
STATUTORY INSTRUMENTS

2002 No. 253

NURSES AND MIDWIVES

The Nursing and Midwifery Order 2001

Made - - - - *12th February 2002*

Coming into force

articles 1 and 54(4) *12th February 2002*
remainder in accordance
with article 1(2)

At the Court at Buckingham Palace, the 12th day of February 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by a resolution of each House of Parliament in accordance with section 62(9) of the Health Act 1999⁽¹⁾;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 60 and 62(4)(2) of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I
GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Nursing and Midwifery Order 2001.

(2) This article and article 54(4) come into force on the day on which this Order is made and the other provisions of this Order shall come into force on such day as the Secretary of State may specify.

(1) 1999 c. 8. An earlier draft of this Order was published for consultation in accordance with paragraph 9(1) of Schedule 3 to the Health Act.

(2) Section 62(4) applies section 126 of the National Health Service Act 1977, relevant amendments to which are made by the Health Act 1999.

(3) Different days may be specified under paragraph (2) for different purposes and any day so specified shall be caused to be notified in the London, Edinburgh and Belfast Gazettes published not later than one week before that date.

Interpretation

2. This Order is to be interpreted in accordance with Schedule 4.

PART II

THE COUNCIL AND ITS COMMITTEES

The Nursing and Midwifery Council and its Committees

3.—(1) There shall be a body corporate known as the Nursing and Midwifery Council (referred to in this Order as “the Council”).

(2) The principal functions of the Council shall be to establish from time to time standards of education, training, conduct and performance for nurses and midwives and to ensure the maintenance of those standards.

(3) The Council shall have such other functions as are conferred on it by this Order or as may be provided by the Privy Council by order.

(4) The main objective of the Council in exercising its functions shall be to safeguard the health and well-being of persons using or needing the services of registrants.

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

- (a) have proper regard to the interests of all registrants and prospective registrants and persons referred to in paragraph (4) in each of the countries of the United Kingdom and to any differing considerations applying to the professions to which this Order applies and to groups within them; and
- (b) cooperate wherever reasonably practicable with—
 - (i) employers and prospective employers of registrants,
 - (ii) persons who provide, assess or fund education or training for registrants or prospective registrants, or who propose to do so,
 - (iii) persons who are responsible for regulating or coordinating the regulation of other health or social care professions, or of those who carry out activities in connection with the services provided by those professions or the professions regulated under this Order,
 - (iv) persons responsible for regulating services in the provision of which registrants are engaged.

(6) Before making any order under paragraph (3), the Privy Council shall consult the Council.

(7) The Council shall consult the Privy Council, or such person as the Privy Council may designate, at least once in each calendar year on the way in which it proposes to exercise its functions in respect of such period as the Privy Council or the designated person, as the case may be, may specify.

(8) Part I of Schedule 1 shall have effect with respect to the constitution of the Council.

(9) There shall be four committees of the Council, to be known as—

- (a) the Investigating Committee;
- (b) the Conduct and Competence Committee;

- (c) the Health Committee; and
- (d) the Midwifery Committee.
- (10) The four committees are referred to in this Order as “the statutory committees”.
- (11) Each of the statutory committees shall have the functions conferred on it by this Order.
- (12) The Council may establish such other committees as it considers appropriate in connection with the discharge of its functions and delegate any of its functions to them, other than any power to make rules.
- (13) The Council shall inform and educate registrants, and shall inform the public, about its work.
- (14) Before establishing any standards or giving any guidance under this Order the Council shall consult representatives of any group of persons it considers appropriate including, as it sees fit, representatives of—
 - (a) registrants or classes of registrant;
 - (b) employers of registrants;
 - (c) users of the services of registrants; and
 - (d) persons providing, assessing or funding education or training for registrants or prospective registrants.
- (15) The Council shall publish any standards it establishes and any guidance it gives.
- (16) Paragraphs (14) and (15) do not apply to guidance given to an individual which is particular to him.
- (17) Part II of Schedule 1 shall have effect with respect to the statutory committees.
- (18) Nothing in this Order shall require or permit any disclosure of information which is prohibited by or under any other enactment.

PART III

REGISTRATION

Registrar

- 4.—**(1) The Council shall appoint a Registrar who shall hold office for such period and on such terms as the Council may determine.
- (2) The Registrar shall have such functions as the Council may direct.
- (3) The terms on which the Registrar holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Council.
- (4) Where the terms on which the Registrar holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances or expenses are paid shall be determined by the Council.
- (5) If the Council appoints a deputy or assistant Registrar and that deputy or assistant Registrar is authorised by the Registrar to act for him in any matter, any reference in this Order to “the Registrar” shall include a reference to that deputy or assistant Registrar.

Establishment and maintenance of register

5.—(1) In accordance with the provisions of this Order the Council shall establish and maintain a register of qualified nurses and midwives.

(2) The Council shall from time to time—

- (a) establish the standards of proficiency necessary to be admitted to the different parts of the register being the standards it considers necessary for safe and effective practice under that part of the register; and
- (b) prescribe the requirements to be met as to the evidence of good health and good character in order to satisfy the Registrar that an applicant is capable of safe and effective practice as a nurse or midwife.

(3) The Council shall—

- (a) before prescribing the requirements mentioned in paragraph (2)(b), consult the Conduct and Competence Committee in addition to the persons referred to in article 3(14); and
- (b) publish those requirements.

(4) The register shall show, in relation to each registrant, such address and other details as the Council may prescribe.

(5) In any enactment or instrument (past or future and including this Order), except where the context otherwise provides, “registered” in relation to nurses and midwives means registered in the register maintained under this article by virtue of qualifications in nursing or midwifery, as the case may be.

Register

6.—(1) The register shall be divided into such parts as the Privy Council may by order determine, on a proposal by the Council or otherwise, and in this Order, references to parts of the register are to the parts so determined.

(2) Each part shall have a designated title indicative of different qualifications and different kinds of education or training and a registrant is entitled to use the title corresponding to the part of the register in which he is registered.

(3) Subject to article 7, the Privy Council may by order, on a proposal by the Council or otherwise, make such other provision in connection with the register as it considers appropriate and in particular may provide for—

- (a) the register to include entries indicating the possession of qualifications (whether or not they are approved qualifications) or competence in a particular field or at a particular level of practice, or for the use of a particular category of entry to be discontinued;
- (b) persons to be registered in one or more parts of the register by virtue of having been included in the register maintained under the 1997 Act;
- (c) the recording of additional entries by virtue of their having been in the register maintained under the 1997 Act;
- (d) a specified part of the register to be closed, as from a date specified in the order, so that on or after that date no further person may become registered in that part;
- (e) a specified part of the register to be sub-divided into two or more parts, or for two or more parts to be combined into one;
- (f) persons to be registered in one or more parts of the register by virtue of having been registered in a part or parts of the register which have been closed, sub-divided or combined;
- (g) the register to include a part or parts for specialists in community and public health;

- (h) the recording in Welsh of titles, qualifications and other entries referred to in this paragraph in respect of those members of the professions regulated by this Order whose registered address is in Wales.

(4) The Privy Council, except where acting in accordance with a proposal made by the Council, shall consult the Council before making, varying or revoking any order under this article.

(5) Before making any proposal referred to in paragraph (1) or (3), the Council shall consult representatives of any group of persons who appear likely to be affected by the proposed order.

The register: supplemental provisions

7.—(1) The Council shall make rules in connection with registration and the register, and as to the payment of fees.

(2) The rules shall, in particular, make provision as to—

- (a) the form and keeping of the register;
- (b) the procedure for the making, alteration and deletion of entries in the register;
- (c) the form and manner in which applications are to be made and the fee to be charged—
 - (i) for registration, renewal of registration and readmission to the register,
 - (ii) for the making of any additional entry in the register, and
 - (iii) for registration to lapse;
- (d) the documentary and other evidence which is to accompany applications of the kind mentioned in sub-paragraph (c).

(3) Before determining or varying any fees mentioned in paragraph (2)(c) the Council shall consult such of those persons mentioned in article 3(14) as it considers appropriate.

Access to register etc.

8.—(1) The Council shall make the register available for inspection by members of the public at all reasonable times.

(2) The Council shall publish the register maintained by it in such manner, and at such times, as it considers appropriate.

(3) Any copy of, or extract from, the published register shall be evidence (and in Scotland sufficient evidence) of the matters mentioned in it.

(4) A certificate purporting to be signed by the Registrar, certifying that a person—

- (a) is registered in a specified category;
- (b) is not registered;
- (c) was registered in a specified category at a specified date or during a specified period;
- (d) was not registered in a specified category, or in any category, at a specified date or during a specified period; or
- (e) has never been registered,

shall be evidence (and in Scotland sufficient evidence) of the matters certified.

(5) On application by a registrant who wishes to practise in another EEA State, the Council shall provide him with such documentary evidence as is required by the relevant Directive.

Registration

9.—(1) A person seeking admission to a part of the register must apply to the Council and, subject to the provisions of this Order, if he satisfies the conditions mentioned in paragraph (2) he shall be entitled to be registered in that part.

(2) Subject to paragraph (3), the conditions are that the application is made in the prescribed form and manner and that the applicant—

- (a) satisfies the Registrar that he holds an approved qualification awarded—
 - (i) within such period, not exceeding five years ending with the date of the application, as may be prescribed, or
 - (ii) before the prescribed period mentioned in head (i), and he has met such requirements as to additional education, training and experience as the Council may specify under article 19(3) and which apply to him;
- (b) satisfies the Registrar in accordance with the Council's requirements mentioned in article 5(2) that he is capable of safe and effective practice as a nurse or midwife; and
- (c) has paid the prescribed fee.

(3) Where the applicant is already registered in the register and wishes to be registered in an additional part of the register or to have additional entries recorded, paragraph (2)(a) shall apply only to the qualifications on which his application is based.

