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Tel : 3919 3308

Date : 21 March 2018

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 28 March 2018

Amendments to Medical Registration (Amendment) Bill 2017

The Second Reading debate on the above Bill will be resumed at the Council meeting of 28 March 2018. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Food and Health to move amendments to the Bill.

2. As directed by the President, the amendments are attached for Members' consideration.

(Lilian MOK)
for Clerk to the Legislative Council

Encl.

Medical Registration (Amendment) Bill 2017

Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)(b)	By deleting “4(25)” and substituting “4(27)”.
3	By adding— “(1A) Section 2(1), definition of <i>Secretary</i> — Repeal “section 3B” Substitute “section 3B(1)”.”.
3(2)	By adding in alphabetical order to the proposed definitions— “ <i>Fellow</i> (院士) has the meaning given by section 2 of the Hong Kong Academy of Medicine Ordinance (Cap. 419); <i>Permanent Secretary</i> (常任秘書長) means the Permanent Secretary for Food and Health (Health);”.
4	By adding— “(1A) Section 3(2)— Repeal paragraph (c) Substitute “(c) the Director, or his or her representative, as ex officio member (<i>ex officio member</i>);”. (1B) Section 3(2)— Repeal paragraph (db) Substitute “(db) the Chief Executive of the Hospital Authority, or his or her representative, as ex officio member;”.”.

- 4 By deleting subclause (4) and substituting—
“(4) After section 3(2)(h)—
Add
“(ha) 2 registered medical practitioners who are Fellows nominated and elected by Fellows in accordance with the regulations or procedures of the Academy of Medicine;”.’.”.
- 4 By deleting subclause (6) and substituting—
“(6) Section 3(3)—
Repeal
“(2)(c), (d), (da), (g) or (h) shall hold office for a period of’
Substitute
“(2)(d), (da), (g) or (h) holds office for’.”.
- 4(7) In the proposed section 3(3AA), by adding “or (ha)” after “subsection (2)(ga)”.
- 4(8) By deleting the proposed section 3(3AAC).
- 4(9) In the proposed section 3(3A), by deleting “or elected to fill a vacancy caused by a person ceasing to be a member in accordance with subsection (4) or (6A)”.
- 4(9) In the proposed section 3(3AB), by deleting “(2)(h)” and substituting “(2)(ha)”.
- 4 By adding—
“(10A) Section 3(4), after “Council”—
Add
“who is not an ex officio member”.”.
- 4(11) In the proposed section 3(5AA)(b), by deleting “Council must, as soon as possible, on the nomination of any lay member of the Council, appoint a person who, in its opinion” and substituting “Permanent Secretary must, as soon as possible, on the nomination by any lay member of the Council, appoint a person who, in the opinion of the

Permanent Secretary”.

4(11) By adding—

“(5AAB) A member elected or appointed to fill a vacancy under subsection (5AA) holds office from the date of election or appointment until the end of the unexpired term.”.

4(12) By deleting the proposed section 3(5AAB).

4(12) In the proposed section 3(5AAE), by deleting “(2)(h)” and substituting “(2)(ha)”.

4 By deleting subclause (17) and substituting—

“(17) Section 3(5B)(b)—

Repeal

“of any member of the Council”

Substitute

“by any member of the Council who is a registered medical practitioner”.

4 By adding—

“(19A) Section 3(6), after “by the Chief Executive”—

Add

“, or any ex officio member”.

4(22) By deleting “appointed by the Chief Executive” and substituting “described in subsection (6)”.

4(27) In the proposed section 3(9), by deleting “office under subsection (2)(ga), (gb), (h) or (i)” and substituting “an office in the Council described in subsection (2)(ga), (gb), (ha), (i) or (j)”.

6 By adding—

“(1A) After section 3C(1)—

Add

“(1AA) If any member of the Council described in section 3(2)(ga) is, because of illness, absence from Hong Kong

or any other reason, unable to perform the member's duties and exercise the member's powers for any period, the Permanent Secretary may appoint another person who is suitably qualified for appointment under section 3(2) (not being one who is disqualified from holding office under section 3 or who has been removed from office under that section) to be a temporary member of the Council in the place of the member during that period.”.”.

6 By deleting subclause (2) and substituting—

“(2) Section 3C(1A)—

Repeal

everything after “If any” and before “for any”

Substitute

“member of the Council described in section 3(2)(gb), (ha), (i) or (j) is, because of illness, absence from Hong Kong or any other reason, unable to perform the member's duties and exercise the member's powers”.

