

SCHEDULE 5

Regulation 30

Transition from licensing under the 1957 Act to registration under the 2000 Act

1.—(1) This sub-paragraph applies to a nurses agency provider (referred to as “the provider” (“y darparydd”) in the following provisions of this Schedule) when in accordance with sub-paragraph (6) he or she is treated as having applied for and been granted registration under Part II of the 2000 Act in respect of the agency that he or she was licensed to carry on under the 1957 Act.

(2) The 1957 Act shall continue in force for the purpose of giving effect to the following provisions of this paragraph.

(3) Until such time as sub-paragraph (1) applies in relation to a nurses agency provider the provisions of the 1957 Act shall continue in force in relation to, and in respect of, the provider as if any reference in the 1957 Act to the licensing authority is a reference to the National Assembly.

(4) The National Assembly, having regard to any representations made by the provider under sub-paragraph (9), shall determine at such time as it thinks fit, the matters described in sub-paragraph (5), and serve notice of its determination upon the provider.

(5) The matters are —

(a) the conditions (if any) to which the registration of the provider under the 1957 Act was subject;

(b) any other matter in so far as the determination of that matter is necessary to enable the provider, in accordance with sub-paragraph (6), to be treated for the purposes of Part II of the 2000 Act as having applied for and been granted registration in respect of the agency;

and any determination of the National Assembly under sub-paragraph (4) shall for the purposes of section 21 of the 2000 Act (appeals to the Tribunal) be treated as if it were a decision of the Assembly under Part II of that Act.

(6) When the National Assembly has made a determination in accordance with sub-paragraph (4), then with effect from a date specified by the National Assembly ('the effective date') —

(a) the provider shall, for the purposes of Part II of the 2000 Act, be treated as having applied for and been granted registration in respect of the existing undertaking;

(b) the conditions (if any) determined in accordance with sub-paragraph (5)(a) shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the 2000 Act is subject, have effect —

(i) as if they were conditions to which the registration for those purposes is subject; and

(ii) as if, for the purposes of section 19(1) of the 2000 Act, they had been agreed in writing between the provider and the National Assembly.

(7) On, or before, the effective date in respect of a determination under this paragraph the National Assembly shall issue a certificate to the provider —

(a) the contents of which shall be in accordance with any regulations made under section 16(1) (b) of the 2000 Act about the contents of certificates issued under Part II of that Act; and

(b) which shall be treated as if it were a certificate in respect of the existing undertaking issued by the National Assembly under Part II of the 2000 Act.

(8) The provisions of sub-paragraphs (5) and (6) shall be without prejudice to the powers of the National Assembly to vary, remove or impose any condition in accordance with Part II of the 2000 Act.

(9) Before making a determination as to the matters described in sub-paragraph (5) in relation to an existing undertaking the National Assembly shall give notice in writing to the provider informing the provider that he or she may, within twenty eight days of the receipt of that notice, make written

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representations about the determination, and that no determination will be made before the expiry of those twenty eight days.

Transfer of outstanding applications for licensing under the 1957 Act

2.—(1) Sub-paragraph (3) applies to an application for a licence under the 1957 Act to carry on an agency for the supply of nurses —

- (a) which has been made to an authority before 2nd October 2003 and which has not been granted at that date; and
- (b) to which sub-paragraph (2) does not apply.

(2) This sub-paragraph applies to an application in respect of which the authority has given the person who made the application —

- (a) notice under section 2(4) of the 1957 Act of the refusal of a licence, or the grant of a licence subject to conditions and either —
 - (i) the period for appealing in respect of that notice has not expired; or
 - (ii) the person who made the application has appealed but the appeal has not been determined or abandoned; or
- (b) the opportunity of being heard under section 2(5) of that Act in respect of any proposal to refuse to grant a licence, unless —
 - (i) the person has not, within the time allowed by the authority in the notice giving opportunity to be heard, taken the opportunity so offered or indicated that he or she wishes to do so; or
 - (ii) the authority has given notice of the refusal of a licence.

(3) Where this sub-paragraph applies in relation to an application that application shall be treated as an application for registration under Part II of the 2000 Act.

(4) Where sub-paragraph (2) applies —

- (a) the 1957 Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to the following matters —
 - (i) the decision to grant or refuse a licence under section 2 of that Act;
 - (ii) an appeal against such a decision;
- (b) the functions, powers and duties that immediately before 2nd October 2003 the authority had under that Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph shall apply to, and be exercisable by, the National Assembly instead of the authority;
- (c) the decision to adopt a proposal to grant an application with effect from the date on which it takes effect, shall be treated for the purposes of Part II of the Act —
 - (i) as if it were a decision to adopt a proposal to grant an application for registration in respect of a nurses agency;
 - (ii) as if it had taken effect in accordance with section 19(5) of the Act.

Pending decision as to cancellation

3. Where the authority have revoked the licence of the existing provider in respect of the existing undertaking, and either —

- (a) the period for appealing against the revocation has not expired; or

- (b) the existing provider has appealed under section 2(4) of the 1957 Act and the appeal has not been determined or abandoned,

the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking.

Pending proposal as to cancellation

- 4.—(1) This sub-paragraph applies where, immediately before the effective date —
- (a) the authority or the National Assembly are considering whether to revoke the licence of the existing provider in respect of the existing undertaking;
 - (b) in pursuance of section 2(5) of the 1957 Act the existing provider has been given an opportunity of being heard; and
 - (c) the authority or the National Assembly have not determined the matter.
- (2) Where sub-paragraph (1) applies —
- (a) subject to paragraph (b) of this sub-paragraph, the notice informing the existing provider that he or she is to be given the opportunity of being heard shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from the effective date as if it were a notice of proposal given under section 17(4) of the Act to cancel the registration (otherwise than in accordance with an application under section 15(1)(b)), in respect of the existing undertaking;
 - (b) section 18(2) of the Act shall have effect as if —
 - (i) in paragraph (a) the word “written” were omitted;
 - (ii) for paragraph (c) the following paragraph were substituted —
 - “(c) the person who is registered in respect of the agency has been given an opportunity to make oral or written representations to the National Assembly concerning the matter within a reasonable period and has failed to make them within that period.”

Transfer of Information and documents

5. An authority shall pass to the National Assembly —
- (a) forthwith at the coming into force of these Regulations all information and documents which are in their possession relating to the licensing of any nurses agency in relation to which immediately before the coming into force of these regulations it is exercising the functions of the licensing authority under the 1957 Act;
 - (b) as soon as practicable, all such information or documents which come into their possession after the coming into force of these Regulations.