



**BILLE NA nALTRAÍ AGUS NA gCNÁIMHSEACH 2010
NURSES AND MIDWIVES BILL 2010**

EXPLANATORY MEMORANDUM

Background

The Bill is designed to update provisions relating to the regulation of nurses and midwives by the regulatory body and to enhance the protection of the public in its dealing with these professions. The Bill is consistent with the commitment in the Health Strategy, “*Quality and Fairness — A Health System for You*” to strengthen and expand provisions for the statutory registration of health professionals, including nurses and midwives.

The existing Nurses Act 1985 provided for the establishment of An Bord Altranais and the regulation of the professions of nursing and midwifery. Since that time there have been many developments and changes in nursing and midwifery and in the regulatory framework governing other health professionals. The expectations of the public have greatly increased since the 1985 Act was passed. There is a need to ensure stronger governance and accountability. Self regulation is no longer considered to be in the best interest of the public and there is also a need to provide a legislative framework which provides greater support for the regulatory body in the efficient discharge of its functions.

Purpose of Bill

The purpose of the Bill is to enhance the protection of the public in its dealings with nurses and midwives and to ensure the integrity of the practice of nursing and midwifery. It will provide for a modern, efficient, transparent and accountable system for the regulation of the nursing and midwifery professions, which will satisfy the public and these professions that all nurses and midwives are appropriately qualified and competent to practice in a safe manner on an ongoing basis.

Principal Elements of the Bill

The main elements of the Bill are as follows:

- Provision for the repeal of the Nurses Act 1985 and for a new legislative framework in respect of nurses and midwives.
- Provision for the enhanced protection of the public in its dealings with nurses and midwives.

- Provision for a regulatory body to be known as Bord Altranais agus Cnáimhseachais na hÉireann, or the Nursing and Midwifery Board of Ireland and an explicit statement that it performs its functions in the public interest.
- The recognition of midwifery as a separate and distinct profession. Provides for clinical supervision of midwives who must have adequate indemnity insurance.
- The provision of a non-nursing/midwifery majority on the Board and on the Fitness to Practise Committee.
- The provision of a stronger governance and accountability structure for the Board.
- An improved investigation mechanism for complaints about nurses and midwives including the setting up of an assessment committee prior to Fitness to Practise investigations and the appointment of investigators to facilitate such preliminary investigations.
- Prohibition on unregistered nurses and midwives engaging in the practice of nursing or midwifery.
- Registration of nurses and midwives and also registration of candidates and the registration of Advanced Nurse/Midwife Practitioner posts.
- Approval of programmes of education and further education necessary for the purposes of registration.
- Specification of standards of practice for registered nurses and midwives and guidance on all matters related to professional conduct and ethics.
- A new statutory framework for the maintenance of professional competence of registered nurses and midwives.
- An obligation on employers to facilitate the maintenance of professional competence of nurses and midwives in particular by providing learning opportunities in the workplace.
- Fitness to Practise inquiries will generally be held in public. The Fitness to Practise Committee may decide, on application by the nurse or midwife or a witness, including the complainant, to hold some or all of an inquiry in private, depending on the circumstances.
- Dissolution of the National Council for the Professional Development of Nursing and Midwifery and the transfer of its staff, assets and liabilities into the Board.

Provisions of Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 provides for the short title and commencement of the Act. It provides for the making of orders by the Minister with regard to setting the day or days on which the provisions of the Act will come into operation.

Section 2 defines certain words and terms used in the Bill. This section also states that midwifery is recognised as a separate profession to nursing.

Section 3 provides that the Minister may make regulations for the purpose of giving full effect to this Act and these regulations must be laid before each House of the Oireachtas.

Section 4 provides for the repeal of the Nurses Act 1985 and for the revocation of a number of statutory instruments listed. It also provides that references to An Bord Altranais or Bord Altranais agus Cnáimhseachais na hÉireann in legislation will be references to the Board and that references to the register of nurses will be references to the new register of nurses and midwives.

Section 5 provides that any expenses incurred by the Minister in the administration of this Act may be paid out of moneys provided by the Oireachtas to the extent approved by the Minister for Finance.

PART 2

BORD ALTRANAIS AGUS CNÁIMHSEACHAIS NA hÉIREANN

Section 6 provides for the continuance in being of the Board but with a new name — Bord Altranais agus Cnáimhseachais na hÉireann or, in the English language, the Nursing and Midwifery Board of Ireland. It also includes saving provisions for matters which have been commenced by the Board under the 1985 Act but not completed at the time of its repeal. This section also provides for the Board to regulate its own procedures, subject to the provisions of the Act.

Section 7 provides for the Board to have a corporate seal of which judicial notice may be taken.

