

## SCHEDULE 1

Article 2(1)

### Amendments to the Nursing and Midwifery Order 2001

#### Amendment of article 3

1. In article 3 (the Nursing and Midwifery Council and its Committees)—
  - (a) for paragraph (5) substitute the following paragraphs—

“(5) In exercising its functions, the Council shall—

    - (a) have proper regard for—
      - (i) the interests of persons using or needing the services of registrants in the United Kingdom, and
      - (ii) any differing interests of different categories of registrants;
    - (b) co-operate, in so far as is appropriate and reasonably practicable, with public bodies or other persons concerned with—
      - (i) the employment (whether or not under a contract of service) of registrants,
      - (ii) the education or training of nurses, midwives or other health care professionals,
      - (iii) the regulation of, or the co-ordination of the regulation of, other health or social care professionals,
      - (iv) the regulation of health services, and
      - (v) the provision, supervision or management of health services.

(5A) In carrying out its duty to co-operate under paragraph (5)(b), the Council shall have regard to any differing considerations relating to practising as a nurse or midwife which apply in England, Scotland, Wales or Northern Ireland.

(5B) In paragraph (5), “health care professionals” means persons regulated by a body, other than the Council, mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(1) (which relates to the Council for the Regulation of Health Care Professionals).”;
  - (b) omit paragraph (7);
  - (c) before paragraph (8) insert the following paragraph—

“(7A) The Council shall be constituted as provided for by order of the Privy Council, subject to Part 1 of Schedule 1.”; and
  - (d) in paragraph (8), after “of the Council” insert “and orders of the Privy Council under paragraph (7A)”.

#### New article 6A

2. After article 6, insert the following article—

**“Temporary annotations with regard to emergencies involving loss of human life or human illness etc.**

**6A.—**(1) If the Secretary of State advises the Registrar that an emergency has occurred, is occurring or is about to occur and that action should be considered under this article, the Registrar may make—

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(1) 2002 c.17.

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- (a) an annotation in the register against the name of a registrant to indicate that the registrant is qualified to order drugs, medicines and appliances in a specified capacity, notwithstanding that the registrant is not so qualified, if the Registrar considers that the registrant is a fit, proper and suitably experienced person to order drugs, medicines and appliances in that capacity with regard to the emergency;
- (b) annotations in the register against the names of registrants comprising a specified group of registrants to indicate that they are qualified to order drugs, medicines and appliances in a specified capacity, notwithstanding that they are not so qualified, if the Registrar considers that the group is comprised of registrants who are of a type who may reasonably be considered fit, proper and suitably experienced persons to order drugs, medicines and appliances in that capacity with regard to the emergency.

(2) The Registrar may make the annotation in such a way so as to distinguish registrants against whose names in the register annotations are made by virtue of paragraph (1) from registrants in respect of whom the annotation is made otherwise than by virtue of paragraph (1).

(3) Annotations made by virtue of paragraph (1)—

- (a) must be removed by the Registrar if the Secretary of State advises the Registrar that the circumstances that led the Secretary of State to advise the Registrar as mentioned in paragraph (1) no longer exist;
- (b) may be removed by the Registrar at any time, including where the Registrar has grounds for suspecting that the registrant's fitness to order drugs, medicines or appliances may be impaired.

(4) A registrant against whose name in the register an annotation is made by virtue of paragraph (1)(b) as one of a specified group may have that annotation removed without the Registrar removing the equivalent annotations against the names of the other members of the group or by virtue of a decision to remove the annotations made by virtue of paragraph (1) (b) against the names of all the members of the group.

(5) For the purposes of this article, “emergency” means an emergency of the type described in section 19(1)(a) of the Civil Contingencies Act 2004<sup>(2)</sup> (meaning of “emergency”), read with subsection (2) of that section.”

#### **Amendment of article 7**

**3.** In article 7(3) (the register: supplemental provisions), after paragraph (4) insert the following paragraph—

“(5) Rules may not be made under this article in connection with annotations made under article 6A.”