(3) After section 3C(1A)—

Add

“(1B) In subsections (1), (1AA) and (1A), a reference to any member of the Council includes a person who is appointed, nominated or elected under section 3 to fill a vacancy in the office of the Council.”.”.

7 By adding—

“(1A) Section 4(3), after “appointment”—

Add

“, nomination or election”.”.

13 In the proposed section 20BD(3)(c), in the English text, by adding a comma after “bankrupt”.

18(4) In the Chinese text, by deleting “Preliminary” and substituting “Preliminary”.

22 By deleting the proposed section 20X(1) and substituting—

“(1) The Council must appoint an inquiry panel for the inquiry of a

case if—

- (a) the Council receives a notification under section 20T(2A) informing the Council of a Preliminary Investigation Committee’s decision to refer the case to an inquiry panel; or
- (b) the Court of Appeal remits the case to the Council under section 26(1A)(b)(ii).”.

22 By deleting the proposed section 20X(5)(a) and (b) and substituting—

- “(a) the inquiry panel has decided to make an order referred to in section 21(1); but
- (b) the order has not yet been issued.”.

23(2) By adding “or any case remitted by the Court of Appeal,” after “section 33,”.

23(30) By adding—

- “(4CB) Subsection (4CA) does not apply if, when the vacancy occurs because of the circumstances mentioned in that subsection, the inquiry panel—
- (a) has made a determination under subsection (4D)(a); but
- (b) has not yet announced the determination under subsection (4D)(b).”.

23 By deleting subclause (31) and substituting—

“(31) Section 21—

Repeal subsection (4D)

Substitute

- “(4D) On a review by an inquiry panel under subsection (4B), the panel must—
- (a) make a determination as to any decision or order made in the inquiry by affirming, varying or revoking it; and
- (b) announce the determination.”.

24(2) By deleting “, (b) and (c)” and substituting “and (b)”.

24

By adding—

“(3) Section 21A(1)—

Repeal paragraph (c)

Substitute

“(c) make an order referred to in paragraph (a) or (b) but suspend its application, subject to the conditions that the Council thinks appropriate, for a period, or periods in the aggregate, not exceeding 3 years;”.

(4) Section 21A(1)(d)—

Repeal

“any such order as aforesaid and further order that such”

Substitute

“an order referred to in paragraph (a) or (b) and further order that the”.

(5) Section 21A(3)—

Repeal

“, (b) or (c)”

Substitute

“or (b)”.

29

By deleting subclause (2) and substituting—

“(2) Section 25—

Repeal subsection (1A)

Substitute

“(1A) If an inquiry panel makes an order under section 21(1)(v), the Registrar must immediately serve the order, together with the warning letter, on the registered medical practitioner concerned, either personally or by registered post addressed to the practitioner’s registered address.”.

30(4)

In the proposed section 26(1A)(b)(i), by adding “(*old panel*)” after “panel”.

30(4)

In the proposed section 26(1A)(b)(ii), by adding “(*new panel*)” after “panel”.

- 30 By adding—
“(5A) Section 26(3), proviso, after “25(1)”—
Add
“or (1A)”.”.
- 30(6) In the proposed section 26(6), by deleting everything after “subsection” and substituting—
“(1A)(b)(ii) (*new inquiry*), the validity of the proceedings before the new panel is not to be called into question only because—
(a) a member of the old panel who was present at the former inquiry is not present at the new inquiry; or
(b) a member of the new panel who is present at the new inquiry was not present at the former inquiry.”.
- 31(3) In the proposed section 33(3A), by deleting “for Food and Health (Health)”.
- 31 By deleting subclause (7) and substituting—
“(7) Section 33(4)(a)—
Repeal subparagraph (viii)
Substitute
“(viii) inquiries held by the Council or an inquiry panel;”.”.
- 34 In the proposed Schedule 5, in the English text, in Table 2, in item 6, in Column 2, by deleting “Hong Kong” and substituting “The Hong Kong”.
- 34 In the proposed Schedule 6, in section 1, by deleting the definitions of *pre-amended Ordinance* and *pre-amended Regulation*.
- 34 In the proposed Schedule 6, in section 1, by adding in alphabetical order—
“*pre-amended Disciplinary Regulation* (《原有紀律處分規例》) means the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) as in force immediately before the commencement;

pre-amended Electoral Regulation (《原有選舉規例》) means the Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg. B) as in force immediately before the commencement;

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement.”.