Section 8 sets out the object of the Board, which is:

- the protection of the public in its dealings with nurses and midwives and the integrity of the practice of nursing and midwifery through the promotion of high standards of professional education, training and practice and professional conduct among nurses and midwives.

Section 9 outlines the functions of the Board and specifies that the Board will perform its functions in the public interest.

The Board's functions include the registration of nurses, midwives, candidates and Advanced Midwife Practitioner /Advanced Nurse Practitioner posts, the regulation of nursing and midwifery education and training and matters relating to the recognition of qualifications of nurses and midwives, including the recognition of qualifications awarded in other countries.

The Board's functions also include: the setting of standards of practice and ethical guidance for nurses and midwives and the maintenance of their professional competence, the specification of criteria for the creation by employers of specialist posts, the handling of complaints and inquiries relating to the conduct of nurses and midwives and advising the public on all matters of general interest relating to the functions of the Board and relating to nurses and midwives and their practice. The Board also has functions in relation to advising the Minister and in appointing and setting standards for clinical supervising authorities for midwives.

The section includes provisions requiring the Board to have regard to the functions performed by other bodies which are similar to the functions of the Board and the policies and objectives of the Government to the extent that they relate to the functions of the Board and to ensure the most effective and efficient use of resources.

Section 10 provides that the Minister may confer additional functions on the Board by order and that any such order made must be laid before each House of the Oireachtas.

Section 11 provides for the Minister to give general policy directions in writing to the Board in relation to its functions, excluding matters relating to professional conduct and ethics and fitness to practise.

Section 12 provides for protection from civil liability of Board and committee members and staff, former Board and committee members and former staff and persons appointed to assist the Preliminary Proceedings Committee or the Fitness to Practise Committee.

Section 13 outlines the Board's power to make rules and details a range of matters for which the Board may make such rules, including the operation of committees, registration, the receiving of evidence by the Preliminary Proceedings Committee and the Fitness to Practise Committee, the setting of standards and criteria in relation to nursing and midwifery education and training, clinical supervising authorities for midwives, requirements for indemnity insurance for midwives and any professional competence scheme.

Rules will be subject to publication in draft form, to a public consultation and to Ministerial approval. The Minister for Finance must give consent to any rules relating to a professional competence scheme. Rules must be laid before each House of the Oireachtas.

This section also provides for the retention of rules made under the Nurses Act 1985 until new rules are made.

Section 14 provides for the Board to prepare and publish guidelines on the manner in which the Board proposes to perform its functions.

Section 15 provides for the Board to enter into co-operation agreements with prescribed bodies to avoid duplication of activities and to allow for appropriate consultation and for conducting joint studies. It also provides for information to be shared if needed by the other body in order to perform its functions. The Minister will prescribe such bodies by Regulation.

Section 16 provides for the passing of information regarding the commission of an indictable offence to the bodies/people listed. The Minister may add to this list by Regulation.

Section 17 prohibits the disclosure of confidential information unless it is authorised by the Board and it will be an offence to contravene this.

PART 3

STATEMENT OF STRATEGY, BUSINESS PLAN AND ANNUAL REPORT OF BOARD

Section 18 provides for the Board to prepare a statement of strategy for its term of office, and to subsequently amend the statement if required and to submit it to the Minister, who may return it for a number of reasons, including if it does not contain the information required or does not have regard to relevant policies of the Minister or Government.

Section 19 provides for the laying of the statement of strategy before the Houses of the Oireachtas within 21 days after receipt by the Minister and for its publication. The Board will be required to submit progress reports to the Minister on the implementation of the strategy.

Section 20 provides for the Board to prepare an annual business plan and outlines items to be included in that plan. Similar to the provisions regarding the statement of strategy, the Board must submit the business plan to the Minister who may return it for a number of reasons, including if it does not contain the information required or does not have regard to relevant policies of the Minister or Government. This section also provides for the business plan to be laid before each House of the Oireachtas and for its publication.

Section 21 provides for the Board to submit an annual report on its activities to the Minister and for the laying of the report before each House of the Oireachtas.

PART 4

MEMBERS, COMMITTEES AND EMPLOYEES OF BOARD

Section 22 outlines the membership of the Board. The Board shall consist of 23 members appointed by the Minister as follows:

(1) 2 persons employed as academic staff, one a nurse and one a midwife; of these, one will be from the university sector and one from the Institute of Technology sector, chosen from a list of names jointly provided by bodies approved to provide nursing and midwifery pre-registration training. It also provides for how these nominations will be made to the first Board following the commencement of the Act.