#### **Amendment of article 22**

**4.** In article 22 (allegations), in paragraph (1)(a), omit “or” at the end of paragraph (iv) and after paragraph (v) insert—

“(vi) the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006<sup>(4)</sup> or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>(5)</sup>), or

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(2) 2004 c.36.

(3) Amended by S.I. 2007/3101.

(4) 2006 c.47.

- (vii) the Scottish Ministers including the person in the children’s list or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(6)).”

#### **Amendment of article 32**

5. In article 32 (investigation of allegations: procedural rules), in paragraph (4), for “Chairman” substitute “chair”.

#### **Amendment of article 37**

6. In article 37(7) (appeals against Registrar’s decisions)—
- (a) after paragraph (2), insert the following paragraph—

“(2A) No appeal lies to the Council where the Registrar has refused to make, or has removed, an annotation under article 6A.”; and
  - (b) in paragraph (5)(g), for “Chairman” substitute “chair”.

#### **Amendment of article 48**

7. In article 48 (exercise of powers by the Privy Council), after paragraph (2) insert the following paragraph—

“(2A) For the purposes of section 1 of the Statutory Instruments Act 1946 (definition of “Statutory Instrument”), paragraph (2) shall have effect as if contained in an Act of Parliament.”

#### **Substitution of article 50**

8. For article 50 (annual reports), substitute the following article—

##### **“Annual reports, statistical reports and strategic plans**

**50.**—(1) The Council shall publish, by such date in each year as the Privy Council shall specify—

- (a) a report on the exercise of its functions which includes a description of the arrangements that the Council has put in place to ensure that it adheres to good practice in relation to equality and diversity (and for these purposes “equality” and “diversity” have the meanings given in section 8(2) of the Equality Act 2006(8) (equality and diversity));
- (b) a statistical report which indicates the efficiency and effectiveness of, and which includes a description of, the arrangements which the Council has put in place under article 21(1)(b) to protect members of the public from registrants whose fitness to practise is impaired, together with the Council’s observations on the report; and
- (c) a strategic plan for the Council in respect of such number of years as the Council shall determine.

(2) The Council shall submit copies of the reports and the plan published under paragraph (1) to the Privy Council and the Privy Council shall lay copies of the reports and the plan before each House of Parliament.”

(5) S.I. 2007/1351 (N. I. 11).

(6) 2007 asp 14.

(7) Amended by S.I. 2007/3101.

(8) 2006 c.3.

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### **Amendment of article 52**

9. In article 52 (accounts of the Council), for paragraph (3) substitute the following paragraph—
- “(3) The Council shall ensure that the persons it appoints are eligible for appointment as statutory auditors under Part 42 of the Companies Act 2006<sup>(9)</sup> (statutory auditors).”

### **Amendment of Schedule 1**

10.—(1) Schedule 1 (the Nursing and Midwifery Council and committees) is amended in accordance with the provisions of this paragraph.

- (2) In Part 1<sup>(10)</sup>, for paragraphs 1 to 11 substitute the following paragraphs—

#### **“Membership: general**

1A.—(1) The Council shall consist of—

- (a) registrant members, that is members who are registrants; and
- (b) lay members, that is members who—
  - (i) are not and never have been registered nurses or registered midwives (and article 5(5) does not apply for these purposes), and
  - (ii) do not hold qualifications which would entitle them to apply for registration under this Order.

(2) The members of the Council shall be appointed by the Privy Council.

(3) The Privy Council shall ensure that, at any time, at least one member of the Council lives or works wholly or mainly in each of England, Scotland, Wales and Northern Ireland.

(4) Before the Privy Council directs the Appointments Commission under section 60 of the Health Act 2006 to exercise any function of the Privy Council relating to the appointment of members of the Council, the Privy Council shall consult the Council.

(5) The Privy Council may, by a direction under section 60 of the Health Act 2006<sup>(11)</sup> (Commission to exercise Privy Council’s appointment functions), require the Appointments Commission to appoint the person who held office as President of the Council on the day before the first order under article 3(7A) comes into force as a member of the Council as constituted on the day the first order under article 3(7A) comes into force.