(4) The Registrar shall give his decision on an application under paragraph (1) as soon as reasonably practicable and in any event within—

- (a) three months from the date by which the application together with full supporting documentation has been received or, if the Nursing or Midwifery Directive applies, such longer period as may be allowed by the relevant Directive; or
- (b) in respect of applications to which the European Communities (Recognition of Professional Qualifications) Regulations 1991⁽³⁾ or the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996⁽⁴⁾ apply, within the period specified in the relevant regulations.

(5) The Registrar shall notify the applicant in writing of his decision, and, where that decision is unfavourable to the applicant, of his reasons for reaching that decision and, of the applicant's right of appeal under article 37.

(6) Failure to notify the applicant of the Registrar's decision within the time specified in paragraph (4) shall be treated as a decision from which the applicant may appeal under article 37.

Renewal of registration and readmission

10.—(1) Where a person is registered and wishes to renew his registration at the end of a prescribed period, he shall make an application for renewal to the Registrar in accordance with rules made by the Council.

(2) The Registrar shall grant the application for renewal if the applicant—

- (a) meets the conditions set out in article 9(2)(b) and (c);
- (b) satisfies the Registrar that he has met any prescribed requirements for continuing professional development within the prescribed time; and
- (c) where he has not practised, or has practised for less than the prescribed period, since his first registration or, as the case may be, his latest renewal, has met such requirements as

(3) S.I. 1991/824 relevant amendments to which are made by S.I. 2000/1960.

(4) S.I. 1996/2374 as amended by S.I. 1999/67.

to additional education, training or experience as the Council may specify under article 19(3) and which apply to him.

(3) Where an applicant does not satisfy the Registrar that he has met the requirements mentioned in paragraph (2)(b) or (c), the Registrar may renew the applicant's registration on condition that he satisfy those requirements within a specified time and if the person fails to comply with the condition, subject to articles 12(3) and 37(3), his registration shall lapse and, in accordance with prescribed procedure, his name shall be removed from the register.

(4) Where a person's registration has lapsed, he may apply to the Registrar to be readmitted and the Registrar shall grant the application if—

- (a) the applicant meets the conditions set out in article 9(2)(b) and (c); and
- (b) he satisfies the Registrar that he has met such requirements as to additional education, training or experience as the Council may specify under article 19(3) and which apply to him.

(5) Article 9(4) to (6) shall apply to applications made under this article.

Deemed registration of visiting EEA nurses and midwives

11.—(1) A visiting EEA nurse may practise as a nurse responsible for general care during the period specified in his relevant documents in pursuance of article 39, and while he is so practising he shall be deemed to be registered as a nurse responsible for general care.

(2) A visiting EEA midwife shall be deemed to be registered as a midwife during the period specified in his relevant documents(5).

Lapse of registration

12.—(1) The Council may make rules providing for the procedure by which and the circumstances in which a registrant's name may be removed from the register on his own application or after the expiry of a specified period.

(2) Where a person's name is removed in accordance with this article or article 10(3), his registration shall be referred to as lapsed.

(3) Any rules made under paragraph (1) shall provide that a person's registration shall not lapse under this article or under article 10(3)—

- (a) where the person concerned is the subject of an allegation, or is treated under article 22(6) as if he were the subject of an allegation, or is the subject of any investigations or proceedings under Part V or VI of this Order, on the grounds only that he has not paid the prescribed fee or has failed to apply for renewal in the prescribed form or within the prescribed time; or
- (b) if the person concerned is the subject of a suspension order, a conditions of practice order, an interim suspension order or an interim conditions of practice order.

Approved qualifications

13.—(1) For the purposes of this Order a person is to be regarded as having an approved qualification if—

- (a) he has a qualification awarded in the United Kingdom which has been approved by the Council as attesting to the standard of proficiency it requires for admission to the part of the register in respect of which he is applying;

(5) See Article 39.

- (b) he is an EEA national and has a qualification of the kind mentioned in article 14; or
- (c) he has, elsewhere than in the United Kingdom, undergone training in nursing or midwifery and either—
 - (i) holds a qualification which the Council is satisfied attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a), or
 - (ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying; and, in either case,
 - (iii) he is not an EEA national or exempt person and he satisfies prescribed requirements as to knowledge of English.
- (2) The Council shall determine procedures to—
 - (a) assess whether a qualification awarded outside the United Kingdom is of a comparable standard to a qualification mentioned in paragraph (1)(a) and it shall, where it sees fit, keep a list of qualifications which are of a comparable standard which it shall publish and keep under review; and
 - (b) assess other training or professional experience acquired outside the United Kingdom and to compare it, together with qualifications mentioned in sub-paragraph (a) where appropriate, with the standard of proficiency required for admission to any part of the register.

EEA qualifications

14.—(1) For the purposes of article 13(1)(b) a qualification is one obtained outside the United Kingdom, to which an EC Directive applies and which the Privy Council has by order designated as being an approved qualification for the purposes of registration in the relevant part of the register.

- (2) An order under paragraph (1) may provide—
 - (a) that a qualification is designated for the purposes of registration in a particular part of the register only if prescribed conditions required by a Directive issued by the Council of the European Communities are fulfilled, and different conditions may be prescribed with respect to the same qualification for different circumstances; and
 - (b) that the Council may require the applicant to satisfy specified additional conditions before being registered including the undertaking of training or education, working under supervision or the taking and passing of a test of competence.

(3) A person falling within the definition of “exempt person” shall be treated for the purposes of this article and article 13(1)(b) as if he were an EEA national.

PART IV

EDUCATION AND TRAINING

Education and training

- 15.—**(1) The Council shall from time to time establish—
 - (a) the standards of education and training necessary to achieve the standards of proficiency it has established under article 5(2); and

- (b) the requirements to be satisfied for admission to, and continued participation in, such education and training which may include requirements as to good health and good character.
- (2) So far as is necessary to implement the requirements provided for in the Second Nursing and Second Midwifery Directives, the standards and requirements established under paragraph (1) shall be set out in rules made by the Council.
- (3) The standards mentioned in paragraph (1)(a) shall include such matters as the outcomes to be achieved by that education and training.
- (4) Before establishing the requirements referred to in paragraph (1) the Council shall consult such of those persons mentioned in article 3(14) as it considers appropriate.
- (5) The Council shall—
 - (a) ensure that universities and other bodies in the United Kingdom concerned with such education and training are notified of the standards and requirements established under paragraph (1); and
 - (b) take appropriate steps to satisfy itself that those standards and requirements are met.
- (6) In performing the function mentioned in paragraph (5)(b) the Council may in particular, approve, or arrange with others to approve—
 - (a) a course of education or training which the Council is satisfied confers or would confer on persons completing it successfully the standards of proficiency mentioned in paragraph (1);
 - (b) qualifications which are granted following success in an examination, or some other appropriate assessment, taken as part of an approved course of education or training;
 - (c) institutions which the Council considers to be properly organised and equipped for conducting the whole or part of an approved course of education or training;
 - (d) such tests of competence or knowledge of English as it may require.
- (7) In connection with paragraph (6), the Council may approve or arrange with others to approve a course of education or training run outside the United Kingdom by an institution to which paragraph (6)(c) applies.
- (8) The Council shall from time to time publish a statement of the criteria which will be taken into account in deciding whether to give approval under paragraph (6).
- (9) The Council shall maintain and publish a list of the courses of education or training, qualifications and institutions—
 - (a) which are for the time being approved under this Order; or
 - (b) which have been approved under this Order but which are no longer so approved, together with a record of the periods in respect of which they were approved.
- (10) In this article a reference to education or training includes any course of education or training or test referred to in paragraph (6).

Visitors

- 16.—**(1) The Council may appoint persons (“visitors”) to visit any place at which or institution by which or under whose direction—
- (a) any relevant course of education or training is, or is proposed to be, given;
 - (b) any examination or other assessment is, or is proposed to be, held in connection with any such course;

- (c) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purposes connected with this Order.
- (2) For the purposes of this article and article 18, the words “any test of competence” includes an assessment to establish the level of a person’s knowledge of written or spoken English.
- (3) In this article, “relevant course of education or training” means any course of education or training which forms, or is intended to form, part of an approved course of education or training or any course which a registrant may be required to undergo after registration in accordance with rules made by the Council.
- (4) No visitor may exercise his functions under this Order in relation to—
 - (a) any place at which he regularly gives instruction in any subject; or
 - (b) any institution with which he has a significant connection.
- (5) A person shall not be prevented from being a visitor merely because he is—
 - (a) a member of the Council or any of its committees; or
 - (b) a Screener,but no person may be a visitor if he is employed by the Council.
- (6) Visitors shall be selected with due regard to the profession with which the education and training they are to report on is concerned and at least one of the visitors shall be registered in that part of the register which relates to that profession.
- (7) Where a visitor visits any place or institution in the exercise of his functions under this article, he shall report to the Council—
 - (a) on the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at that place or by that institution; and
 - (b) on such other matters (if any) as it requires.
- (8) Requirements of the kind mentioned in paragraph (7)(b) may be imposed by the Council—
 - (a) generally in relation to all visits made to a specified kind of place or institution or in respect of a specified type of course; or
 - (b) specifically in relation to a particular visit.
- (9) Where a visitor reports to the Council in accordance with paragraph (7), the Council shall on receipt of the report—
 - (a) send a copy of it to the institution concerned; and
 - (b) notify that institution of the period within which it may make observations on the report.
- (10) The period specified by the Council in a notice given under sub-paragraph (b) of paragraph (9) shall be not less than one month beginning with the date on which a copy of the report is sent to the institution concerned under sub-paragraph (a) of paragraph (9).
- (11) The Council shall not take any steps in the light of any report made under paragraph (7) before the end of the specified period mentioned in paragraph (10).
- (12) The Council shall publish such reports together with, on the request of the institution concerned, the response of that institution to the report.
- (13) The Council may make such provision in respect of visitors as it may determine—
 - (a) for the payment of fees and allowances, including the payment of allowances to employers of visitors for the purposes of enabling visitors to perform functions under this article;
 - (b) for the reimbursement of such expenses as visitors may reasonably have incurred in the course of carrying out their functions under this article.