(2) one Director of Nursing or Director of Midwifery from a list of names provided by the Health Service Executive,

(3) 8 nurses or midwives elected by nurses and midwives in accordance with procedures specified by the Minister:

(a) 2 nurses, of whom one shall be from general nursing and one from children's nursing, of these, at least one shall be in clinical nursing practice,

(b) 2 nurses, of whom one shall be from psychiatric nursing and one from intellectual disability nursing, of these, at least one shall be in clinical nursing practice,

(c) one midwife and one public health nurse, of these, at least one shall be in clinical practice,

- (d) one nurse or midwife employed in the public health sector and engaged in the education of nurses and midwives,
 - (e) one nurse engaged in the care of older persons.
- (4) one registered medical practitioner nominated by the Medical Council,
- (5) one person nominated by the Minister for Education and Science from a third-level educational establishment involved in the education and training of nurses or midwives who is not a nurse or midwife,
- (6) 2 persons nominated by the Health Service Executive who are representative of the management of the public health sector and are not nurses or midwives,
- (7) one person nominated by the Health and Social Care Professionals Council whose name is entered in any register established under the Health and Social Care Professionals Act 2005 who is not a nurse or midwife,
- (8) one person nominated by the Health Information and Quality Authority who is not a nurse or midwife,
- (9) one person who is experienced in the provision of health or personal social care in the voluntary sector who is not a nurse or midwife,
- (10) 5 persons who are not nurses or midwives and who have such qualifications, expertise, interests or experience as, in the opinion of the Minister, would enable them to make a contribution to the performance of the Board's functions.

This section also provides for the first President of the Board to be appointed by the Minister and the Vice-President to be elected by the Board. For subsequent Boards, both the President and Vice-President shall be elected by the Board, in accordance with the *Schedule*.

Section 23 provides for the chief executive officer to give notice of the time and place of the first meeting of the Board under the Act and the Board shall meet at that time and place.

Section 24 outlines the Board's power to establish committees to perform any of its functions and provides that persons who are not members of the Board may be included in the membership of its committees.

There will be two committees relating to Fitness to Practise matters — a Preliminary Proceedings Committee to give initial consideration to complaints and a Fitness to Practise Committee to conduct inquiries. At least one third of the members of these Committees must be members of the Board and the majority will not be nurses or midwives.

A Midwives Committee is provided for to advise the Board on matters relating to midwifery practice. In addition, an Education and Training Committee is provided for to perform functions in relation to the education and training of nurses, midwives or candidates assigned to it by the Board. A Health Committee is provided for, as a support for nurses and midwives.

This section also provides that, where a committee member's term of office as a Board member ends, the work of the committee can continue and also provides that the individual may continue as a committee member.

Section 25 provides for the payment of travel and subsistence expenses to members of the Board or a committee as determined by the Minister with the consent of the Minister for Finance.

Section 26 provides that the Board may, as determined by the Minister with the consent of the Minister for Finance, pay an allowance to the President of the Board, members of the Board or members of committees out of funds at the disposal of the Board.

Section 27 provides for specified circumstances in which a member of the Board may be removed by the Minister. It also provides for membership of the Board to cease in circumstances relating to indictable offences, bankruptcy or removal from registration by a competent authority. In particular, the section provides for membership to cease where a person does not attend the required number of meetings.

The section also provides for the circumstances in which the Minister may, by order, remove all of the members of the Board from office. If the Minister considers that the Board is not performing its functions in an effective manner, the Minister may appoint a person to conduct an independent review of the matter and to submit a report to the Minister on the results of the review.

Section 28 provides for the appointment of a chief executive officer to carry on and manage the administration and business of the Board. The terms and conditions of office are to be determined by the Board with the prior approval of the Minister given with the consent of the Minister for Finance. The chief executive officer will be the accountable person in relation to the accounts of the Board and when required will report to the relevant Dáil Committee. The section provides for the serving CEO of the Board under the Nurses Act 1985 to continue as the CEO of the Board under this Act.

Section 29 provides for the appointment of employees of the Board. The number of employees and terms and conditions of office are to be determined by the Board with the prior approval of the Minister given with the consent of the Minister for Finance. The section provides for the employees of the Board serving under the Nurses Act 1985 to continue as employees of the Board and on the same conditions as before.

Section 30 provides that the age of retirement of employees of the Board shall be 65 years, unless the person is a new entrant within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004. It provides that the Minister may, by order, increase the age limit from 65 years.

Section 31 provides for the superannuation arrangements for employees of the Board under the Local Government (Superannuation) Act 1980.

Section 32 provides that where an employee of the Board becomes a member of either House of the Oireachtas, the individual is seconded from employment with the Board. The section precludes members of the Oireachtas from becoming an employee of the Board.

Section 33 provides for the provision of *section 32* to apply where an employee becomes a member of a local authority or the European Parliament.