#### **Matters for the order of the Privy Council under article 3(7A)**

1B.—(1) An order under article 3(7A) shall include provision with regard to—

- (a) the numbers of registrant members and lay members of the Council;
- (b) the terms of office for which members of the Council are appointed, and the order may provide that these are to be determined by the Privy Council, on appointment;
- (c) the grounds on which persons are to be disqualified from appointment as registrant or lay members of the Council;
- (d) the appointment of a chair of the Council and the chair’s term of office;
- (e) deputising arrangements in respect of the chair;
- (f) the quorum of the Council; and

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<sup>(9)</sup> 2006 c.46.

<sup>(10)</sup> Part 1 has previously been amended by: the Health and Social Care (Community Health and Standards) Act 2003, Schedule 12, paragraph 7; the Health Act 2006, Schedule 8, paragraph 47, and Schedule 9; and [S.I. 2006/1914](#).

<sup>(11)</sup> 2006 c.28.

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- (g) the circumstances in which members cease to hold office or may be removed or suspended from office.
- (2) But an order under article 3(7A) must not include any provision which would have the effect that a majority of the members of the Council would be lay members.
- (3) An order under article 3(7A) may include provision with regard to—
- (a) the maximum period for which a member of the Council may hold office as a member during a specified period;
  - (b) the maximum period for which a member of the Council may serve as chair of the Council during a specified period;
  - (c) the education and training of members of the Council, and the order may provide for the Council to include the requirements with regard to education and training of its members in standing orders, and for those standing orders to provide for—
    - (i) that education and training to be the responsibility of another body, and
    - (ii) those requirements to be set and varied by that body from time to time;
  - (d) the attendance of members of the Council at meetings of the Council;
  - (e) the effect (if any) of any vacancy in the membership of the Council or any defect in the appointment of a member; and
  - (f) enabling the Privy Council to appoint as the chair of the Council, for a specified period, the person who held office as President of the Council on the day before the first order under article 3(7A) comes into force.
- (4) An order under article 3(7A) may make different provision for different cases or different classes of case and may contain such incidental, consequential, transitional, transitory, saving or supplementary provisions as appear to the Privy Council to be necessary or expedient.”
- (3) For paragraph 12, substitute the following paragraph—
- “**12.**—(1) Subject to any provision made by this Order or under this Order (otherwise than by standing orders), the Council may by standing orders make provision in respect of—
- (a) its procedure;
  - (b) the performance of its functions;
  - (c) the constitution of its committees and sub-committees, other than the Practice Committees and the Midwifery Committee;
  - (d) the procedure of any of its committees or sub-committees;
  - (e) the performance by any of its committees or sub-committees of their functions; and
  - (f) the standards of education, training, attendance and performance expected of the members of its committees and sub-committees.
- (2) Standing orders of the Council may make provision with regard to the provisional suspension of a member from office, pending the taking of a decision about the suspension or removal from office of the member in accordance with the provisions of an order under article 3(7A).”
- (4) In paragraph 14 (which relates to voting)—
- (a) in sub-paragraph (2), for “Chairman” substitute “chair”;
  - (b) omit sub-paragraph (3); and
  - (c) in sub-paragraph (4), for “statutory committees” substitute “Practice Committees”.

