

## SCHEDULES

### SCHEDULE 4

Nurses, midwives and nursing associates

### PART 2

Savings and transitional provision

#### **Pending applications**

**27.**—(1) Where a relevant application is received before exit day, any provision made by or under the 2001 Order (except for provision contained in Schedule 2B to the Order) continues to apply in relation to the application (including any appeal arising from it) without the amendments made by Part 1 of this Schedule.

(2) In sub-paragraph (1) “relevant application” means an application for—

- (a) admission to a part of the register of qualified nurses, midwives and nursing associates,
- (b) renewal of registration in that register,
- (c) readmission to that register following lapse of registration, or
- (d) restoration to that register following striking-off.

#### **Visiting nurses, midwives and nursing associates: saving of old law for up to one year**

**28.**—(1) Where, immediately before exit day—

- (a) a visiting nurse or midwife was entitled under paragraph 4 or 7 of Schedule 2A to the 2001 Order to provide occasional services, or
- (b) the Registrar was in receipt of the required documents (within the meaning of paragraph 5 of that Schedule) from a nurse or midwife seeking to acquire that entitlement,

any provision made by or under the Order continues to apply in relation to the nurse or midwife without the amendments that the Part 1 of this Schedule makes to the provisions relating to visiting midwives and certain visiting nurses from relevant European states.

(2) But a visiting nurse or midwife’s entitlement does not continue (or further continue) under paragraph 7 of Schedule 2A to the 2001 Order on or after exit day (and, accordingly, the entitlement lapses at the end of the period mentioned in paragraph 8(1) or (2) of that Schedule).

(3) The reference in sub-paragraph (1) to “the provisions relating to visiting midwives and certain visiting nurses from relevant European states” is to the provisions listed in the following table.

| <i>Act or instrument</i> | <i>Provision relating to visiting practitioners</i> |
|--------------------------|---|
| The 2001 Order           | article 6(3)(aa)                                    |
|                          | article 7(4)  |
|                          | article 9(1) and (7)                                |

| <i>Act or instrument</i>  | <i>Provision relating to visiting practitioners</i>  |
|---|--|
|   | article 10(1) and (6)  |
|   | article 12A(11)  |
|   | article 19(2A) to (2D)   |
|   | article 37(1)(aa)  |
|   | article 39   |
|   | Schedule 2A  |
|   | in Schedule 4, the definitions of “competent authority”, “the Directive”, “exempt person”, “General Systems Regulations”, “national”, “relevant European State” and “visiting nurse or midwife from a relevant European State” |
| Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004            | article 8  |
| Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 | rule 2A  |
|   | rule 20(a) (so far as it relates to article 37(1)(aa) of the 2001 Order)   |
|   | rule 21(2)(a)(iii) (so far as it relates to article 37(1)(aa) of the 2001 Order)   |

**29.—(1) Where—**

- (a) a person had, immediately before exit day, the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015 in respect of the provision by that person of services as a nurse or nursing associate (and article 39A(3) or 39C(3) of the 2001 Order accordingly applied to the person), and
- (b) the person continues to have that benefit on or after exit day,

any provision made by or under the 2001 Order continues to apply in relation to the provision of those services by that person without the amendments that Part 1 of this Schedule makes to the provisions relating to visiting general systems nurses and nursing associates from relevant European states.

**(2) Sub-paragraph (1) ceases to apply in relation to a visiting nurse or nursing associate—**

- (a) in respect of a part of the register in which the person is registered as required by article 39A(3) or 39C(3) of the 2001 Order, when the person’s name is removed under article 39A(6) or 39C(6) of the Order;
- (b) in respect of any other part of the register, when the person’s entitlement ceases by reason of the operation of article 39A(5) or 39C(5) of the 2001 Order.

**(3) The reference in sub-paragraph (1) to “the provisions relating to visiting general systems nurses and nursing associates from relevant European states” is to the provisions listed in the table in paragraph 28(3), but as if—**

- (a) the references to article 39 of, and Schedule 2A to, the 2001 Order were omitted, and
- (b) there were inserted at the appropriate place a reference to articles 39A and 39C of the 2001 Order.

## European Professional Card

**30.**—(1) Sub-paragraph (2) applies where, immediately before exit day—

- (a) a person held a valid European professional card for establishment as a nurse in the United Kingdom, or
- (b) the Nursing and Midwifery Council was in receipt of a person’s application for such a card, the application having been transmitted to it under Article 4d(1) of the Directive.

(2) For the purposes of registration in the register of qualified nurses, midwives and nursing associates, the person is not required to resubmit any document or evidence held by the Council which is derived from the person’s IMI file and which does not appear to the Council to have become invalid.

(3) In this paragraph—

- (a) “the Directive” means [Directive 2005/36/EC](#) of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications (OJ No L255, 30.09.2005, p 22), as it had effect immediately before exit day;
- (b) “IMI file” has the meaning given by Schedule 4 to the 2001 Order as it had effect immediately before exit day.