PART 5

ACCOUNTS AND FINANCES OF BOARD

Section 34 provides for the Board to keep proper books of account of its expenditure and income, property, assets and liabilities. The accounts of the Board are to be audited by the Comptroller and Auditor General. The Comptroller and Auditor General is not entitled to question the policy objectives of the Board or the need for, or the conduct of, an inquiry. The Board must present the audited accounts to the Minister, arrange for them to be printed and published and also arrange for them to be laid before each House of the Oireachtas.

Section 35 provides for the Board to have the power to borrow money for current or capital purposes, with the consent of the Minister for Finance.

Section 36 provides that the Board may accept gifts of money, land or other property, providing any conditions specified by the donor are consistent with the Board's functions.

Section 37 provides that the expenses incurred by the Board shall be paid out of funds at its disposal. The section provides that the Minister may, with the consent of the Minister for Finance, arrange for the provision of assistance to the Board in relation to its functions under *Part 11* (Maintenance of Professional Competence), or for other specified functions, out of moneys provided by the Oireachtas for that purpose.

Any surplus of funds at the Board's disposal may be allocated to education, research or public purposes connected with the professions of nursing and midwifery.

Section 38 provides for the fees that the Board may charge. Fees may be charged for registration, retention of registration, restoration of registration, annotation of registration with additional qualifications, entry into Board examinations and registration certificates. The Board may charge fees to bodies approved for the purposes of nursing and midwifery education and training, subject to Ministerial consent, and for any other service which the Board may provide from time to time.

PART 6

REGISTRATION AND PRACTICE

Section 39 provides that unregistered nurses and midwives may not practise nursing or midwifery or advertise that they practise that profession. It also protects the title of advanced nurse practitioner, advanced midwife practitioner, nurse practitioner and midwife practitioner.

Section 40 prohibits a person from attending a woman in childbirth for payment, unless the person is a midwife with adequate indemnity insurance, a registered medical practitioner or a person undergoing training to be a medical practitioner or training as a midwife or

undergoing training in obstetrics. It states that it is not an offence if the person attends in an emergency situation.

It provides that it is an offence to contravene this section. Penalties for summary convictions are a maximum fine of €5,000 and/or 6 months imprisonment. Penalties on convictions on indictment are, for a first offence, a maximum fine of €65,000 and/or 5 years imprisonment and for a subsequent offence, a maximum fine of €160,000 and/or 10 years imprisonment.

Section 41 provides clarity on the provisions of *section 39* that a person does not commit an offence in emergency situations where first aid is provided or where a person is in the State for humanitarian purposes and for less than 30 days and who is practising nursing or midwifery in accordance with a permit issued by the Board for this purpose.

Section 42 provides that the Minister may, after consulting with the Board or following a recommendation by the Board, make regulations to designate titles which may only be used by registered nurses and midwives or certain specified classes of registered nurses and midwives. Any such action shall be subject to prior consultation with interested persons, organisations or bodies and must be in the public interest.

Section 43 provides that only persons entitled to use designated titles may do so.

Section 44 outlines offences and penalties relating to registration, including contravening *sections 39* or *43* relating to the practise of nursing or midwifery or relating to the unauthorised use of a designated title. It will be an offence to falsely represent oneself as a registered nurse or midwife or falsely represent oneself as registered in a particular division of the register or to make a false declaration for the purpose of obtaining registration or to help another person make a false declaration.

Penalties for summary convictions are a maximum fine of €5,000 and/or 6 months imprisonment. Penalties on convictions on indictment are, for a first offence, a maximum fine of €65,000 and/or 5 years imprisonment and for a subsequent offence, a maximum fine of €160,000 and/or 10 years imprisonment. Provisions for the awarding of costs are included.

Section 45 provides that a nurse or midwife who is not registered cannot charge or recover fees for nursing or midwifery services provided while the nurse or midwife was unregistered.

Section 46 establishes three registers. The register of nurses and midwives, the candidate register and the AMP/ANP posts register which may be maintained in paper or electronic format.

The register of nurses and midwives will include the names and qualifications of registered nurses and midwives and will consist of at least four divisions — the nurses division, the midwives division, the advanced nurse practitioners division, the advanced midwife practitioners division. The Board can create other divisions by rule.

The candidate register will include the name and details of all candidates who are pursuing education and training leading to first time registration with the Board. It will consist of at least two divisions, the nurse candidate division and the midwife candidate division.

The AMP/ANP post register will contain the names and details of advanced nurse practitioner posts and advanced midwife practitioner posts and any other information required by rules. It will consist of at least two divisions, the advanced nurse practitioners posts division and the advanced midwife practitioners posts division.

This section also provides for the Board's and the individual's responsibilities in relation to the maintenance of the registers.

Section 47 provides for the transition of registration from the register of nurses under the Nurses Act 1985 to the new nurses and midwives register and provides for accredited posts to transfer to the AMP/ANP posts register. The Minister shall specify the date on which the new registers are to be established.