34 In the proposed Schedule 6, by deleting section 2 and substituting—

“2. Filling vacancy in office of member of Council under section 3(5B)(b) of pre-amended Ordinance

If, immediately before the commencement, the Secretary has sent an invitation under section 8 of the pre-amended Electoral Regulation, then section 3(5B)(b) of the pre-amended Ordinance and section 8 of that Regulation continue to apply in relation to a nomination of candidate made pursuant to the invitation.”.

34 In the proposed Schedule 6, in section 5(1)(a), by deleting “pre-amended Regulation” and substituting “pre-amended Disciplinary Regulation”.

34 In the proposed Schedule 6, in section 5(1)(b), by deleting “, a decision” and substituting—

“—

(i) a decision”.

34 In the proposed Schedule 6, in section 5, by deleting everything after “direct that it be” and before subsection (3) and substituting—

“investigated further under section 6(3), (4) or (5) of the pre-amended Disciplinary Regulation;

(ii) the chairman or the deputy chairman of the former PIC has directed that the existing case be referred to the former PIC under section 9(1) or 10(1) of the pre-amended Disciplinary Regulation for its consideration (***existing direction***), and a decision has not yet been made under section 11(8) or (9) of that Regulation in respect of the existing case; or

(iii) the Chairman has, under section 15(1) of the pre-amended Disciplinary Regulation, referred the existing case back to the former PIC for further consideration, and a decision has not yet been made under section 11(8) or (9) of that Regulation in

respect of the existing case.”.

34 In the proposed Schedule 6, in section 5(5), by deleting “section 20S(1), (1A), (2)” and substituting “sections 20BA(5) and 20S(1), (1A), (2), (2A)”.

34 In the proposed Schedule 6, in section 5(5), by deleting “, apply to and” and substituting “, apply”.

34 In the proposed Schedule 6, in section 5(5)(b), by deleting “to and”.

34 In the proposed Schedule 6, in section 5(8), by deleting “Section 20S(1), (2), (3) and (5) of the pre-amended Ordinance applies to and in relation to the deemed PIC as if that section” and substituting “Sections 20BA(5) and 20S(1), (2), (3) and (5) of the pre-amended Ordinance apply in relation to the deemed PIC as if those sections”.

34 In the proposed Schedule 6, in Part 3, by adding—

“5AA. Referral of existing cases back to PIC on or after commencement

(1) This section applies if—

- (a) an existing case (within the meaning of section 5(1)(a) of this Schedule) has been referred by the former PIC to the Council for an inquiry under section 21 of the pre-amended Ordinance; and
- (b) the case falls within the description of section 5A(1)(b) or 6(1)(b)(i) of this Schedule.

(2) If the chairperson of an inquiry panel exercises the power under section 15(1)(a) of the amended Regulation to refer the case back to a Preliminary Investigation Committee (**PIC**) by virtue of section 5A(2)(b) of this Schedule, or the chairperson of the deemed panel (within the meaning of section 6(2)(a) of this Schedule) exercises that power by virtue of section 6(3) of this Schedule, then—

- (a) the deemed PIC (within the meaning of section 5(3)(a) of this Schedule) is taken to be the PIC to which the case is referred back; and
- (b) section 5 (other than section 5(1) and (7)) of this Schedule applies for all purposes in relation to the

further consideration of the case by the deemed PIC.”.

34

In the proposed Schedule 6, in Part 4, by adding—

“5A. Council’s inquiry yet to commence under section 21 of pre-amended Ordinance

- (1) This section applies if—
 - (a) a case has been referred by the former PIC to the Council for an inquiry under section 21 of the pre-amended Ordinance (*former PIC’s decision*); and
 - (b) immediately before the commencement, no meeting has been held in accordance with section 21B of the pre-amended Ordinance for the purpose of conducting the inquiry.
- (2) The former PIC’s decision is taken to be a decision referred to in section 20T(2A) of the amended Ordinance, and the Council is taken to have received a notification referred to in section 20X(1) of the amended Ordinance, and accordingly, on and after the commencement—
 - (a) the Council must, as required by section 20X(1) of the amended Ordinance, appoint an inquiry panel for the inquiry; and
 - (b) the provisions of this Ordinance apply for all purposes in relation to the further conduct (including the inquiry) of the case.

5B. Council’s inquiry yet to commence under section 26 of pre-amended Ordinance

If the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for another inquiry and immediately before the commencement, the inquiry has not yet commenced, then—

- (a) the Council must appoint an inquiry panel for the inquiry under section 20X(1) of the amended Ordinance; and
- (b) the provisions of this Ordinance apply for all purposes in relation to the further conduct (including the inquiry) of the case.”.

