



# Health and Personal Social Services Act (Northern Ireland) 2002

## 2002 CHAPTER 9

An Act to amend the Health and Personal Social Services (Northern Ireland) Order 1972 in relation to charges for nursing care in residential accommodation; to provide for the establishment and functions of the Northern Ireland Practice and Education Council for Nursing and Midwifery; and for connected purposes. [4th October 2002]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Charges for nursing care**

1.—(1) In Article 36 of the 1972 Order for paragraph (4) there shall be substituted—

“(4) Subject to the following provisions of this Article, a person for whom accommodation is provided under any such arrangements shall refund to the Department—

- (a) where the payments made in respect of him under paragraph (3) include any amount in respect of nursing care by a registered nurse, the amount of such payments less any amount paid in respect of such nursing care;
- (b) in any other case, the amount of the payments made in respect of him under paragraph (3).

(4A) In paragraph (4) “nursing care by a registered nurse” means any services provided by a nurse registered under Article 5 of the Nursing and Midwifery Order 2001 (SI 2002 / 253) and involving—

(a) the provision of care, or

(b) the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse so registered.”.

(2) In Article 36(5) of the 1972 Order for “paragraph (3)” there shall be substituted “paragraph (4)(a) or (b)”.

(3) In Article 99(2) of the 1972 Order at the end there shall be added “, other than any costs in respect of nursing care by a registered nurse (within the meaning given by Article 36(4A)) at that accommodation”.

### **The Northern Ireland Practice and Education Council for Nursing and Midwifery**

2.—(1) There shall be a body corporate to be known as the Northern Ireland Practice and Education Council for Nursing and Midwifery (referred to in this Act as “the Council”).

(2) It shall be the duty of the Council to promote—

(a) high standards of practice among nurses and midwives;

(b) high standards in the education and training of nurses and midwives; and

(c) the professional development of nurses and midwives.

(3) Without prejudice to the generality of subsection (2) the Council may—

(a) provide guidance on best practice for nurses and midwives; and

(b) provide advice and information on matters relating to nursing and midwifery.

(4) The Council shall, in the exercise of its functions, act—

(a) in accordance with any directions given to it by the Department; and

(b) under the general guidance of the Department.

(5) The Schedule shall have effect with respect to the Council.

### **Interpretation**

3.—(1) In this Act—

“the Department” means the Department of Health, Social Services and Public Safety;

“the 1972 Order” means the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#).

(2) Except where any provision of this Act otherwise provides, any word or expression to which a meaning is assigned by Article 2(2) of the 1972 Order has the same meaning in this Act as in that Order.

### **Commencement**

4.—(1) Sections 1 and 2 (with the Schedule) come into operation on such day or days as the Department may by order appoint.

(2) An order under this section may contain such transitional provisions as the Department considers necessary or appropriate.

### **Short title**

5. This Act may be cited as the Health and Personal Social Services Act (Northern Ireland) 2002.

## SCHEDULE

Section 2.

THE NORTHERN IRELAND PRACTICE AND EDUCATION  
COUNCIL FOR NURSING AND MIDWIFERY*Status*

1. The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Council's property shall not be regarded as property of, or property held on behalf of, the Crown.

*General powers*

2.—(1) Subject to any directions given by the Department, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

(2) That includes, in particular—

- (a) co-operating with other public authorities in the United Kingdom;
- (b) acquiring and disposing of land and other property; and
- (c) entering into contracts.

*General duty*

3. It is the duty of the Council to carry out its functions effectively, efficiently and economically.

*Membership*

4.—(1) The Council shall consist of—

- (a) a chairman appointed by the Department in accordance with regulations under paragraph 5;
- (b) the person for the time being appointed under paragraph 7 to be the chief executive of the Council; and
- (c) other members appointed by the Department in accordance with regulations under paragraph 5.

(2) In the following provisions of this Schedule the members appointed under sub-paragraph (1)(a) and (c) are referred to as non-executive members of the council.