Section 48 provides for registration applications by nurses and midwives. It also provides for annotation of a registration in accordance with Board rules.

Section 49 provides for registration in the advanced nurse practitioner division or the advanced midwife practitioner division of the register where the nurse or midwife meets the standards and criteria set by the Board and who is employed, or has an offer of employment, in a registered advanced nurse practitioner post or registered advanced midwife practitioner post. It also provides for the removal of registration in these divisions where the nurse or midwife no longer meets the criteria or is no longer employed in the registered post.

Section 50 provides for registration in the candidate register of persons who are pursuing the requirements for first time registration in the register of nurses and midwives. It also provides for the removal of registration in the candidate register where the person is awarded a qualification leading to registration in the register of nurses and midwives or where the person ceases to be qualified to be registered.

Section 51 provides for the registration of advanced nurse practitioner posts and advanced midwife practitioner posts where the Health Service Executive or other service provider applies and where the post meets the standards and criteria specified by the Board. It also provides for the removal of posts where the Health Service Executive or service provider applies to have a post removed or where the post no longer meets the standards or criteria specified.

Section 52 provides for the procedures for a registered nurse or midwife to apply to have his or her name removed from the register. The Board shall not consider such an application where the registered nurse or midwife is the subject of an unresolved complaint or has been convicted of an indictable offence until the Board decides whether such registration should be cancelled.

This section also provides for the Board to remove from the register a nurse or midwife who is suffering from an illness or condition of a permanent or terminal nature which renders their practice unsafe and where he or she is unable to request such removal due to the illness or condition.

Section 53 provides for the declaration of relevant medical disabilities by applicants for registration and for the attachment of conditions to the registration where it is in the interest of public safety. In the situations where conditions are to be attached and the

nurse or midwife agrees to these conditions, the Board will register the nurse or midwife as appropriate.

Section 54 provides for the refusal of registration by the Board on the grounds of the unfitness of a nurse or midwife to practise nursing or midwifery. Such a decision may be appealed to the High Court, which may confirm the decision or cancel it and replace it with another decision, including the attachment of conditions to registration. The Court may direct how the costs of the appeal are to be borne.

Section 55 provides for the Board to keep the registers correct and up to date. It also provides for registered nurses and midwives to notify the Board of absence from the State for more than 12 months and to notifying the Board of material matters which could affect the continuation of his or her registration within 30 days. These matters include imposition of sanctions by a regulatory body in another jurisdiction and also include any conviction of a criminal nature. Failure to notify the Board is sufficient grounds for a complaint to be made to the Preliminary Proceedings Committee.

Section 56 provides for the publication of an up-to-date version of the registers no less frequently than once a year. Personal details of nurses and midwives, in the interests of security, should be protected from disclosure.

PART 7

COMPLAINTS TO PRELIMINARY PROCEEDINGS COMMITTEE CONCERNING REGISTERED NURSES AND REGISTERED MIDWIVES

Section 57 provides for the grounds on which the Board or any person may make a complaint to the Preliminary Proceedings Committee concerning a registered nurse or a registered midwife. The grounds are:

- (a) professional misconduct,
- (b) poor professional performance,
- (c) inappropriate behaviour,
- (d) a relevant medical disability,
- (e) a failure to comply with a relevant condition,
- (f) a failure to comply with an undertaking or to take any action specified in a consent given in response to a request under *section 67(1)*,
- (g) a contravention of a provision of this Act (including regulations and rules),
- (h) an irregularity in relation to the custody, prescription of supply of a controlled drug under the Misuse of Drugs Act 1977 and 1984 or another drug that is likely to be abused, or
- (i) a conviction for an indictable offence in the State or in another jurisdiction.

It provides for keeping the complainant informed of decisions taken and for the use of the services of a person appointed under *section 58* to assist with the investigation.

Where the complaint relates to a conviction on indictment, it is referred immediately to the Board which may decide, if appropriate, to cancel the registration of the person, or refer the matter back to the Preliminary Proceedings Committee.

Complaints which were made under the Nurses Act 1985 shall not be considered under this section.

Section 58 provides that the Board may appoint persons, including members of its staff, to assist the Preliminary Proceedings Committee in the investigation of a complaint. The functions to be undertaken by and the powers of such persons are outlined. The Board shall provide a warrant to any such persons which must be produced for inspection on request.

Section 59 provides for the Preliminary Proceedings Committee to consider a complaint. Where appropriate, it may inform the complainant that the complaint is more proper to the procedures of another body or authority, including the complaints procedures of the Health Service Executive under the Health Act 2004. The section outlines the procedures to be undertaken by the Committee including notifying the complaint to the relevant nurse or midwife. The Committee shall consider whether the complaint is trivial or vexatious, without substance or in bad faith.