- 34 In the proposed Schedule 6, in section 6(1)(b), by deleting “, a meeting” and substituting—
- “—
- (i) a meeting”.
- 34 In the proposed Schedule 6, in section 6(1)(b)(i), by deleting “order or referral has been made under section 21(1) of the pre-amended Ordinance.” and substituting—
- “decision or order has been made under section 21(1) of the pre-amended Ordinance;
- (ii) a decision or order has been made by the Council under section 21(1) of the pre-amended Ordinance and—
- (A) no review is taking place under section 21(4B) of that Ordinance and the period for reviewing the decision or order under that section has not yet expired; or
- (B) the Council is reviewing the decision or order, but has not yet made any determination under section 21(4D) of that Ordinance;
- (iii) the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for an, or another, inquiry, and the inquiry has commenced but has not yet been concluded; or
- (iv) the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for an inquiry, and the inquiry has not yet commenced.”.
- 34 In the proposed Schedule 6, in section 6(2), by deleting everything before paragraph (a) and substituting—
- “(2) Despite sections 3 and 4 of this Schedule, on and after the commencement, the members of the Council and (if applicable) assessors who, immediately before the commencement, have conducted the inquiry, or have been conducting the inquiry or review (*inquirers*), may continue to conduct the inquiry or review (including a review that commences before the expiry of the period referred to in subsection (1)(b)(ii)(A)) as an inquiry panel, and may do so beyond the expiry of their term of office, as if—”.
- 34 In the proposed Schedule 6, in section 6(2)(b), by deleting “mentioned

in subsection (1)(b)” and substituting “held in accordance with section 21B of the pre-amended Ordinance”.

34 In the proposed Schedule 6, in section 6(3), by deleting “to and in relation to the deemed panel, the inquirers and the inquiry” and substituting “in relation to the deemed panel, the inquirers and the inquiry or review”.

34 In the proposed Schedule 6, in section 6(3)(b), by deleting “to and in relation to an inquiry panel, its members and an inquiry” and substituting “in relation to an inquiry panel, its members and an inquiry or review”.

34 In the proposed Schedule 6, in section 6(4)(a), by deleting “if a vacancy occurs amongst the members of the deemed panel” and substituting “in relation to the inquiry conducted by the deemed panel if a vacancy occurs amongst its members”.

34 In the proposed Schedule 6, in section 6(4), by adding—

“(ba) section 21(4CA) of the amended Ordinance applies in relation to the review conducted by the deemed panel if a vacancy occurs amongst its members;”.

34 In the proposed Schedule 6, in section 6(4)(c), by deleting “and”.

34 In the proposed Schedule 6, in section 6(4)(d), by deleting the full stop and substituting “; and”.

34 In the proposed Schedule 6, in section 6(4), by adding—

“(e) section 13A of the amended Regulation applies in relation to the review conducted by the deemed panel.”.

34 In the proposed Schedule 6, in section 6(5), by deleting “referred to in subsection (1)” and substituting “or review”.

34 In the proposed Schedule 6, by adding—

“6A. Remittal of cases on or after commencement for inquiry by deemed panel

If the Court of Appeal, by virtue of section 7(3) of this Schedule, exercises its power to remit a case referred to in

section 7(1) or (2) of this Schedule under section 26(1A)(b)(i) of the amended Ordinance to an inquiry panel for holding a new inquiry, then—

- (a) the deemed panel (within the meaning of section 6(2)(a) of this Schedule) is taken to be the inquiry panel to which the case is remitted; and
- (b) section 6 (other than section 6(1) and (6)) of this Schedule applies for all purposes in relation to the further conduct of the case by the deemed panel.

Part 5

Appeal Against Orders in Inquiries”.

34

In the proposed Schedule 6, in section 7, by deleting everything after the heading and substituting—

“(1) If—

- (a) in respect of an existing case (within the meaning of section 5(1)(a) of this Schedule), an order was made by the Council under section 21 of the pre-amended Ordinance; and
- (b) immediately before the commencement, an appeal has been made to the Court of Appeal against the order under section 26(1) of the pre-amended Ordinance,

then, on and after the commencement, the appeal is taken to be made under section 26(1A) of the amended Ordinance.

(2) If—

- (a) in respect of an existing case (within the meaning of section 5(1)(a) of this Schedule), an order was made by the Council under section 21 of the pre-amended Ordinance; and
- (b) immediately before the commencement, the period provided in section 26(3) of the pre-amended Ordinance for an appeal to be made under section 26(1) of that Ordinance against the order has not yet expired,

then, on and after the commencement, an appeal against the order may be made under section 26(1A) of the amended Ordinance as if the order were an order made by an inquiry panel.

