions, supported by the Department of Health and Children, is that competence-based CPD must be a compulsory element of statutory registration. Indeed, it is difficult to envisage how a registration scheme which seeks to maintain high standards of practice could operate effectively without it.

The implications of this proposal are significant. CPD will affect the Department, the professions and the entire education and training system. Given the need for detailed preparation, including the planning and implementation of appropriate CPD systems across all professions to be registered, the timeframe for achieving compulsory CPD for registration purposes should not be under-estimated. It is proposed that the aim should be to move to a system of compulsory CPD within five to seven years of introducing a statutory scheme of registration.

The timescale may vary between professions depending on the state of their existing education and CPD facilities, but the process of preparing for compulsory CPD in the context of statutory registration should ideally start immediately. It would be a matter for each Registration Board to ensure the introduction of compulsory CPD for registration purposes, in conjunction with the relevant professional bodies. It is proposed that the timetable and monitoring of progress in relation to introducing CPD should be overseen by the Registration Council.

The Department of Health and Children has indicated to the professional bodies that it is prepared in principle to support financially an agreed system of CPD for health and social care professions in the specific context of introducing a system of statutory registration. The level of funding and the means by which it would operate would have to be worked out in detail,

but the Department can indicate at this stage that it accepts in principle the need to fund an element of compulsory registration-related CPD for health and social care professionals. It would be important to target the CPD funding so as to achieve the maximum benefit from the resources available.

In addition, the scope for making fees paid by professionals for CPD subject to tax relief will be explored. As in the case of registration fees, the question of tax relief would be a matter for the Minister for Finance and the Revenue Commissioners.

- CPD and Maintenance on Register

It is proposed that following initial registration, there should be a review mechanism every five years to determine a professional's right to be maintained on the register. CPD of the type discussed above would play a key role in this regard, since it would act as a record of each professional's steps to maintain his/her professional competence. As referred to above, CPD would be assessed over a period of time, requiring practitioners to engage in CPD over a reasonable time scale, rather than rushing to attain the required standard shortly before maintenance on the register is reviewed. (This would all be a matter of structuring CPD programmes and assessments in an appropriate way).

At the workshops with the professional bodies, the question of utilising peer review and clinical audit as part of the registration process was considered. There was general consensus that peer review and clinical audit should be seen more as issues of good practice, rather than as matters determining maintenance on a statutory register. They could conceivably be used by a registration board as a tool in certain circumstances, perhaps in a case involving fitness to practice, but they were not seen as regular means of determining whether a professional should be maintained on a register.

Administration and Funding Issues

- Staffing and Headquarters

One of the reasons for proposing a joint system of registration involving some twelve to fourteen professions initially (and ultimately more than this number) is the economies of scale that it offers. Due to the relatively small number of those registered, and the need for a self-financing system, administration should be kept to a minimum. The number of committees and boards should also be kept to a workable minimum without compromising the integrity and autonomy of the professions. Administrative staff would deal with queries from across all of the professions, as it is not likely that a single profession or a group of professions could sustain a separate administrative system alone. This underlines the principle that the registration system must be based on mutual co-operation across the professions.

A slim operation is therefore envisaged, with as much as possible of the non-core work of the Registration Council and Registration Boards being contracted out, as appropriate. This could include records management, legal work and mailing.

It is envisaged that each Registration Board would meet on average ten times per year, but this may vary depending on the number of registered members per profession. Other necessary meetings, such as sub-committees, could be planned so as to co-incide with these meetings. The PPC, FPC and HC would have to meet as necessary, depending on whether there were cases for them to consider.

- Funding of the Registration System

As discussed at the beginning of this document, it is vital that the operation of the registration scheme as a whole be self-financing, i.e. funded from the registration fees of registered members. It is also a key principle that the fees for each profession would be the same, and would not be based on the size of any individual profession. It is proposed that the fees for registration would be charged by the Registration Council and would, as such, form the Council's income. Out of this, Council would be required to pay all pay necessary costs such as accommodation, staff and other operational expenses. It would also meet the expenses of the three Statutory Committees and the Registration Boards from this source.

Funding of legal actions will have to be met from registration fees also. The most likely means of meeting these would be for the Registration Council to insure itself against fitness to practice and health-related cases, so that registration fees would not be heavily affected by, for example, one expensive case.

It is difficult to be precise about the level of registration fee that would be charged, but the Department believes that it would be possible to operate an efficient scheme of statutory registration for health and social care professionals at reasonable cost. It is likely that if all groups currently discussing registration with the Department, a membership of approximately 7,500 would be registered. If registration fees were set at, for example, at £100, then the Council would have an income of about £750,000 per annum. This would probably be a reasonable sum from which to meet accommodation, staff salaries, support services and all other costs of running the system including insurance costs.

The exact level of the fee, and decisions regarding whether it should subsequently be increased, might best be left to the Registration Council. The Council could, in consultation with the Registration Boards, decide the most appropriate level of fee and would best be placed to judge whether registered members were prepared to pay more for more developed services. The Council could also decide to charge a larger fee at initial registration, with lower fees for each subsequent year.

As discussed earlier, it is possible that the registration fee would be made the subject of tax relief, but this would be a matter for decision by the Minister for Finance in consultation with the Revenue Commissioners.

Finally, the Department of Health and Children has indicated that it would be in a position to provide seed funding on a once-off basis for the establishment costs of the registration system.

Conclusion

The proposals set out in this document have emerged from intensive discussions with the professional bodies involved. They reflect a considerable degree of consensus on how a registration scheme might operate. The proposals are now being put to the members of the professions for their consideration. The Minister for Health and Children is anxious to proceed with these proposals and, if they are acceptable to the professions, his Department will set about drafting the necessary legislation immediately.

It might be noted that, in drafting the legislation, the intention would be to make it as flexible as possible. The critical issue, of course, is to provide for a workable, efficient, fair system of registration which is given statutory effect, but which is sufficiently flexible to be allow for amendment in light of experience.

The Minister and Department would again like to thank the professions who participated in the workshops and contributed so much to the process of developing these proposals.

Appendix 1

Participants in Workshops on Statutory Registration for Health and Social Care Professionals

Professional Bodies

Academy of Medical Laboratory Science
Association of Occupational Therapists of Ireland
Association of Clinical Biochemists in Ireland
Environmental Health Officers Association
Psychological Society of Ireland
Institute of Chiropodists and Podiatrists
Irish Association of Care Workers
Irish Nutrition & Dietetic Institute
Irish Association of Speech and Language Therapist
Irish Association of Social Workers
Irish Association of Orthoptists (Republic of Ireland)
Irish Chiropodists/Podiatrists Organisation
Irish Institute of Radiography
Irish Society of Chartered Physiotherapy
Resident Managers Association
Society of Chiropodists and Podiatrists of Ireland

Department of Health and Children

Fergal Lynch, Principal Officer
Adrienne Harrington, Assistant Principal Officer
Ger Coughlan, Higher Executive Officer
Peter McGoldrick, Executive Officer

The discussions were facilitated by Anne O'Keeffe and Mary Rose Tobin, Institute of Public Administration.