EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE (DISCIPLINARY PROCEDURES) REGULATIONS (NORTHERN IRELAND) 2014

S.R. 2014 No. 267

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 61, 62, 63 and 106 of the Health and Personal Social Services (Northern Ireland) Order 1972 and Article 10 of the Health and Medicines (Northern Ireland) Order 1988 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2014 revoke and replace the Health and Personal Social Services (Disciplinary Procedures) Regulations (Northern Ireland) 1996, "the 1996 regulations". They provide for the investigation and determination by the Regional Health and Social Care Board (HSC Board), of questions whether chemists, dentists, ophthalmic medical practioners or opticians have failed to comply with their terms of service.

3. Background

3.1. The 1996 regulations set out how concerns that a chemist, dentist, ophthalmic medical practitioner or optician is failing to comply with their terms of service are to be investigated and, if necessary, the disciplinary procedures to be followed. The 1996 regulations were predicated on the existence of 4 Health and Social Services Boards and the HSC Board has been operating an interim system for any disciplinary cases, whilst a new system is devised and underpinned by new regulations.

3.2. These regulations revoke the 1996 regulations and set out revised procedures for the investigation of disciplinary matters. In recognition that the disciplinary matters that the HSC Board are being asked to deal with have become more complex, the new regulations standardise the amount of time that the HSC Board has to begin its investigations to 26 weeks. The length of time that practitioners have to respond to allegations has also been extended to ensure a level playing field for both practitioners and the HSC Board.

3.3. The 1996 regulations also specified, in considerable detail; the make-up and standing orders of internal HSS Board disciplinary committees. This has been removed from the regulations to reflect the revised legislative framework for the HSC.

3.4. Regulation 2 sets out that where the HSC Board receives an allegation that a chemist, dentist, optician or ophthalmic medical practitoner has failed to comply with the terms of their service, it may decide to either take no

action, investigate the matter as a disciplinary matter or refer the allegation to the HSC Tribunal, the police or the relevant professional body, i.e. the Pharmaceutical Society of Northern Ireland, General Dental Council, General Optical Council or General Medical Council. Regulation 2(3) & (4) stipulate that the HSC Board may not investigate any allegation where the information it is based upon, is being investigated as a complaint against the practitioner. Regulation 2(5) allows the HSC Board to investigate a matter relating to an overpayment at any time.

3.5. Paragraphs (1) to (3) of Regulation 3 set out the timescales within which the HSC Board must decide to investigate a disciplinary matter or refer it to the HSC Tribunal, police or relevant professional body. The 1996 Regulations had differing timescales for each profession, these have now been standardised at 26 weeks.

3.6. Regulation 3(4) explains that where a potential disciplinary matter is reported to the HSC Board by the Business Services Organisation (BSO), within 28 days of the end of the 26 week period, the time limit will be extended so that the HSC Board has at least 28 days to consider the BSO's report.

3.7. Regulation 4 deals with the outcomes of the HSC Board's investigation; setting out what actions it may take, if it is determined that a practitioner has failed to comply with their terms of service. The HSC Board may issue a warning, a fine or (for dentists) a requirement to seek the approval of the BSO Dental Committee prior to providing dental treatment for a specified period. The HSC Board is able to take any previous disciplinary determinations from the last 6 years into account when deciding on what action to take. The HSC Board must notify both the practitioner and the Department of its findings and may not take any action until the practitoner has had an opportunity to appeal the HSC Board's determination.

3.8. Regulations 5 and 6 set out the right of practitioners to appeal to the Department against a determination of the HSC Board and the procedures and timescales for appeals proceedings.

3.9. Regulation 7 specifies the procedure for the HSC Board and BSO to recover a fine from a practitioner following an unsuccessful appeal to the Department.

3.10. Regulation 8 sets out how, if a dentist has made an unsuccessful appeal to the Department, they can be required to submit treatment plans for the prior approval of the BSO Dental Committee for a specified period of time. It also allows the dentist to apply to the Department to have the prior approval requirement waived after a 6 month period.

3.11. Regulation 9 states that if a practioner dies whilst being investigated by the HSC Board but before the Board has decided what action to take, no further action shall be taken.

3.12. Regulation 10 allows the Department to dispense with certain procedural requirements if it appears to be just and proper to do so.

3.13. Regulation 11 enables any person, who is required to provide input to a disciplinary investigation within a certain time limit, to apply in writing to the Department for an extension to that time limit.

3.14. Regulation 12 sets out the circumstances under which the Department may make a fresh appointment to an appeal panel constituted under Regulation 6.

3.15. Regulation 13 explains how the HSC Board or Department may refer a disciplinary matter and any connected documents to the relevant professional body.

4. Consultation

4.1. The Department of Health, Social Services and Public Safety consulted with the HSC Board, BSO and a range of stakeholders that represent the views of chemists, dentists, opticians and ophthalmic medical practitioners in Northern Ireland. Responses to the consultation supported the introduction of revised regulations.

5. Equality Impact

5.1. Consideration has been given to the equality and human rights implications of the Regulations. They are considered to be compliant with section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. These Regulations are considered to have no impact on small businesses, charities or voluntary bodies.

7. Financial Implications

7.1. There are no financial implications associated with these Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1. Considered compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable

10. Parity or Replicatory Measure

10.1. The decision to introduce new updated regulations is based on changes to the HSC structures which are particular to Northern Ireland.

11. Additional Information

11.1. Not applicable