Information to be given by institutions

17.—(1) This article applies to any institution in the United Kingdom by which, or under whose direction, whether inside or outside the United Kingdom—

- (a) any relevant course of education or training is, or is proposed to be, given; or
- (b) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with this Order.

(2) In paragraph (1) “relevant course of education or training” has the same meaning as in article 16(3).

(3) Whenever required to do so by the Council, any such institution shall give to the Council such information and assistance as the Council may reasonably require in connection with the exercise of its functions under this Order.

(4) Where an institution refuses any reasonable request for information made by the Council under this article, the Council may in accordance with article 18 refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which the information relates.

(5) In this article a reference to education or training includes any course of education or training or test referred to in article 15(6).

Refusal or withdrawal of approval of courses, qualifications and institutions

18.—(1) Where as a result of any visitor’s report or other information acquired by the Council and taking account of the observations received from the institution under article 16(9), the Council is of the opinion that the standards established under article 15(1) are not, or will not be, met by particular education or training or that an institution is not observing the requirements referred to in article 15(1) it may refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which that opinion relates.

(2) In this article a reference to education or training includes any course of education or training or test referred to in article 15(6).

(3) In making any decision under paragraph (1) to refuse or to withdraw approval the Council shall act in accordance with this article.

(4) The Council shall—

- (a) notify the institution concerned, setting out its reasons; and
- (b) inform the institution of the period within which it may make observations on the matters raised, which shall be not less than one month beginning with the date on which the reasons are sent to the institution under sub-paragraph (a).

(5) The Council shall take no further steps before the period specified in sub-paragraph (b) of paragraph (4) has expired.

(6) If, taking account of the matters referred to in paragraph (1) and any observations submitted by the institution under paragraph (4), the Council decides that it is appropriate to refuse or withdraw approval under paragraph (1) it shall notify the institution accordingly.

(7) A decision under paragraph (6) shall have effect from the date of the decision or from such later date as may be specified in the decision.

(8) Where approval is withdrawn under this article, the Council shall use its best endeavours to secure that any person who is undertaking the education or training concerned or is studying for the qualification concerned or is studying at the institution concerned at the time when recognition is withdrawn is given the opportunity to follow approved education or training or to study for an approved qualification or at an approved institution.

(9) The withdrawal under this article of approval from any education or training, qualification or institution shall not affect the entitlement of any person to be registered on the basis of an award to him, before the date on which the decision withdrawing approval had effect, of—

- (a) the qualification concerned; or
- (b) any qualification awarded—
 - (i) in connection with any education or training, or
 - (ii) by an institution

from which approval has been withdrawn.

Post-registration training

19.—(1) The Council may make rules requiring registrants to undertake such continuing professional development as it shall specify in standards.

(2) The rules may, in particular, make provision with respect to registrants who fail to comply with any requirements of the rules, including making provision for their registration to cease to have effect.

(3) The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards.

(4) If the Council makes rules under paragraph (1) or (3), it shall establish the standards to be met in relation to—

- (a) continuing professional development;
- (b) the education or training mentioned in paragraph (3),

and article 15(3) to (9) and articles 16 to 18 of this Order shall apply in respect of those standards as if they were standards established under article 15(1)(a).

(5) In the articles mentioned in paragraph (4), references to “education and training” shall, for the purposes of that paragraph, be treated as being to education, training or experience.

(6) In respect of additional qualifications which may be recorded on the register the Council may establish standards of education and training and article 15(3) to (9) and articles 16 to 18 shall apply in respect of those standards as if they were standards established under article 15(1)(a).

Wales

20. The National Assembly for Wales may create or designate a body with which the Council may enter into any such arrangements as are referred to in article 15(6) of this Order in order to perform its function under article 15(5)(b) in respect of the standards established under article 15(1) or 19(4) or (6).

PART V

FITNESS TO PRACTISE

Council’s functions in respect of fitness to practise, ethics and other matters

21.—(1) The Council shall—

- (a) establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and give them such guidance on these matters as it sees fit; and

- (b) establish and keep under review effective arrangements to protect the public from persons whose fitness to practise is impaired.

(2) The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants.

(3) Before establishing any standards or arrangements mentioned in paragraph (1), the Council shall consult the Conduct and Competence Committee in addition to the persons mentioned in article 3(14).

Allegations

22.—(1) This article applies where any allegation is made against a registrant to the effect that—

- (a) his fitness to practise is impaired by reason of—

- (i) misconduct,
 - (ii) lack of competence,
 - (iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,
 - (iv) his physical or mental health, or
 - (v) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect;

- (b) an entry in the register relating to him has been fraudulently procured or incorrectly made.

(2) For the purposes of this article references to a conviction include a conviction by a Court Martial.

(3) This article is not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered.

(4) Rules may provide that where a Practice Committee finds that a person has failed to comply with the standards mentioned in article 21(1), such failure shall not be taken of itself to establish that his fitness to practise is impaired, but may be taken into account in any proceedings under this Order.

(5) When an allegation is made to the Council or any of its committees, as soon as reasonably practicable after receipt of the allegation in the form required by the Council, the Council shall refer it—

- (a) where it is an allegation of the kind mentioned in paragraph (1)(b), to the Investigating Committee; and

- (b) in any other case—

- (i) to persons appointed by the Council in accordance with any rules made under article 23, or

- (ii) to a Practice Committee.

(6) If an allegation is not made under paragraph (1) but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register it may refer the matter in accordance with paragraph (5) and this Order shall apply as if it were an allegation made under paragraph (1).

(7) Hearings and preliminary meetings of Practice Committees at which the person concerned is entitled to be present or to be represented are to be held in—

- (a) the United Kingdom country in which the registered address of the person concerned is situated; or
- (b) if he is not registered and resides in the United Kingdom, in the country in which he resides; and
- (c) in any other case, in England.

(8) While the registration of a registrant is suspended by virtue of a suspension order or an interim suspension order he shall be treated as not being registered notwithstanding that his name still appears in the register but this does not prevent action being taken in respect of such a person as appropriate under articles 22 to 32 of this Order.

(9) The Council shall publish as soon as reasonably practicable particulars of any orders and decisions made by a Practice Committee under article 26(7) or (11), 29(5), 30(1), (2), (4), (6), (7) or (8) or 33 and of its reasons for them and of any decision given on appeal.

(10) The Council may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose.

(11) In this Part "the person concerned" means the person against whom an allegation has been made.

Screeners

23.—(1) The Council may by rules provide for the appointment of persons, to be known as Screeners, to whom allegations may be referred in accordance with this Order or rules made under it.

- (2) A person shall not be prevented from being a Screener merely because he is—
 - (a) a member of the Council or any of its committees, other than a Practice Committee; or
 - (b) a visitor.
- (3) No person may be a Screener if he is—
 - (a) a member of a Practice Committee;
 - (b) a legal, medical or registrant assessor; or
 - (c) employed by the Council.

(4) No person may act as a Screener in respect of a particular case if he has been involved in that case in any other capacity.

Screeners: supplementary provisions

24.—(1) Any rules made under article 23 shall contain the provisions mentioned in paragraphs (2) and (3).

- (2) The rules made under article 23(1) shall provide that—
 - (a) any matter referred to the Screeners shall be considered by a panel of at least two Screeners;
 - (b) the panel shall include at least one lay person and one registrant selected with due regard to the professional field of the person concerned and to the matter under consideration;
 - (c) the number of registrants on any panel may not exceed the number of lay persons.
- (3) Any such rules shall give Screeners the functions—
 - (a) of considering the allegation and establishing whether, in their opinion, power is given by this Order to deal with it if it proves to be well founded;
 - (b) if in their opinion such power is given, of referring the matter together with a report of the result of their consideration to such Practice Committee as they see fit;
 - (c) if in their opinion such power is not given, of closing the case, provided that—

- (i) if there are two Screeners, the lay person agrees, or
 - (ii) if there are more than two Screeners, it is the decision of the majority,
- and if head (i) or (ii), as the case may be, is not satisfied, of referring the matter in accordance with sub-paragraph (b);
- (d) where requested to do so by any Practice Committee, of mediating in any case with the aim of dealing with the allegation without it being necessary for the case to reach the stage at which the Health Committee or Conduct and Competence Committee, as the case may be, would arrange a hearing in accordance with article 32(2)(f);
- (e) in the event that mediation fails, of referring the matter back to the Practice Committee which referred it to the Screeners.
- (4) The Council may make such provision in respect of Screeners as it may determine—
 - (a) for the payment of fees and allowances, including the payment of allowances to employers of Screeners for the purpose of enabling Screeners to perform their functions under this Order; and
 - (b) for the reimbursement of such expenses as the Screeners may reasonably have incurred in the course of carrying out their functions under this Order.
- (5) If the Screeners decide that power is not given by this Order to deal with the allegation the Registrar shall inform the person making the allegation giving reasons.

Council's power to require disclosure of information

25.—(1) For the purpose of assisting them in carrying out functions in respect of fitness to practise, a person authorised by a Practice Committee may require any person (other than the person concerned) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.

(2) As soon as is reasonably practicable after a decision has been made under article 22(5) or (6) to refer an allegation or other matter to a Practice Committee, the Council shall require, from the person concerned, details of—

- (a) any person—
 - (i) by whom he is employed to provide services in, or in relation to, nursing or midwifery; or
 - (ii) with whom he has an arrangement to provide such services; and
- (b) any body by which he is authorised to practise, in the United Kingdom or elsewhere, a health or social care profession which is regulated under any enactment.

(3) Nothing in this article shall require or permit any disclosure of information which is prohibited by or under any other enactment.

(4) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person referred to in paragraph (1) may, in exercising his functions under that paragraph, require that the information be put into a form which is not capable of identifying that individual.

(5) Paragraph (1) shall not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings in any court to which an appeal would lie from a decision of the Practice Committee in respect of the allegation with which it is dealing.

(6) For the purposes of paragraph (5), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

The Investigating Committee

26.—(1) The Investigating Committee shall investigate any allegation which is referred to it in accordance with article 22 or 24.