It provides that where a complaint is withdrawn, the committee may proceed or decide that no further action should be taken, subject to the Board's agreement. The Committee will have the power to compel the production of records for the purpose of its investigations.

Section 60 provides that the Board may apply *ex parte* to the High Court to suspend the registration of a nurse or midwife where it is considered necessary to protect the public. Such applications are to be heard in private, unless the Court decides otherwise. The Court may decide to suspend the registration or give any other direction which the Court may decide.

Section 61 provides that the Preliminary Proceedings Committee shall inform the Board where it considers no further action is necessary or that the complaint relates to another body or authority or to a matter of professional competence or could be resolved by mediation. The Board may decide that the matter should not be pursued further or direct that the complainant should be referred to another body or authority or refer information to another body in accordance with a co-operation agreement or refer the complaint to a Professional Competence scheme or for resolution by mediation or direct that further action should be taken by the Committee. The nurse or midwife and the complainant must be kept informed as appropriate.

Section 62 provides that the Board may develop and publish guidance on the resolution of complaints by mediation or other informal means. Resolution of a complaint by mediation or other means can only be undertaken with the consent of the complainant and the nurse or midwife and cannot be resolved by the payment of any financial compensation. Matters discussed may not be used for the purposes of disciplinary, civil or criminal proceedings.

Section 63 provides that the Preliminary Proceedings Committee may, if it considers that a *prima facie* case exists or if the Board directs further action be taken, refer a complaint to the Fitness to Practise Committee. The Preliminary Proceedings Committee may, in certain circumstances, change the grounds of the complaint from the original grounds to one or more other grounds in *section 57*.

PART 8

COMPLAINTS REFERRED TO FITNESS TO PRACTISE COMMITTEE

Section 64 provides for the Chief Executive Officer to notify the registered nurse or midwife of the referral of the complaint to the Fitness to Practise Committee and the nature of the matter to be the subject of the inquiry, including the evidence and the date, time and place of the hearing in sufficient time for the nurse or midwife to prepare for the hearing.

Witnesses, including the complainant, and the nurse or midwife, may request that some or all of the hearing be held in private, if reasonable and sufficient cause can be shown.

Section 65 provides that a Fitness to Practise hearing shall be held in public unless the Committee decides, on foot of a request under *section 64*, that some or all of the hearing should be held otherwise than in public.

The section outlines the conduct of the hearing including presentation of evidence, oaths and cross-examination.

Section 66 provides that for the purposes of an inquiry the Fitness to Practise Committee has all the powers, rights and privileges vested in the High Court or a Judge of that Court that relate to enforcing witness attendance, examining witnesses on oath and compelling the production of records.

Subject to any rules in force and to fair procedures, the committee may receive evidence orally before the committee, by affidavit or by live video link, a video recording or a sound recording or other mode of transmission.

Witnesses before the committee have the immunities and privileges of a witness before the High Court. It is an offence for a person to fail to answer a summons to attend, refuse to take an oath, refuse to produce a record or refuse to answer a question. The maximum penalty on summary conviction is a fine of €5,000.

This section also protects the medical records of a patient from production for the purposes of an inquiry unless the patient has consented to production or the committee has directed in writing the nurse or midwife to make the records available.

Section 67 provides that the Committee may, with the Board's agreement, during an inquiry, request the nurse or midwife to undertake not to repeat the conduct, undertake to be referred to a professional competence scheme, undertake steps specified including education or training, consent to undergo medical treatment or consent to being censured by the Board. Where a required undertaking or consent is given, the inquiry into the complaint shall

be considered to be completed. Where such an undertaking or consent is not given, the Committee may proceed with the inquiry.

Section 68 provides that if a complaint is withdrawn while under consideration by the Fitness to Practise committee, the committee may, with the agreement of the Board, decide to take no further action or proceed as if the complaint had not been withdrawn.

Section 69 provides for the Fitness to Practise Committee to submit a report in writing to the Board on its findings following an inquiry and will specify the Committee's findings as to whether any allegation is proved, whether on the grounds on which the complaint was made or on any other grounds.

Section 70 provides for the Board, on receipt of the report under *section 69*, where there is an undertaking or consent under *section 67* to impose the measures, to dismiss the complaint where no allegation is proved or to impose a sanction as appropriate where any allegation is proved.

PART 9

MEASURES TAKEN WITH REGARD TO REGISTERED NURSES AND REGISTERED MIDWIVES FOLLOWING REPORTS OF FITNESS TO PRACTISE COMMITTEE

Section 71 provides for the following sanctions to be imposed:

- (a) an advice or admonishment, or a censure, in writing,
- (b) a censure in writing and a fine not exceeding €2,000,
- (c) attachment of conditions to registration,
- (d) transfer of registration to another division of the register,
- (e) suspension of registration,
- (f) cancellation of registration,
- (g) prohibition from applying for restoration of registration for a specified period.