*Appointment, procedure etc.*

5. The Department may by regulations make provision as to—

- (a) the appointment of the non-executive members of the Council (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment);
- (b) the tenure of office of the non-executive members of the Council (including the circumstances in which they cease to hold office or may be removed or suspended from office);
- (c) the appointment of, constitution of and exercise of functions by committees and sub-committees of the Council (including committees and sub-committees which consist of or include persons who are not members of the Council); and
- (d) the procedure of the Council and any committees or sub-committees of the Council (including the validation of proceedings in the event of vacancies or defects in appointment).

#### *Remuneration and allowances*

6.—(1) The Council may pay to the non-executive members of the Council and to any member of a committee or sub-committee who is not a member of the Council such allowances as the Department may determine.

(2) The Council may pay to its chairman such remuneration as the Department may determine.

(3) If the Department determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Council to receive compensation, the Council shall pay to him such compensation as the Department may determine.

(4) Any determination of the Department under this paragraph shall be subject to the approval of the Department of Finance and Personnel.

#### *Chief executive*

7.—(1) There shall be a chief executive of the Council who shall be responsible to the Council for the general exercise of its functions.

(2) The first chief executive shall be appointed by the Department on such terms and conditions as the Department may determine.

(3) Subject to paragraph 8(3), any chief executive subsequent to the first shall be appointed by the Council on such terms and conditions as the Council may determine.

(4) An appointment under sub-paragraph (3) requires the approval of the Department.

*Staff*

- 8.**—(1) The Council may appoint such other staff as it considers appropriate.
- (2) Subject to sub-paragraph (3), appointments under this paragraph shall be on such terms and conditions as the Council may determine.
- (3) The Department may give directions as to—
- (a) the appointment of staff under this paragraph and paragraph 7(3) (including any conditions to be fulfilled for appointment); and
  - (b) the terms and conditions of appointment of staff under the provisions mentioned in sub-paragraph (a).
- (4) Different directions may be given under sub-paragraph (3) in relation to different categories of staff.

*Delegation of functions*

- 9.** The Council may arrange for the discharge of any of its functions by a committee, sub-committee, member or member of staff of the Council or any other person.

*Arrangements for the use of staff*

- 10.** The Department may by regulations provide for arrangements under which—
- (a) members of staff of the Council are placed at the disposal of a prescribed person for the purpose of discharging, or assisting in the discharge of, prescribed functions of that person; or
  - (b) members of staff of a prescribed person are placed at the disposal of the Council for the purpose of discharging, or assisting in the discharge of, any functions of the Council.

*Payments to Council*

- 11.** The Department may make payments to the Council of such amounts, at such times and on such conditions (if any) as it considers appropriate.

*Accounts*

- 12.**—(1) The Council shall keep accounts in such form as the Department may determine.
- (2) The Council shall prepare annual accounts in respect of each financial year in such form as the Department may determine.

(3) The Council shall send copies of the annual accounts to the Department and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Department may determine.

(4) The Comptroller and Auditor General shall examine, certify and report on the annual accounts and lay copies of the accounts and of his report before the Assembly.

(5) In this paragraph and paragraph 13 “financial year” means—

- (a) the period beginning with the date on which the Council is established and ending with the next 31st March following that date; and
- (b) each successive period of twelve months ending with 31st March.

#### *Reports and other information*

**13.—**(1) As soon as possible after the end of each financial year, the Council shall make a report to the Department on the exercise of its functions during the year.

(2) The Council shall provide the Department with such reports and information relating to the exercise of its functions as the Department may from time to time require.

(3) A report made under sub-paragraph (1) shall be published in a manner which the Council considers appropriate.

#### *Application of seal and evidence*

**14.** The application of the seal of the Council shall be authenticated by the signature—

- (a) of any member of the Council; or
- (b) of any other person who has been authorised by the Council (whether generally or specifically) for that purpose.