(2) Where an allegation is referred to the Investigating Committee, it shall—

- (a) notify without delay the person concerned of the allegation and invite him to submit written representations within a prescribed period;
- (b) where it sees fit, notify the person making the allegation of the representations mentioned in sub-paragraph (a) and invite him to deal within a specified period with any points raised by the Committee in respect of those representations;
- (c) take such other steps as are reasonably practicable to obtain as much information as possible about the case;
- (d) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it under sub-paragraph (a) or (b), whether in its opinion—
 - (i) in respect of an allegation of the kind mentioned in article 22(1)(a), there is a case to answer, and
 - (ii) in respect of an allegation of the kind mentioned in article 22(1)(b), whether the entry concerned has been fraudulently procured or incorrectly made.

(3) The Council shall by rules make provision as to the procedure to be followed by the Investigating Committee in any investigation carried out by it under this article.

(4) In the case of an allegation of the kind mentioned in article 22(1)(b) the rules shall, in particular, make similar provision to that made by virtue of article 32(2)(b), (f), (g), (h), (i), (j), (m), (n), (o) and (p) and may provide for the Registrar to be made a party to the proceedings.

(5) When the Investigating Committee reaches a decision under paragraph (2) as to whether—

- (a) there is a case to answer; or
- (b) an entry in the register has been fraudulently procured or incorrectly made,

it shall notify in writing both the person concerned and the person making the allegation, if any, of its decision, giving its reasons.

(6) Where the Investigating Committee concludes that there is a case to answer under paragraph (2)(d)(i), it shall—

- (a) undertake mediation; or
- (b) refer the case—
 - (i) to Screeners for them to undertake mediation,
 - (ii) to the Health Committee in the case of an allegation of a kind mentioned in article 22(1)(a)(iv), or
 - (iii) to the Conduct and Competence Committee, in the case of any other allegation.

(7) In the case of an allegation of a kind mentioned in article 22(1)(b), if the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.

(8) If the Investigating Committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made—

- (a) where requested to do so by the person concerned, it shall make a declaration to that effect, giving its reasons; and

- (b) in any other case and with the consent of the person concerned, may make such a declaration.
- (9) For the purposes of paragraph (8), the publication of the decision mentioned in paragraph (5) together with the reasons for it may constitute such a declaration.
- (10) No order made under paragraph (7) shall have effect—
 - (a) before the expiry of the period within which an appeal against the order may be made; or
 - (b) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.
- (11) The Investigating Committee may make an interim order in accordance with article 31 at the same time as making an order under paragraph (7) or at any time before referring a case to the Health Committee or Conduct and Competence Committee under paragraph (6).
- (12) The Investigating Committee may review an order made under paragraph (7) if new evidence relevant to the order becomes available after the order has been made and may revoke that order if it considers that it should not have been made.
- (13) Where the Investigating Committee makes an order under paragraph (7) or decides not to review such an order under paragraph (12) the person concerned may appeal to the appropriate Court and the provisions of article 38 shall apply to the appeal.
- (14) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.
- (15) On an appeal under this article, the Council shall be the respondent.
- (16) An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for the purposes of this article as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made.

The Conduct and Competence Committee

- 27.** The Conduct and Competence Committee shall—
- (a) having consulted the other Practice Committees as it thinks appropriate, advise the Council (whether on the Council's request or otherwise) on—
 - (i) the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants and prospective registrants,
 - (ii) requirements as to good character and good health to be met by registrants and prospective registrants, and
 - (iii) the protection of the public from people whose fitness to practise is impaired; and
 - (b) consider—
 - (i) any allegation referred to it by the Council, Screeners, the Investigating Committee or the Health Committee, and
 - (ii) any application for restoration referred to it by the Registrar.

The Health Committee

- 28.** The Health Committee shall consider—
- (a) any allegation referred to it by the Council, Screeners, the Investigating Committee or the Conduct and Competence Committee; and
 - (b) any application for restoration referred to it by the Registrar.

Orders of the Health Committee and the Conduct and Competence Committee

29.—(1) If, having considered an allegation, the Health Committee or the Conduct and Competence Committee, as the case may be, concludes that it is not well founded—

- (a) where requested to do so by the person concerned, it shall make a declaration to that effect giving its reasons; and
- (b) in any other case and with the consent of the person concerned, may make such a declaration.

(2) For the purposes of paragraph (1) the publication of the decision mentioned in article 32(2)(k) and the reasons for it may constitute such a declaration.

(3) If, having considered an allegation, the Health Committee or the Conduct and Competence Committee, as the case may be, concludes that it is well founded, it shall proceed in accordance with the remaining provisions of this article.

(4) The Committee may—

- (a) refer the matter to Screeners for mediation or itself undertake mediation, or
- (b) decide that it is not appropriate to take any further action.

(5) Where a case does not fall within paragraph (4), the Committee shall—

- (a) make an order directing the Registrar to strike the person concerned off the register (a “striking-off order”);
- (b) make an order directing the Registrar to suspend the registration of the person concerned for a specified period which shall not exceed one year (a “suspension order”);
- (c) make an order imposing conditions with which the person concerned must comply for a specified period which shall not exceed three years (a “conditions of practice order”); or
- (d) caution the person concerned and make an order directing the Registrar to annotate the register accordingly for a specified period which shall be not less than one year and not more than five years (a “caution order”).

(6) A striking-off order may not be made in respect of an allegation of the kind mentioned in article 22(1)(a)(ii) or (iv) unless the person concerned has been continuously suspended, or subject to a conditions of practice order, for a period of no less than two years immediately preceding the date of the decision of the Committee to make such an order.

(7) The Committee may specify in an order made under paragraph (5) a period within which an application to vary, replace or revoke the order may not be made, which—

- (a) in the case of a striking-off order, except where new evidence relevant to the order becomes available, shall be expressed in terms of article 33(2);
- (b) in the case of a suspension order shall not exceed 10 months; and
- (c) in the case of a conditions of practice order shall not exceed two years.

(8) The Committee shall, when it makes, varies, replaces or revokes an order under this article or article 30 or when an order it has made ceases to have effect, give the Registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order;

(9) The person concerned may appeal to the appropriate court against an order made under paragraph (5) and article 38 shall apply to the appeal.

(10) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.

(11) No order mentioned in paragraph (9) shall have effect—

- (a) before the expiry of the period within which an appeal against the order may be made; or

- (b) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.

Review of orders by the Health Committee and the Conduct and Competence Committee

30.—(1) Before the expiry of an order made under article 29(5)(b) or (c) by the Conduct and Competence Committee or the Health Committee, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, shall review the order and may, subject to paragraph (5)—

- (a) with effect from the date on which the order would, but for this provision, have expired, extend, or further extend the period for which the order has effect;
- (b) with effect from the expiry of the order, make an order which it could have made at the time it made the order being reviewed;
- (c) with effect from the expiry of a suspension order, make a conditions of practice order with which the practitioner must comply if he resumes the practice of his registered profession after the end of his period of suspension.

(2) Subject to paragraph (1), on the application of the person concerned or otherwise, at any time an order made by the Conduct and Competence Committee or the Health Committee under article 29(5)(b) to (d) is in force, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, may review the order and may take any of the steps referred to in paragraph (4).

(3) Paragraphs (1) and (2) apply to an order made on a review under paragraph (1) or (2) as they do to an order made under article 29(5)(b) to (d).

(4) The steps mentioned in paragraph (2) are for the Committee to—

- (a) confirm the order;
- (b) extend, or further extend, the period for which the order has effect;
- (c) reduce the period for which the order has effect, but in the case of a caution order not so that it has effect for less than one year beginning with the date on which the order was made under article 29(5)(d);
- (d) replace the order with any order which it could have made at the time it made the order being reviewed and the replacement order shall have effect for the remainder of the term of the order it replaces;
- (e) subject to paragraph (6), revoke the order or revoke any condition imposed by the order;
- (f) vary any condition imposed by the order.

(5) The Committee may not extend a conditions of practice order by more than three years at a time or a suspension order by more than one year at a time.

(6) The Committee may make the revocation of a suspension order subject to the applicant's satisfying such requirements as to additional education or training and experience as the Council has established under article 19(3) and which apply to him.

(7) Where new evidence relevant to a striking-off order becomes available after the making of the order, the Committee which made the order or, where appropriate, the Committee mentioned in article 33(3)(b) may review it and article 33(4) to (8) shall apply as if it were an application for restoration made under that article.

(8) A striking-off order, conditions of practice order, suspension order or caution order which is in force by virtue of a decision made on appeal to the appropriate court may be reviewed in accordance with paragraph (2) or (7), as the case may be, by the Committee which made the order appealed from and any of the steps mentioned in paragraph (4) may be taken.

(9) Before exercising its powers under paragraph (1), (2), (4), (6), (7) or (8) a Practice Committee shall give the person concerned the opportunity to appear before it and to argue his case in accordance with rules made by the Council which shall include the matters referred to in article 32(2)(b), (g), (i), (j), (k), (m), (n) and (o).

(10) The person concerned may appeal to the appropriate court against an order or decision made under paragraph (1), (2), (4), (6), (7) or (8).

(11) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.

(12) On an appeal under this article the Council shall be the respondent.

Interim Orders by a Practice Committee

31.—(1) This article applies where—

- (a) an allegation against a registered professional has been referred to the Investigating Committee, Conduct and Competence Committee or to the Health Committee but—
 - (i) that Committee has not reached a decision on the matter; or
 - (ii) in a case to which article 26(6) applies, where the Investigating Committee refers the matter to another Practice Committee;
- (b) the Investigating Committee makes an order under article 26(7), or
- (c) the Conduct and Competence Committee or the Health Committee makes an order under article 29(5)(a) to (c).

(2) Subject to paragraph (4), if the Committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the registration of that person to be suspended or to be made subject to conditions, it may—

- (a) make an order directing the Registrar to suspend the person's registration (an "interim suspension order"), or
- (b) make an order imposing conditions with which the person must comply (an "interim conditions of practice order"),

during such period not exceeding eighteen months as may be specified in the order.