Where there is an undertaking or consent under *section 67*, the measures shall be those in the report.

Section 72 provides for matters supplementary to the sanctions under *section 71*, such as the amount of a fine, the details of conditions to be attached to registration, the period of suspension etc.

This section also provides for matters to be considered in relation to a proposed sanction of cancellation of registration pursuant to a conviction for an indictable offence.

Section 73 provides for the Board to notify a registered nurse or midwife of the sanction it has decided to impose and the rights of the nurse or midwife to appeal the decision. The decision must also be notified to the complainant.

Section 74 provides for the High Court to confirm the decision of the Board to impose a sanction (other than an advice, admonishment or censure in writing alone), on an appeal against the Board's decision or an application for confirmation by the Board to the Court.

Section 75 provides for the rights of a nurse or midwife to appeal the decision of the Board to the High Court within 21 days. The Court may consider any evidence adduced or argument made to the Fitness to Practise Committee or otherwise and may decide to confirm the decision of the Board or cancel it and replace it with another decision to impose no sanction or a different sanction. The Court may make a direction as to costs.

Section 76 provides for the Board to make an application to the Court, on an *ex parte* basis, for confirmation of its decision where no appeal is made under *section 75*.

Section 77 provides for the Court to consider the evidence of any person of good standing in the nursing or midwifery profession as to what constitutes professional misconduct, poor professional performance or inappropriate behaviour in relation to the practice of that profession. Provision for appeal to the Supreme Court on a specified question of law is provided for.

Section 78 provides for the Board to notify the nurse or midwife of any conditions attached, the transfer of registration to another division of the register, or the suspension or cancellation of registration as confirmed by the High Court.

Section 79 provides for the Board to remove a person's registration where an appropriate fee has not been paid, unless a complaint against that person has not been disposed of.

Section 80 provides for the restoration of registration removed under *section 79* where the fee is paid within 6 months.

Section 81 provides for the circumstances in which a person whose registration has been cancelled may be restored to the register, including the right of the Board to attach conditions to registration it proposes to restore.

Section 82 provides for the Board, in certain circumstances, to remove all or any conditions attached to a nurse or midwife's registration or to refuse to do so.

Section 83 provides for the right of a nurse or midwife to appeal the decision of the Board not to restore registration under *section 81* or to remove conditions under *section 82* to the High Court. The Court may confirm the Board's decision, or make another order, including the attachment of conditions, removal of conditions or replacement of conditions to registration or restore the registration with or without conditions attaching. The Court may give directions to the Board and make an order as to costs.

Section 84 provides for the notification to the Minister, the Health Service Executive and other employers regarding the imposition of sanctions on a nurse or midwife by the Board or in another jurisdiction, where known. It also provides for the Board to notify a registration body in another jurisdiction of sanctions imposed by the Board on a nurse or midwife.

Section 85 provides that the Board may advise the public, where it considers it to be in the public interest, when a sanction imposed takes effect or when a sanction imposed in another jurisdiction takes effect on a nurse or midwife and may publish a transcript of all or part of the proceedings of the Fitness to Practise inquiry.

PART 10

EDUCATION AND TRAINING

Section 86 outlines the duties of the Health Service Executive with regard to nursing and midwifery education and training.

The Health Service Executive shall facilitate, as far as practicable, the education and training of candidates who are pursuing education and training leading to first time registration with the Board, in accordance with the Health Act 2004.

In relation to specialist nursing and midwifery education and training, the Health Service Executive shall promote and co-ordinate their development in co-operation with the Board and the nursing and midwifery training bodies. It shall also undertake appropriate workforce planning in order to meet the needs of nursing and midwifery specialist staffing and training needs of the public health service. It must advise the Minister on these matters, including related financial matters.

The Minister may request information on the Health Service Executive's functions under this Act by notice given in writing and the Health Service Executive shall carry out any other functions assigned to it by the Minister in relation to nursing and midwifery education and training.

Section 87 outlines the duties of the Board with regard to nursing and midwifery education and training. The Board shall set and publish standards of education and training for first time registration and post-registration specialist nursing and midwifery. It shall approve programmes and bodies which may deliver such programmes of nursing and midwifery education and training and inspect places in the State where training is provided for the purposes of monitoring adherence to the nursing and midwifery education and training standards. The Board must prepare and publish guidelines for bodies approved to deliver education programmes on ethical standards and behaviour appropriate for nurses, midwives and candidates.

This section also provides for bodies approved under the Nurses Act 1985 to be deemed to be approved for the purposes of this Act unless the Board determines otherwise. The Board may recognise a nursing or midwifery qualification awarded in a third country as equivalent to a qualification for first time registration.