- (3) On and after the commencement, the provisions of this Ordinance apply for all purposes in relation to the further conduct (including any appeal or remittal) of the case referred to in subsection (1) or (2).”.

35(3) By deleting “3(2)(h)” and substituting “3(2)(ha)”.

35 In the English text, by deleting subclause (4) and substituting—

“(4) Section 4(2)(d)—

Repeal

“composition”

Substitute

“a composition or arrangement”.”.

New By adding—

“35A. Section 8 amended (filling of casual vacancy where unexpired period is less than 1 year)

(1) Section 8(1), after “members of the Council”—

Add

“who are registered medical practitioners”.

(2) Section 8(2)(b), after “Council”—

Add

“who are registered medical practitioners”.

(3) Section 8(4), after “members of the Council”—

Add

“who are registered medical practitioners”.”.

39 (a) By renumbering the clause as clause 39(1).

(b) By adding—

“(2) Section 24(4)—

Repeal

“may”

Substitute

“must”.”.

- 41 (a) By renumbering the clause as clause 41(2).
(b) By adding—
“(1) Schedule 1, Form 2, Part II, paragraph 2—
Repeal
“and for”
Substitute
“in an”.”.
44(2) By deleting the proposed section 8(1)(a) and substituting—
“(a) at a meeting or an inquiry mentioned in section 6(1);”.
51 By deleting the clause and substituting—
“51. Section 9 amended (reference of case to Committee)
Section 9—
Repeal subsection (1)
Substitute
“(1) Except where section 10 or 16(1A) applies, the chairman or the deputy chairman of a Committee who receives a case under section 6 must make the directions specified in subsection (1A) if—
(a) the case has not been dismissed under section 6(3);
(b) the case has not been referred to the Health Committee under section 6(4); or
(c) he or she has directed that the case be investigated further under section 6(5).
(1A) The directions specified for subsection (1) are—
(a) that the case must be referred to the Committee for its consideration; and
(b) that the Secretary must fix a date on which it is proposed that the Committee meets to consider the case.”.”.
54 By adding—
“(3A) Section 13(4)—

Repeal

“of the receipt of a notification under subsection (1)”

Substitute

“after a direction by the chairperson of the inquiry panel under subsection (2)”.

55 By adding before the proposed section 13A(1)(a)—

“(aa) holds an inquiry under section 21 of the Ordinance;”.

55 In the proposed section 13A, by adding—

“(3A) Subsections (2) and (3) have effect in relation to a review under section 21(4B) of the Ordinance as if the references to inquiry in those subsections were references to review.”.

55 In the proposed section 13A(4), by adding “or review the decision or order, as the case may be” after “the case”.

63 In the proposed section 21(2), by deleting “including” and substituting “or”.

74 By deleting subclause (5) and substituting—

“(5) Section 32—

Repeal subsection (3).”.

76 By deleting the clause and substituting—

“76. Section 34 substituted

Section 34—

Repeal the section

Substitute

“34. Review by inquiry panel

(1) If, after an inquiry under section 21 of the Ordinance, an inquiry panel has decided to—

(a) review its decision or order under section 21(4B) of the Ordinance; and

(b) invite any specified person to attend the review

under section 21(4C) of the Ordinance,

the chairperson of the panel must direct the Secretary to notify the specified person in writing and invite the specified person to appear before the panel at the time and place fixed for holding the review.

- (2) At the review, the inquiry panel may invite a specified person to address the panel in the order it thinks appropriate.
- (3) The inquiry panel may proceed with the review in the absence of any specified person.
- (4) After the review, the chairperson of the inquiry panel must—
 - (a) announce the panel's latest decision in writing; and
 - (b) direct the Secretary to—
 - (i) serve a notice of the decision on the defendant; and
 - (ii) notify the complainant of the decision.
- (5) The Secretary must comply with a direction given under subsection (1) or (4).
- (6) In this section—

specified person (指明人士) means—

 - (a) a party to an inquiry under section 21 of the Ordinance; or
 - (b) any other person who has appeared before an inquiry panel in the inquiry.”.”.

78 By adding—

“(8A) Section 37(6)—

Repeal

“, the deputy chairman”.”.

80 By deleting subclause (2).

80(3) In the proposed section 39(3), by deleting the definition of ***section 21***

order.

81 By deleting the clause.

82 By deleting the clause.