(3) In a case coming within paragraph (1)(b) or (c), such an order may be made at the same time as an order made under article 26(7) or 29(5)(a) to (c).

(4) The Investigating Committee shall not make an order in any case after it has referred the allegation in question to another Practice Committee.

(5) Subject to paragraphs (6), (7), (9) and (12) the order mentioned in paragraph (2) shall cease to have effect—

- (a) in a case falling within paragraph (1)(a) when the Committee reaches a decision in respect of the allegation in question; and
- (b) in a case falling within paragraph (1)(b) or (c)—
 - (i) if there is no appeal against the order mentioned in that paragraph, when the period for appealing expires, or
 - (ii) if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of.

(6) The Committee which made the order or, if the matter has been referred to another Practice Committee, that Committee, shall, in a case coming within paragraph (1)(a), review an order made under paragraph (2)—

- (a) within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review;
- (b) where new evidence relevant to the order has become available after the making of the order.

(7) Where an interim suspension order or an interim conditions of practice order has been made under this article (including this paragraph) the Practice Committee which made the order or, where the case has been referred to another Practice Committee, that Committee, may, subject to paragraph (15)—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) confirm the order;
- (c) vary any condition imposed by the order;
- (d) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the former;
- (e) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an interim conditions of practice order, replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the former.

(8) The Council may apply to the court for an order made by a Practice Committee under paragraph (2) or (7) to be extended, and may apply again for further extensions.

(9) On such an application the court may extend (or further extend) for up to 12 months the period for which the order has effect.

(10) In this article, references to an interim suspension order or interim conditions of practice order include such an order as so extended.

(11) For the purposes of paragraph (6) the first review after the court's extension of an order made by a Practice Committee or after a replacement order made by a Practice Committee under paragraph (7)(d) or (e) shall take place—

- (a) if the order (or the order which has been replaced) had not been reviewed at all under paragraph (6), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order under paragraph (7)(d) or (e) was made; and
- (b) if it had been reviewed under the provision, within the period of three months beginning on that date.

(12) Where an order has effect under paragraph (2), (7) or (9), the court may, on an application being made by the person concerned—

- (a) in the case of an interim suspension order, terminate the suspension;
- (b) in the case of an interim conditions of practice order, revoke or vary any condition imposed by the order;
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),

and the decision of the court under any application under this paragraph shall be final.

(13) In this article “the court” has the same meaning as “the appropriate court” in article 38.

(14) The Committee shall notify the person concerned giving its reasons where it makes an order under paragraph (2) or any decision under paragraph (7) and shall notify him of his right to apply to the court.

(15) No order under paragraph (2) or (7)(c) to (e), or, in a case where paragraph (5)(b) applies, under paragraph (7)(b), shall be made by any Practice Committee in respect of any person unless he has been afforded an opportunity of appearing before the Committee and being heard on the question whether such an order should be made in his case.

(16) At any such hearing, the person concerned shall be entitled to be represented whether by a legally qualified person or otherwise.

(17) The Committee shall when it makes, varies, replaces or revokes an order under this article or when an order it has made ceases to have effect, give the Registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order.

Investigation of allegations: procedural rules

32.—(1) The Council shall make rules as to the procedure to be followed by the Health Committee and the Conduct and Competence Committee in considering any allegation and before making an order under article 29(5).

(2) The rules shall, in particular, make provision—

- (a) empowering each Committee to refer to the other any allegation which it considers would be better dealt with by that other Committee;
- (b) empowering each Committee, before it holds any hearing to which sub-paragraph (f) applies, where it considers that it would assist it in performing its functions, to hold a preliminary meeting in private attended by the parties and their representatives and any other person it thinks appropriate;
- (c) requiring the person concerned to be given notice of the allegation without delay;
- (d) giving the person concerned an opportunity to submit written representations within a prescribed period;
- (e) for the Committee, where it sees fit, to notify the person making the allegation of the representations provided under sub-paragraph (d) and to invite him to deal within a prescribed period with any points raised by the Committee in respect of those representations;
- (f) giving the person concerned an opportunity to put his case at a hearing if—
 - (i) before the end of the prescribed period, he asks for a hearing; or
 - (ii) the Committee considers that a hearing is desirable;
- (g) entitling the person concerned to be represented whether by a legally qualified person or otherwise at any such hearing;
- (h) where an allegation is referred by the Council, Screeners or the Investigating Committee to the Health Committee or the Conduct and Competence Committee, for the Council to give notice of that referral to specified persons who shall include the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland, and, where they are known, to any person referred to in article 25 paragraph (2)(a) or (b);
- (i) giving any person, other than the person concerned, who, in the opinion of the relevant Committee, taking account of any criteria included in the rules, has an interest in proceedings before it, the opportunity to submit written representations;

- (j) requiring a hearing before a Committee to be held in public except in so far as may be provided by the rules;
- (k) requiring the Committee to notify the person concerned of its decision, its reasons for reaching that decision and of his right of appeal;
- (l) requiring the person by whom the allegation was made to be notified by the Committee of its decision and of its reasons for reaching that decision;
- (m) empowering the Committee to require persons (other than the person concerned) to attend and give evidence or to produce documents;
- (n) about the admissibility of evidence;
- (o) enabling the Committee to administer oaths;
- (p) where the person concerned has been convicted of a criminal offence, for the conviction to be proved by the production of a certified copy of the certificate of conviction, or, in Scotland, an extract conviction, relating to the offence and for the findings of fact upon which the conviction is based to be admissible as proof of those facts.

(3) Each stage in proceedings under Part V and article 37 shall be dealt with expeditiously and the Committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

(4) The Council may provide in the rules for the Chairman of the Committee to hold the meeting referred to in paragraph (2)(b) or to give the directions mentioned in paragraph (3) and, subject to the agreement of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

(5) In this article “parties” means the Council and the person concerned.

Restoration to the register of persons who have been struck off

33.—(1) Where a person who has been struck off the register by virtue of an order made by a Practice Committee or the court wishes to be restored to the register, he shall make an application for restoration to the Registrar.

(2) Subject to article 30(7), no such application may be made—

- (a) before the end of the period of five years beginning with the date on which the order under article 29, 30 or 38 took effect; or
- (b) in any period of twelve months in which an application for restoration to the register has already been made by the person who has been struck off.

(3) Any application for restoration shall be referred by the Registrar for determination to—

- (a) the Committee which made the striking-off order; or
- (b) where any previous applications have been made in connection with the same striking-off order, the Committee which last gave a decision on such an application.

(4) Before making any decision on the application the Committee shall give the applicant an opportunity to appear before it and to argue his case in accordance with rules made by the Council which shall include the matters referred to in article 32(2)(b), (g), (i), (j), (k), (m), (n) and (o).

(5) The Committee shall not grant an application for restoration unless it is satisfied, on such evidence as it may require, that the applicant not only satisfies the requirements of article 9(2)(a) and (b) but, having regard in particular to the circumstances which led to the making of the order under article 29, 30 or 38, is also a fit and proper person to practise the relevant profession.

(6) The Committee may make the granting of an application subject to the applicant satisfying such requirements as to additional education or training and experience as the Council has specified under article 19(3) and which apply to him.

(7) On granting an application for restoration, the Committee—

(a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and

(b) may make a conditions of practice order with respect to him.

(8) The provisions of article 29 shall have effect in relation to a conditions of practice order made under paragraph (7) as they have effect in relation to a conditions of practice order made under that article and article 30 shall apply as if the order made under paragraph (7) were an order made under article 29.

(9) If, while a striking-off order is in force, a second or subsequent application for restoration to the register, made by the person who has been struck off, is unsuccessful, the Committee which determined that application may direct that that person's right to make any further such applications shall be suspended indefinitely.

(10) A person in respect of whom a direction is made under paragraph (9) may, after the expiration of three years from the date on which the direction was made, apply to the Registrar for that direction to be reviewed and, thereafter, may make further applications for review but no such application may be made before the expiration of three years from the date of the most recent review decision.

(11) The Registrar shall refer an application made under paragraph (10) to the Committee which made the direction under paragraph (9).

(12) A person whose application under paragraph (10) or whose application for restoration is refused or made subject to his satisfying requirements under paragraph (6) may appeal to the appropriate Court and article 38 shall apply to that appeal.

(13) The appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the decision rejecting the application, or granting it but imposing conditions under paragraph (6), is served on the applicant.

Legal assessors

34.—(1) The Council shall appoint legal assessors.

(2) Legal assessors shall have the general function of giving advice to—

- (a) Screeners;
- (b) the Practice Committees;
- (c) the Registrar; or
- (d) the Council,

on questions of law arising in connection with any matter which any of those persons is considering under article 9 or 10, Part V or VI.

(3) They may at the request of the person mentioned in paragraph (2) assist in the drafting of any decision required by this Order to be issued under any of the provisions mentioned in that paragraph.

(4) They shall have such other functions as may be conferred on them by rules made by the Council.

(5) To be qualified for appointment as a legal assessor, a person must—

- (a) have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); or

- (b) be an advocate or solicitor in Scotland of at least 10 years' standing; or
 - (c) be a member of the Bar of Northern Ireland of at least 10 years' standing.
- (6) No person shall be a legal assessor if he is—
- (a) a member of the Council;
 - (b) a member of a Practice Committee;
 - (c) a Screener, visitor or medical or registrant assessor; or
 - (d) employed by the Council.
- (7) The Council may make such provision in respect of legal assessors as it may determine—
- (a) for the payment of fees and allowances, including the payment of allowances to employers of legal assessors for the purposes of enabling legal assessors to perform functions under this article;
 - (b) for the reimbursement of such expenses as the legal assessors may reasonably have incurred in the course of carrying out their functions under this Order.

Medical assessors

35.—(1) The Council may appoint registered medical practitioners to be medical assessors.

(2) They shall have the general function of giving advice to—

- (a) Screeners;
- (b) the Practice Committees;
- (c) the Registrar; or
- (d) the Council,

on matters within their professional competence in connection with any matter which any of those persons is considering.

(3) They shall also have such other functions as may be conferred on them by rules made by the Council.