The Board shall prepare guidelines on ethical matters relating to the acceptance or otherwise of non-Exchequer funding offered or provided in relation to nursing and midwifery education and training for registration purposes.

The Board, in consultation with the Health Service Executive, is also given a role in relation to the provision of career information on nursing and midwifery.

Section 88 provides for a body which has been refused approval by the Board for nursing and midwifery education and training to appeal to the Court against the Board's decision.

PART 11

MAINTENANCE OF PROFESSIONAL COMPETENCE

Section 89 provides for the duty of registered nurses and midwives to maintain their professional competence on an ongoing basis. It also provides that a nurse or midwife shall demonstrate competence when required by the Board and to co-operate with any requirements imposed by rules.

Section 90 provides for the duty of registered nurses and midwives to demonstrate competence to the satisfaction of the Board. It provides that the Board may require a nurse or midwife who fails to demonstrate competence to attend a course or courses of further education or training. It also provides for the Board to make a complaint to the Preliminary Proceedings Committee in specific situations including where a nurse or midwife refuses or fails to co-operate with a requirement imposed or poses an immediate risk of harm to the public.

Section 91 provides for the Board to develop, establish, operate and keep under review one or more than one scheme for monitoring the maintenance of professional competence by nurses and midwives. Schemes will not be established or operated until approved by the Minister and the Minister for Finance.

Section 92 provides for employers to facilitate the maintenance of professional competence of registered nurses and midwives pursuant to a professional competence scheme. It also provides that the employer may facilitate the maintenance of professional competence by providing learning opportunities in the workplace.

Section 93 provides for the confidentiality of information disclosed as part of a professional competence scheme. The Board may, however, disclose information in summary form which prevents the identity of individual nurses and midwives being ascertained. It can disclose information for the purposes of criminal proceedings or investigations, or for the purposes of civil proceedings to which it is a party. Provision for an offence relating to unlawful disclosure of information is included, with a penalty of a fine not exceeding €5,000 and/or imprisonment for 6 months.

PART 12

DISSOLUTION OF THE NATIONAL COUNCIL FOR THE PROFESSIONAL DEVELOPMENT OF NURSING AND MIDWIFERY

Section 94 includes definitions of terms relevant to this Part of the Act.

Section 95 provides for the dissolution of the Council.

Section 96 provides for all rights and liabilities of the Council to be transferred to the Board.

Section 97 provides for all land and any other property of the Council to be transferred to the Board.

Section 98 provides for the Board to prepare the final accounts of the Council, for audit by the Comptroller and Auditor General and for their presentation to the Minister and laying before each House of the Oireachtas.

Section 99 provides for the Board to prepare a final report to the Minister on the Council's activities.

Section 100 provides for the substitution of the Board's name in relation to any legal proceedings to which the Council is a party immediately before the commencement of this section.

Section 101 provides that every contract or agreement between the Council and any other person shall continue and shall have the same effect as if the name of the Board was substituted for the Council's name.

Section 102 provides for the transfer of the employees of the Council to, and becoming employees of, the Board. Provision for the preservation of the terms and conditions of employment of such staff and superannuation benefits is included.

Section 103 provides for the transfer of the Council's records to the Board and any right of access under the Freedom of Information Acts 1997 and 2003 is not affected by this transfer.

PART 13

MISCELLANEOUS

Section 104 provides that a clinical supervising authority appointed under the rules shall perform the functions of clinical supervising authorities as specified in the rules.

Section 105 provides for matters which are absolutely privileged in any action for defamation, in particular matters relating to *Parts 7, 8 and 9* (Fitness to Practise) and documents relating to nurses and midwives participation in a Professional Competence Scheme, unless it has been made in bad faith.

Section 106 provides that the Board shall, at the request of the Minister, or may, of its own initiative, investigate unregistered persons suspected of practising nursing or midwifery in contravention of this Act or claiming to be registered. If the Board has reason to believe that this is the case, it shall report the matter forthwith to An Garda Síochána and the Minister and may seek an injunction in the High Court requiring the person to cease the activities.

Section 107 provides that summary proceedings for an offence under this Act may be prosecuted by the Board.

Section 108 provides that the Board or a Committee may specify the form of documents required for the purposes of this Act.

Section 109 provides for an amendment to the Third Schedule of the Freedom of Information Act 1997.

SCHEDULE

BOARD: MEMBERSHIP AND MEETINGS

This Schedule outlines the tenure of office of the Board, proceedings relating to resignations or termination of membership and the filling of casual vacancies, the quorum required for meetings of the Board, meetings, the role of the President and Vice-President, and the proceedings at meetings.

*An Roinn Sláinte agus Leanaí,
Aibreán, 2010.*