**31.**—(1) Where, immediately before exit day, a person was entitled as mentioned in paragraph 15(2) of Schedule 2B to the 2001 Order, any provision made by or under that Order continues to apply in relation to the person without the amendments made by Part 1 of this Schedule to the provisions relating to the provision of occasional nursing services by holders of a European professional card.

(2) For the purposes of paragraph 15(4)(a) of Schedule 2B to the 2001 Order as it continues to apply by virtue of sub-paragraph (1)—

- (a) a European professional card that was transmitted as mentioned in paragraph 15(1)(a) of that Schedule is to be treated as becoming invalid on the expiry of the period of 18 months beginning with the day on which it was transmitted;
- (b) a European professional card that was issued as mentioned in paragraph 15(1)(b) of that Schedule is to be treated as becoming invalid on the expiry of the period of 12 months beginning with the day on which it was issued.

(3) The reference in sub-paragraph (1) to “the provisions relating to the provision of occasional nursing services by holders of a European professional card” is to the provisions listed in the following table.

| <i>Act or instrument</i> | <i>Provision relating to visiting practitioners</i>   |
|--------------------------|---|
| The 2001 Order           | article 6(3)(aa)  |
|                          | article 7(4)  |
|                          | article 10(1) and (6)   |
|                          | article 19(2A) to (2D)  |
|                          | article 39  |
|                          | article 39B   |
|                          | in Schedule 2B, paragraphs 2 (except the definitions of “automatically recognised nurse”, “EPC holder” and “missing document”), 15 and 16 |
|                          | in Schedule 4, the definitions of “competent authority”, “the Directive”, “European professional  |

| <i>Act or instrument</i>   | <i>Provision relating to visiting practitioners</i>                        |
|--|--|
|  | card”, “General Systems Regulations”, “IMI”, and “relevant European State” |
| Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 | article 8  |

**32.**—(1) A decision within article 37(1)(g) of the 2001 Order taken before exit day, or a failure within article 37(1)(h) of that Order arising before exit day, continues to be appealable for the purposes of article 37 of that Order (subject to the provisions of the Order) despite the revocation of article 37(1)(h) and (g).

(2) In disposing of such an appeal (or a further appeal under article 38 of the 2001 Order), the powers of the Council (or the court or sheriff) are, instead of those set out in article 37(9) (or 38(3)) of the 2001 Order, to—

- (a) dismiss the appeal, or
- (b) allow the appeal and—
  - (i) direct that such steps be taken as the Council (or the court or sheriff) thinks fit to draw the findings of the Council (or the court or sheriff) to the attention of the European Commission;
  - (ii) direct that the person in respect of whom the decision was taken (or the failure arose) is to be treated, for the purposes of paragraph 29(1)(a), as a person who held a valid European professional card for establishment as a nurse in the United Kingdom immediately before exit day,

and, in the case of an appeal under article 38, to make such order as to costs (or, in Scotland, expenses) as the court or sheriff thinks fit.

### IMI alerts

**33.**—(1) Where an alert has been sent by the Nursing and Midwifery Council before exit day under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015, the decision to send the alert continues to be appealable for the purposes of article 37 of the 2001 Order despite the revocation of article 37(1)(f).

(2) In disposing of such an appeal (or a further appeal under article 38 of the 2001 Order), the powers of the Council (or the court or sheriff) are, instead of those set out in article 37(9) (or 38(3)) of the 2001 Order, to—

- (a) dismiss the appeal, or
- (b) allow the appeal and direct that such steps be taken as the Council (or the court or sheriff) thinks fit to draw the findings of the Council (or the court or sheriff) to the attention of the European Commission,

and, in the case of an appeal under article 38, to make such order as to costs (or, in Scotland, expenses) as the court or sheriff thinks fit.

### Interpretation of saved provisions

**34.** Where a provision continues to apply by virtue of this Part, it is to be read as if—

- (a) in Schedule 4 to the 2001 Order—
  - (i) there were substituted for the definition of “the Directive”—
 

““the Directive” means [Directive 2005/36/EC](#) of the European Parliament and of the Council of 7th September 2005 on the recognition of professional

- qualifications (OJ No L255, 30.09.2005, p 22), and any reference in this Order to the Directive or to any provision of the Directive is a reference to the Directive, or to that provision, as it had effect immediately before exit day;”;
- (ii) there were inserted at the appropriate place—
- ““enforceable EU right” means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972;”;
- (iii) in the definition of “exempt person”, for paragraphs (a) to (c) there were substituted—
- “(a) a person who, immediately before exit day, was a national of a relevant European State,
- (b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking access to, or pursuing, the medical profession by virtue of an enforceable EU right, or
- (c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;”;
- (iv) in the definition of “General Systems Regulations”, at the end there were inserted—
- “—
- (a) in relation to anything done before exit day, as they had effect at that time;
- (b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of something done before exit day;”;
- (v) in the definition of “national”, for “is not” there were substituted “was not, immediately before exit day”;
- (b) in any reference to a relevant European State other than the United Kingdom, the words “other than the United Kingdom” were omitted.