(4) No person shall be a medical assessor if he is—

- (a) a member of the Council;
- (b) a member of a Practice Committee;
- (c) a Screener, visitor or legal or registrant assessor; or
- (d) employed by the Council.

(5) The Council may make such provision in respect of medical assessors as it may determine—

- (a) for the payment of fees and allowances, including the payment of allowances to employers of medical assessors for the purposes of enabling medical assessors to perform functions under this article;
- (b) for the reimbursement of such expenses as the medical assessors may reasonably have incurred in the course of carrying out their functions under this Order.

Registrant assessors

36.—(1) The Council may appoint registered professionals as registrant assessors.

(2) They shall have the general function of giving advice to—

- (a) the Council;
- (b) the committees of the Council;

- (c) Screeners; or
- (d) the Registrar,

on matters of professional practice arising in connection with any matter which any of those persons is considering.

(3) The assessors shall also have such other functions as may be conferred on them by rules made by the Council.

(4) No person shall be a registrant assessor if he is—

- (a) a member of the Council;
- (b) a member of a Practice Committee;
- (c) a Screener, visitor or legal or medical assessor; or
- (d) employed by the Council.

(5) The Council may make such provision in respect of registrant assessors as it may determine—

- (a) for the payment of fees and allowances, including the payment of allowances to employers of registrant assessors for the purposes of enabling registrant assessors to perform functions under this article;
- (b) for the reimbursement of such expenses as the registrant assessors may reasonably have incurred in the course of carrying out their functions under this Order.

PART VI

APPEALS

Appeals against Registrar's decisions

37.—(1) Where the Registrar under this Order—

- (a) refuses an application for registration, readmission or renewal or for the inclusion of an additional entry;
- (b) in determining an application under article 9 or 10, imposes additional conditions which must be satisfied before the applicant may be admitted to, readmitted to or retained on the register;
- (c) removes the name of a registrant from the register on the ground that he has breached a condition in respect of continuing professional development or such additional education, training or experience as is mentioned in article 19(3) subject to which his registration has effect; or
- (d) fails, within the terms of article 9(6), to issue a decision,

the person aggrieved may appeal to the Council within the prescribed period.

(2) No appeal lies to the Council where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner in accordance with article 9 or 10.

(3) No decision removing a registrant from the register against which an appeal to the Council may be made under paragraph (1) shall have effect before—

- (a) the expiry of the period within which such an appeal may be made; or
- (b) if an appeal is made, the appeal is withdrawn or otherwise finally disposed of.

(4) Any appeal shall be subject to such rules as the Council shall make for the purpose of regulating appeals under this article.

- (5) The rules shall in particular provide—
- (a) for the quorum of the Council considering such an appeal;
 - (b) that the members considering the appeal are to include registrants and lay members and that the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one;
 - (c) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include—
 - (i) one registrant registered in the same part of the register as the one in which the person concerned is, or is applying to be, registered;
 - (ii) one lay member (who shall not be a registered medical practitioner); and
 - (iii) where the health of the person concerned is in issue, one registered medical practitioner;
 - (d) for the person presiding to be a Council member;
 - (e) that no one who has been involved in any other capacity in the case to be considered is to be a member of the panel;
 - (f) for the decision to be made by a majority vote of the persons present;
 - (g) in the event of a tie, for the Chairman to have an additional casting vote which he shall exercise in the favour of the person concerned;
 - (h) for the Registrar to be made a party to the proceedings;
 - (i) for similar provision to be made to that in article 32(2)(b), (f), (g), (i), (j), (k), (m), (n) and (o).
- (6) Article 32(3) shall apply to appeals under this article as if a reference to the Committee concerned were to the Council.
- (7) Article 25, with the exception of paragraph (2), shall apply to appeals under this article as if a reference to a Practice Committee were to the Council.
- (8) A hearing provided for by the rules made under paragraph (4) is to be held—
- (a) in the United Kingdom country in which the registered address of the person concerned is situated;
 - (b) if he is not registered and resides in the United Kingdom, in the country in which he resides; or
 - (c) in any other case, in England.
- (9) Having considered the appeal under this article, the Council may—
- (a) dismiss the appeal;
 - (b) allow the appeal and quash the decision appealed against;
 - (c) substitute for the decision appealed against any other decision that the Registrar could have made; or
 - (d) remit the case to the Registrar to be disposed of in accordance with its directions.
- (10) The person concerned may appeal to a county court or, in Scotland, a sheriff against an unfavourable decision made under paragraph (9)(a), (c) or (d) and article 38 shall apply to that appeal.
- (11) Subject to paragraph 12, the Council shall publish as soon as reasonably practicable a decision of the Council made under this article together with the reasons for it.
- (12) If the decision is favourable to the person concerned, the Council is not required to publish it unless the person concerned so requests but it may do so with the consent of the person concerned.

Appeals

38.—(1) An appeal from—

- (a) any order or decision of the Health Committee or the Conduct and Competence Committee other than an interim order made under article 31, shall lie to the appropriate court; and
- (b) any decision of the Council under article 37 or of the Investigating Committee under article 26(7) or (12) shall lie to a county court or, in Scotland, to a sheriff.

(2) In any appeal under this article the Council shall be the respondent.

(3) The Court or sheriff may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision the Practice Committee concerned or the Council, as the case may be, could have made; or
- (d) remit the case to the Practice Committee concerned or Council, as the case may be, to be disposed of in accordance with the directions of the court or sheriff,

and may make such order as to costs (or, in Scotland, expenses) as it, or he, as the case may be, thinks fit.

(4) In this article “the appropriate court” means—

- (a) in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session;
- (b) in the case of a person whose registered address is (or, if he were registered, would be) in Northern Ireland, the High Court of Justice in Northern Ireland; and
- (c) in the case of a visiting EEA nurse or midwife or in any other case, the High Court of Justice in England and Wales.

PART VII**EEA PROVISIONS****Visiting EEA nurses and midwives**

39.—(1) In this Order “visiting EEA nurse” and “visiting EEA midwife” means a person who—

- (a) is a national of any EEA State;
- (b) is lawfully practising in an EEA State other than the United Kingdom as a nurse responsible for general care or, as the case may be, as a midwife;
- (c) holds the appropriate diploma;
- (d) is temporarily in the United Kingdom as a visitor; and
- (e) provides the Council with the relevant documents.

(2) Any person who—

- (a) is not a national of an EEA State, but
- (b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68⁽⁶⁾ or any other enforceable Community right, entitled to be treated, for the purposes of access

(6) OJ No L257, 19.10.68, p.1 (amended by Council Regulation (EEC) No 312/76 OJ No L39, 14.2.76, p.2).

to the nursing profession, or the profession of midwifery, no less favourably than a national of such a State,

shall be treated for the purposes of paragraph (1) as if he were such a national.

(3) Without prejudice to article 43, a visiting EEA nurse or midwife shall—

- (a) provide the Council with the relevant documents; and
- (b) where he is not required to provide evidence of good character and good health before being authorised to practise by the State referred to in paragraph (1)(b), satisfy the Registrar as to his good character and good health,

before he provides any services as a nurse or midwife in the United Kingdom except that, in a case of sudden or urgent necessity, a nurse may provide the documents as soon as possible after he has provided his services as a nurse.

(4) For the purposes of this Order “the appropriate diploma” means a diploma, certificate or other evidence of formal qualifications which EEA States are required to recognise in the case of a nurse, by the Nursing Directive or, in the case of a midwife, by the Midwifery Directive.

(5) For the purposes of this article and article 11 “relevant documents”, in relation to any person means—

- (a) a written declaration stating—
 - (i) that he is intending to practise in the United Kingdom as a nurse responsible for general care or, as the case may be, as a midwife; and
 - (ii) the address of the place where and the period during which he intends so to practise; and
- (b) a certificate or certificates issued, not more than 12 months before the date on which the Council is provided with the relevant documents, by the competent authority of the EEA State in which he is practising as mentioned in sub-paragraph (1)(b) certifying—
 - (i) that he is lawfully practising as a nurse responsible for general care or, as the case may be, as a midwife in that State; and
 - (ii) that he holds an appropriate diploma.

(6) The Council may refer for determination to whichever Practice Committee it thinks fit taking account of article 22, the question whether the provisions of this Order relating to visiting EEA nurses or midwives (other than this paragraph and paragraph (8)) should cease to apply to a particular visiting nurse or midwife because his fitness to practise is impaired by reason of misconduct or some other matter referred to in article 22(1)(a) or because authorisation to practise has been fraudulently procured or granted in error.

(7) The provisions of Part V and rules made under it shall apply, with any necessary modifications, in relation to any proceedings under paragraph (6) as they apply in relation to proceedings in respect of an allegation referred to a Screener or Practice Committee under article 22.

(8) Where it is determined that the provisions mentioned in paragraph (6) should cease to apply to any person he shall—

- (a) cease to be a visiting EEA nurse or, as the case may be, a visiting EEA midwife for the purposes of this Order;
- (b) cease to be deemed to be registered; and
- (c) not be entitled to be treated as a visiting EEA nurse or midwife before the expiry of such period (if any) as may be specified in the determination, or if no such period is specified, without the written consent of the Council.

(9) A person in respect of whom a determination is made under paragraph (6) may appeal to the appropriate court and article 38 shall apply to that appeal.

Competent authority for EEA purposes

40. The provisions in Schedule 3 shall have effect.

PART VIII

MIDWIFERY

The Midwifery Committee

41.—(1) The role of the Midwifery Committee shall be to advise the Council, at the Council's request or otherwise, on any matters affecting midwifery.

(2) The Council shall consult the Midwifery Committee on the exercise of its functions in so far as it affects midwifery including any proposal to make rules under article 42.

Rules as to midwifery practice

42.—(1) In addition to its functions under other provisions in this Order, the Council shall by rules regulate the practice of midwifery and the rules may in particular—

- (a) determine the circumstances in which and the procedure by means of which a midwife may be suspended from practice;
- (b) require midwives to give notice of their intention to practise to the local supervising authority (referred to in this Part as “the LSA”) for the area in which they intend to practise;
- (c) require midwives to attend courses of instruction in accordance with the rules.