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- (5) In paragraph 15 (powers of the Council)—
- (a) omit sub-paragraph (2)(g); and
  - (b) omit sub-paragraphs (6) and (7).
- (6) In paragraph 16 (Midwifery Committee), for sub-paragraphs (1) and (2) substitute the following sub-paragraphs—
- “(1) The Council shall by rules make provision with regard to the constitution of the Midwifery Committee, and those rules shall include provision with regard to—
- (a) its size and membership;
  - (b) the appointment, suspension and removal of its members;
  - (c) its chair, including the deputising arrangements for its chair; and
  - (d) the quorum at its meetings.
- (2) The rules may make provision for a body (including a committee of the Council other than the Midwifery Committee) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of the Midwifery Committee, including any function relating to tenure of office or suspension or removal from office.
- (2A) The Council shall have regard, when selecting non-Council members for the Midwifery Committee, to the guidance issued by the Commissioner for Public Appointments.
- (2B) Subject to any provision made by this Order or under this Order, including provision made by standing orders of the Council under paragraph 12(1)(d), the Midwifery Committee may regulate its own procedure.”
- (7) For paragraph 17 (which relates to the constitution of Practice Committees), substitute the following paragraph—
- “**17.**—(1) The Council shall by rules make provision with regard to the constitution of each Practice Committee, and those rules shall include provision with regard to—
- (a) its size and membership;
  - (b) the appointment, suspension and removal of its members;
  - (c) its chair, including the deputising arrangements for its chair; and
  - (d) the quorum at its meetings.
- (2) The rules may make provision for a body (including a committee of the Council which is not one of the Practice Committees) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of a Practice Committee, including any function relating to tenure of office or suspension or removal from office.
- (3) Subject to any provision made by this Order or under this Order, including provision made by standing orders of the Council under paragraph 12(1)(d), each Practice Committee may regulate its own procedure.”
- (8) In paragraph 18 (which relates to supplemental matters relating to Practice Committees)—
- (a) omit sub-paragraphs (1) to (3) and (6); and
  - (b) in sub-paragraph (8), for “Chairman” substitute “chair”.

#### **Amendment of Schedule 4**

**11.** In Schedule 4(**12**) (interpretation)—

- (a) omit the definitions of “alternate member”, “corresponding practitioner member”, “corresponding registrant member”, “national constituency” and “registrant member”; and
- (b) for the definition of “lay member” substitute the following definition—
  - ““lay member” shall be construed in accordance with paragraph 1A(1)(b) of Schedule 1;”.

#### **Temporary measures pending the introduction of the new constitution of the Council**

**12.—**(1) In Schedule 1(**13**) (the Nursing and Midwifery Council and committees)—

- (a) in paragraph 1 (which relates to membership of the Council)—
  - (i) in sub-paragraph (1)(c), before “12 members” insert “subject to sub-paragraph (2A),”;
  - (ii) in sub-paragraph (2), before “The Council” insert “Subject to sub-paragraph (2A),” and
  - (iii) after sub-paragraph (2) insert the following sub-paragraph—
    - “(2A) The Council need not appoint an alternate member for a particular registrant member, where to do so would require it to hold a by-election, and in these circumstances there shall be no alternate member for that registrant member (and the number of alternate members of the Council shall be reduced accordingly) unless or until an election (including a by-election) needs to be held to replace that registrant member.”;
- (b) in paragraph 2(2)—
  - (i) in paragraph (b), before “at least one” insert “subject to paragraph 1(2A),” and
  - (ii) in paragraph (f), for “paragraph 7(3)” substitute “paragraphs 1(2A) and 7(3)”;
- (c) in paragraph 8(**14**) (tenure of members)—
  - (i) in sub-paragraph (1), for “Subject to paragraph 6 of Schedule 2,” substitute “Subject to sub-paragraphs (1A) and (1B),” and
  - (ii) after sub-paragraph (1) insert the following sub-paragraphs—
    - “(1A) The term of office of any registrant or alternate member who holds office on 31st July 2008 shall expire at the end of 31st July 2010 or on the coming into force of the first order of the Privy Council under article 3(7A), whichever is the sooner.
    - (1B) The full term of office of any registrant or alternate member who ceases to be a member before 31st July 2008 and whose vacancy remains unfilled at the end of 31st July 2008 shall, for the purposes of paragraph 7(2), be treated as if it would have expired at the end of 31st July 2010 or on the coming into force of the first order of the Privy Council under article 3(7A), whichever is the sooner.”

(2) In Schedule 2 (transitional provisions), omit paragraph 6(**15**) (which relates to the tenure of office of members following the end of the second transitional period).

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(12) Schedule 4 has been amended by [S.I. 2002/2469](#), [2003/3148](#), [2004/1947](#) and [2007/3101](#).

(13) These measures which, by virtue of article 1(2)(b), will come into force on the day after the day on which this Order is made will take effect until the repeal of the provisions that they amend.

(14) Paragraph 8 has been amended by [S.I. 2006/1914](#).

(15) Paragraph 6 has been amended by [S.I. 2006/1914](#).

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