**15.** A document purporting to be duly executed under the seal of the Council or to be signed on its behalf shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

#### *General*

**16.** In the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part II of Schedule 1 (bodies of which all members are disqualified), the following entry shall be inserted at the appropriate place—

“The Northern Ireland Practice and Education Council for Nursing and Midwifery.”

17. In the [Commissioner for Complaints \(Northern Ireland\) Order 1996 \(NI 7\)](#), in Schedule 2 (bodies subject to investigation), the following entry shall be inserted at the appropriate place—

“The Northern Ireland Practice and Education Council for Nursing and Midwifery.”.

18. In the [Superannuation \(Northern Ireland\) Order 1972 \(NI 10\)](#) in Schedule 1 (employments to which Article 3 of that Order applies) at the end there shall be added—

“Employment by the Northern Ireland Practice and Education Council for Nursing and Midwifery.”.

19. In the [Health and Medicines \(Northern Ireland\) Order 1988 \(NI 24\)](#) in Article 3(3) (extension of powers for financing health services) at the end of subparagraph (a) there shall be added “or the Northern Ireland Practice and Education Council for Nursing and Midwifery.”.

*Vesting of certain property, rights and liabilities*

20.—(1) All property, rights and liabilities to which this paragraph applies shall on the appointed day be transferred to, and by virtue of this paragraph vest in, the Council.

(2) This paragraph applies to property, rights and liabilities which—

(a) at any time before the appointed day were transferred by an order under Schedule 2 to the Nursing and Midwifery Order 2001 from the National Board to the Department or a person or body established or authorised by the Department; and

(b) subsist immediately before the appointed day.

(3) In this paragraph and paragraph 21—

“the appointed day” means the day appointed under section 4 for the coming into operation of this paragraph;

“the National Board” means the National Board for Nursing, Midwifery and Health Visiting for Northern Ireland.

(4) This paragraph does not apply to rights and liabilities under or in connection with a contract of employment (which are dealt with by paragraph 21).

21.—(1) This paragraph applies to a person who—

(a) at any time before the appointed day was transferred by an order under Schedule 2 to the Nursing and Midwifery Order 2001 from the employment of the National Board to the employment of the Department or a person or body established or authorised by the Department (“the interim employer”); and

- (b) is in the employment of the interim employer immediately before the appointed day.
- (2) The contract of employment between a person to whom this paragraph applies and the interim employer shall have effect from the appointed day as if originally entered into between that person and the Council.
- (3) Without prejudice to sub-paragraph (2)—
- (a) all the rights, powers, duties and liabilities of the interim employer under or in connection with the contract of employment are by virtue of this paragraph transferred to the Council on the appointed day; and
  - (b) anything done before that day by or in relation to the interim employer in respect of that contract or the employee is to be treated from that day as having been done by or in relation to the Council.
- (4) If a person informs the interim employer that he objects to the transfer of his contract of employment under this paragraph—
- (a) sub-paragraphs (2) and (3) do not apply in relation to him; and
  - (b) his contract of employment with the interim employer is terminated immediately before the appointed day.
- (5) A person is not to be treated for the purposes of the [Employment Rights \(Northern Ireland\) Order 1996 \(NI 16\)](#) as having been dismissed by reason of—
- (a) his transfer under this paragraph; or
  - (b) the termination of his contract of employment under sub-paragraph (4).
- (6) This paragraph does not prejudice any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only that, by virtue of this paragraph, the identity of his employer changes unless the employee shows that in all the circumstances the change is a significant change and is to his detriment.

### *Regulations*

#### **22. Regulations under this Schedule—**

- (a) shall be subject to negative resolution;
- (b) may contain—
  - (i) any supplementary, incidental or consequential provision;
  - (ii) any transitory, transitional or saving provision; or
  - (iii) any provision for a person to exercise a discretion in dealing with any matter,

which the Department considers necessary or expedient.