(2) If rules are made requiring midwives to give the notice referred to in paragraph (1)(b), the LSA shall inform the Council of any notice given to it under those rules.

Local supervision of midwives

43.—(1) Each LSA shall—

- (a) exercise general supervision in accordance with the rules made under article 42 over all midwives practising in its area;
- (b) where it appears to it that the fitness to practise of a midwife in its area is impaired, report it to the Council; and
- (c) have power in accordance with the rules made under article 42 to suspend a midwife from practice.

(2) The Council may prescribe the qualifications of persons who may be appointed by the LSA to exercise supervision over midwives in its area, and no one shall be so appointed who is not so qualified.

(3) The Council shall by rules from time to time establish standards for the exercise by LSAs of their functions and may give guidance to LSAs on these matters.

PART IX

OFFENCES

Offences

44.—(1) A person commits an offence if with intent to deceive (whether expressly or by implication)—

- (a) he falsely represents himself to be registered in the register, or a particular part of it or to be the subject of any entry in the register;
- (b) he uses a title referred to in article 6(2) to which he is not entitled;
- (c) he falsely represents himself to possess qualifications in nursing or midwifery.

(2) A person commits an offence if—

- (a) with intent that any person shall be deceived (whether expressly or by implication) he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive, would be an offence under paragraph (1); or
- (b) with intent to deceive, he makes with regard to another person any representation which—
 - (i) is false to his own knowledge, and
 - (ii) if made by the other person with that intent would be an offence by him under paragraph (1).

(3) A person who fraudulently procures, or tries to procure, the making, amendment, removal or restoration of an entry in the register, is guilty of an offence.

(4) A person who, without reasonable excuse, fails to comply with any requirement imposed by—

- (a) the Council, or
- (b) a Practice Committee

under article 25(1) or (2) or rules made by virtue of article 32(2)(m) or under any corresponding rule made by virtue of article 26, 33 or 37 is guilty of an offence.

(5) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Attendance by unqualified persons at childbirth

45.—(1) A person other than a registered midwife or a registered medical practitioner shall not attend a woman in childbirth.

(2) Paragraph (1) does not apply—

- (a) where the attention is given in a case of sudden or urgent necessity; or
- (b) in the case of a person who, while undergoing training with a view to becoming a medical practitioner or to becoming a midwife, attends a woman in childbirth as part of a course of practical instruction in midwifery recognised by the Council or by the General Medical Council.

(3) A person who contravenes paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART X

MISCELLANEOUS

Further provisions

46.—(1) The Privy Council may make provision by order with regard to the functions of legal assessors and in particular provision may be made—

- (a) requiring legal assessors, when advising the Council or any of its committees, to do so in the presence of the parties or their representatives or, where advice is given in private, requiring the parties to be notified of the advice tendered by the legal assessors;
- (b) requiring the parties to be notified in any case where the legal assessor's advice is not accepted.

(2) Paragraph (1)(a) and (b) shall not apply to advice given by a legal assessor in respect of the drafting of a decision mentioned in article 34(3).

Rules and orders

47.—(1) No rules made under this Order shall come into force until approved by order of the Privy Council.

(2) Any rules made by the Council and any order of the Privy Council made under this Order may make different provision with respect to different cases or classes of case.

(3) Before making any rules under this Order, the Council shall consult representatives of any group of persons who appear likely to be affected by the proposed rules and these may include such persons as appear to it to be representative of—

- (a) registrants or classes of registrant;
- (b) employers of registrants;
- (c) users of the services of registrants; or
- (d) persons providing, assessing or funding education and training for registrants and prospective registrants.

Exercise of powers by the Privy Council

48.—(1) Where the approval of the Privy Council is required by this Order in respect of the making of any rules by the Council, it shall be given by an order made by the Privy Council.

(2) Any power of the Privy Council under this Order to make an order shall be exercisable by statutory instrument.

(3) Any order under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament but this does not apply to an order made under article 54(2) or Schedule 2, paragraph 19, 20, 21 or 25.

(4) For the purpose of exercising any powers conferred by this Order the quorum of the Privy Council shall be two.

(5) Any act of the Privy Council under this Order shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(6) Any document purporting to be—

- (a) an instrument made by the Privy Council under this Order, and
- (b) signed by the Clerk of the Privy Council, shall be evidence (and in Scotland sufficient evidence) of the fact that the instrument was so made and of its terms.

Default powers of the Privy Council

49.—(1) If it appears to the Privy Council that the Council has failed to perform any functions which, in the opinion of the Privy Council, should have been performed, the Privy Council may notify the Council of its opinion and require the Council to make representations to it.

(2) The Privy Council may, having considered the representations of the Council, give such directions (if any) to the Council as it considers appropriate.

(3) If the Council fails to comply with any directions given under this article, the Privy Council may give effect to the direction.

(4) Subject to paragraph (5), for the purpose of giving effect to a direction under paragraph (3), the Privy Council may—

- (a) exercise any power of the Council or do any act or other thing authorised to be done by the Council; and
- (b) do, of its own motion, any act or other thing which it is otherwise authorised to do under this Order at the instigation of the Council.

(5) The Privy Council shall not exercise the power in paragraph (4) to make, amend, remove or restore an entry in the register in respect of an individual, nor to refuse to do so.

(6) The powers under paragraphs (1) and (2) may be exercised by a person authorised or designated by the Privy Council for that purpose.

Annual reports

50.—(1) The Council shall publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements it has put in place to protect the public from persons whose fitness to practise is impaired, together with the Council's observations on the report.

(2) The Council shall—

- (a) within such time as directed by the Privy Council, submit a report to it on the Council's exercise of its functions during the period specified by the Privy Council; and
- (b) thereafter submit such a report once in each calendar year in respect of the period since its last such report.

(3) The Privy Council shall lay before each House of Parliament a copy of the report submitted by the Council under paragraph (2).

Finances of the Council

51.—(1) The Council may charge such fees in connection with the exercise of its functions as it may, with the approval of the Privy Council, determine.

(2) Subject to this article, the expenses of the Council are to be met out of fees received by the Council and other sums paid to it in connection with the exercise of its functions.

(3) The Secretary of State or an appropriate authority may make grants or loans to the Council towards expenses incurred, or to be incurred by it—

- (a) in connection with the process of the implementation of this Order, or
- (b) for such other purposes in connection with the professions regulated by this Order as may be approved by the Secretary of State or the appropriate authority and agreed with the Council.

(4) In this paragraph, “appropriate authority” means the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland.

Accounts of the Council

52.—(1) The Council shall—

- (a) keep accounts in such form as the Privy Council may determine;
- (b) prepare annual accounts in respect of each financial year, in such form as the Privy Council may determine.

(2) The annual accounts shall be audited by persons the Council appoints.

(3) No person may be appointed as an auditor under paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 or article 28 of the Companies (Northern Ireland) Order 1990.

(4) As soon as is reasonably practicable after the end of the financial year to which the annual accounts relate, the Council shall—

- (a) cause them to be published together with any report on them made by the auditors; and
- (b) send a copy of the annual accounts and of any such report to the Privy Council and to the Comptroller and Auditor General.

(5) The Comptroller and Auditor General shall examine, certify and report on the annual accounts.

(6) For the purposes of his examination, the Comptroller and Auditor General may inspect the accounts of the Council and any records relating to them.

(7) The Privy Council shall lay before each House of Parliament a copy of the annual accounts certified by the Comptroller and Auditor General, any report of the auditors and the report of the Comptroller and Auditor General prepared under paragraph (5).

(8) In this article, “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 12 months ending with 31st March.

Inquiry by the Privy Council

53.—(1) The Privy Council may cause an inquiry to be held into any matter connected with the exercise by the Council of its functions.

(2) Before an inquiry is begun, the Privy Council may direct that it shall be held in public.

(3) Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.

(4) For the purpose of any such inquiry (but subject to paragraph (5)) the person appointed to hold the inquiry—

- (a) may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
- (b) may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation.

(5) Nothing in this article requires a person, in obedience to a summons under the article, to attend to give evidence or to produce any documents unless the necessary expenses of his attendance are paid or tendered to him.

(6) Any person who refuses or deliberately fails to attend in obedience to a summons under this article, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this article, shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Where the Privy Council causes an inquiry to be held under this article—

- (a) the costs incurred by it in relation to the inquiry (including such reasonable sum as it may determine for the services of any officer engaged in the inquiry) shall be paid by such party to the inquiry as it may direct; and
- (b) it may cause the amount of the costs so incurred to be certified, and any amount so certified and directed to be paid by any person shall be recoverable from that person by the Privy Council summarily as a civil debt.

(8) Where the Privy Council causes an inquiry to be held under this article it may make orders—

- (a) as to the costs of the parties at the inquiry; and
- (b) as to the parties by whom costs are to be paid,

and every such order may be made a rule of the appropriate court on the application of any party named in the order.

(9) “Appropriate court” has the same meaning as in article 38(5).

Supplementary and transitional provisions and extent

54.—(1) The transitional provisions contained in Schedule 2 to this Order shall apply.

(2) The Privy Council may by order make such further transitional provisions as it considers appropriate.

(3) The consequential amendments contained in Schedule 5 to this Order shall apply.

(4) This Order extends to the whole of the United Kingdom.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 3

THE NURSING AND MIDWIFERY COUNCIL AND COMMITTEES

PART I

THE NURSING AND MIDWIFERY COUNCIL

Membership

1.—(1) The Council shall consist of—

- (a) 12 members who are appointed by the Council on being elected under the election scheme made under paragraph 2 (referred to in this Order as “registrant members”);
- (b) 11 members who are appointed by the Privy Council (referred to in this Order as “lay members”);
- (c) 12 members appointed by the Council on being elected under the election scheme made under paragraph 2 (referred to in this Order as “alternate members”).

(2) The Council shall appoint an alternate member for each registrant member.

(3) An alternate member shall have the same functions as a registrant member but he may attend a Council meeting in his capacity as an alternate member and vote, only if his corresponding registrant member is unable to do so.

(4) The Council shall appoint an elected candidate to be a registrant member or alternate member in accordance with criteria set out in the election scheme made under paragraph 2.

2.—(1) The Council shall provide in rules for an election scheme to elect the registrant members and alternate members and may provide in the rules for by-elections.

(2) The election scheme shall provide that—

- (a) a person seeking election—
 - (i) is registered in the part of the register for which he seeks election but no person may be elected for more than one part of the register at a time,
 - (ii) in respect of a national constituency, lives or works wholly or mainly in that national constituency,
 - (iii) is not the subject of any allegation, investigation or proceedings concerning his fitness to practise, and
 - (iv) is wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeks election or in research in those fields;
- (b) at least one registrant member and one alternate member shall be appointed from each part of the register and the number of members from each part shall be equal;
- (c) at least one member shall be elected from each of the national constituencies for each part of the register;
- (d) a person may only vote—
 - (i) in respect of one part of the register,
 - (ii) for candidates who represent a part of the register in which he is registered at the time of the election, and

- (iii) for a candidate seeking election for the constituency in which he wholly or mainly lives or works or, if he does not wholly or mainly live or work in any constituency, the constituency he has selected or to which he has been assigned in accordance with prescribed criteria;
 - (e) a person may vote even if he lives or works outside the United Kingdom;
 - (f) where someone ceases to be a registrant member or alternate member a replacement shall, subject to paragraph 7(3), be appointed by the Council.
- (3) The Council shall provide such information and advice for voters and candidates about the purpose and conduct of the elections as it considers appropriate.

3. Having consulted such persons as it considers appropriate, the Privy Council shall appoint lay members from among persons who are not and never have been on the register or the register kept under the 1997 Act and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Council in the performance of its functions.

4. Of the members appointed by the Privy Council, there shall be at least one appointed from each country of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

5. On a proposal from the Council or otherwise, the Privy Council may by order vary the size or composition of the Council, provided that—

- (a) the number of registrant members constitutes no less than half the total number of members and the number of registrant members does not exceed the number of lay members by more than one;
- (b) the members live or work wholly or mainly in the United Kingdom;
- (c) there is at least one registrant member and one alternate member from each part of the register, and the number of registrant and alternate members from each part is equal;
- (d) the registrant and alternate members appointed in respect of each part of the register include at least one member appointed from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned;
- (e) the members who are not registered professionals include at least one member appointed from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

6. Where a member appointed by the Privy Council ceases to be a member, the Council shall inform the Privy Council and, subject to paragraph 7(3), the Privy Council shall replace him.

7.—(1) Where a member does not complete his term of office, his successor shall be appointed for the remainder of the unexpired term—

- (a) in the case of registrant and alternate members, by the Council; and
- (b) in the case of lay members, by the Privy Council.

(2) In this paragraph “the unexpired term” means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired.

(3) If the unexpired term is less than twelve months, the vacancy need not be filled.

(4) In the case of a registrant member or alternate member, the person appointed for the unexpired term shall be registered in the same part of the register and live or work wholly or mainly in the same country of the United Kingdom as the member he is to replace.

Tenure of members

- 8.—(1) Each member's term of office will be for a period of 4 years.
- (2) A person shall be removed from office as a Council member if—
- (a) there is a change in his qualifications, interests or experience such that it appears to the Privy Council that he will no longer contribute to the Council's exercise of its functions in such a manner as justifies his continued membership.
 - (b) he ceases to live or work wholly or mainly in the United Kingdom or, if he has been appointed—
 - (i) in the case of a registrant or alternate member, as a member in respect of one of the national constituencies, or
 - (ii) in the case of a lay member, as a member in respect of one of the countries of the United Kingdom,
 in that national constituency or country;
 - (c) he ceases to be registered in the part of the register in respect of which he was appointed;
 - (d) he ceases to be wholly or mainly engaged in the practice, teaching or management of the profession for which he is registered and in respect of which he was appointed or in the research mentioned in paragraph 2(2)(a)(iv);
 - (e) an order has been made against him by a Practice Committee;
 - (f) he is removed by a majority of at least two-thirds of the other members of the Council because of a serious and persistent deficiency in his attendance at meetings or in his conduct or performance at meetings;
 - (g) such other circumstances as may be provided for by the Council in standing orders occur.
9. A member may resign at any time by notice in writing addressed to the Registrar.
10. No member may be appointed for more than three consecutive terms.

The President

- 11.—(1) The members of the Council shall elect a President from among themselves for a term of four years.
- (2) The President shall hold office until whichever of the following first occurs—
- (a) he resigns as President;
 - (b) he ceases to be a member of the Council;
 - (c) he is removed by a majority vote of the other members of the Council.
- (3) A person shall not be prevented from being elected President merely because he has previously been President.
- (4) The President may resign the office of President at any time by notice in writing addressed to the Registrar.

Procedure etc. of Council and committees

- 12.—(1) Subject to any provision made by or under this Order and, subject to paragraph 16, the Council shall make standing orders in respect of the Council, its committees and sub-committees, but not in respect of any of the Practice Committees, to provide for—
- (a) the quorum at meetings, which shall in the case of meetings of the Council include at least one member appointed from each country of the United Kingdom who shall live or work wholly or mainly in the country in respect of which he is appointed;

- (b) the procedure at meetings;
- (c) establishing standards for the education and training, attendance and performance of members;
- (d) the composition of any of its committees and sub-committees;
- (e) the chairman of each of its committees to be a Council member;
- (f) the procedure by which a person is removed from office under paragraph 8(2);
- (g) the functions of its officers; and
- (h) circumstances in which meetings are to be in private.

13.—(1) In appointing non-Council members to any committee set up under article 3(12) the Council shall have regard, where appropriate and subject to the other provisions of this Order, to the guidance issued by the Commissioner for Public Appointments.

(2) The Council shall ensure that such members of the committee who are not Council members shall have such qualifications, interests or experience as, in the opinion of the Council, are relevant to the field with which the committee is mainly concerned.

(3) The Council shall—

- (a) establish and maintain a system for the declaration and registration of private interests of its members and other members of its committees and sub-committees; and
- (b) publish entries recorded in the register of members' interests.

14.—(1) Decisions of the Council and committees shall be made by a majority vote of the members present and voting.

(2) In the event of a tie the Chairman shall have an additional casting vote.

(3) Where a matter to be dealt with by the Council or committee affects only one of the professions regulated under this Order—

- (a) the Chairman shall be a member of the profession concerned; and
- (b) a decision on the matter shall be reached on a majority vote of the members of that profession present and voting.

(4) This paragraph does not apply to the statutory committees or to decisions of the Council under article 37.

Powers of the Council

15.—(1) Subject to any provision made by or under this Order, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions.

(2) The Council shall, in particular, have power—

- (a) to borrow;
- (b) to appoint such staff as it may determine;
- (c) to pay its staff such salaries, allowances and expenses as it may determine;
- (d) to make such provision for the payment of such pensions, allowances or gratuities, or such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine;
- (e) to make such provision in respect of its members and members of its committees and sub-committees as it may determine—

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- (i) for the payment of fees and allowances, including the payment of allowances to employers of such members for the purposes of enabling the members to perform functions under this Order;
 - (ii) for the reimbursement of such expenses as the members may reasonably have incurred in the course of carrying out their functions under this Order;
 - (f) to establish such sub-committees of any of its committees as it may determine;
 - (g) subject to any provision made by or under this Order, to regulate the procedure of any of its committees or their sub-committees;
 - (h) to abolish any of its committees, other than a statutory committee, or any sub-committee of any of its committees.
- (3) The Council may not employ any member of the Council or its committees or sub-committees.
- (4) If it appears to the Council that any statutory committee is failing to perform its functions adequately, the Council may give a direction as to the proper performance of those functions.
- (5) Where the Council, having given a direction under sub-paragraph (4), is satisfied that the committee has failed to comply with the direction, it may exercise any power of that committee or do any act or other thing authorised to be done by that committee.
- (6) The powers of the Council may be exercised even though there is a vacancy among its members.
- (7) No proceedings of the Council shall be invalidated by any defect in the election or appointment of a member.
- (8) No person who is a member of the Council or any of its committees or sub-committees by virtue of his membership of any profession, may take part in any proceedings of the Council in any period during which he is the subject of any investigations, proceedings or a determination against him concerning his fitness to practise his profession.

PART II

THE STATUTORY COMMITTEES

Midwifery Committee

16.—(1) Subject to Part VIII of this Order, the Council shall by standing orders provide in respect of the Midwifery Committee for—

- (a) its composition;
 - (b) the appointment of members;
 - (c) the quorum at its meetings;
 - (d) its procedure;
 - (e) standards for the education and training, attendance and performance of its members; and
 - (f) the performance of its functions.
- (2) The standing orders shall, in particular, provide for—
- (a) the Chairman of the Committee to be a member of the Council;
 - (b) the majority of members of the Committee to be practising midwives;
 - (c) the Council to have regard, subject to other provisions in this Order, when selecting non-Council members for the Committee to the guidance issued by the Commissioner for Public Appointments.

(3) No person who is a member of the Council or Midwifery Committee by virtue of his membership of any profession may take part in any proceedings of the Committee in any period during which he is the subject of any investigations, proceedings or a determination against him concerning his fitness to practise his profession.

(4) The powers of the Midwifery Committee may be exercised even though there is a vacancy among its members.

(5) No proceedings of the Midwifery Committee shall be invalidated by any defect in the appointment of a member.

Practice Committees

17. Subject to any provision made by or under this Order, the Council shall in respect of each Practice Committee provide by rules for—

- (a) subject to paragraph 18(6), the quorum at meetings of the Committee;
- (b) regulating its procedure;
- (c) establishing standards for the education and training, attendance and performance of its members;
- (d) regulating its composition; and
- (e) the performance of its functions.

18.—(1) The members of each Practice Committee shall include registered professionals and other members, of whom at least one shall be a registered medical practitioner.

(2) The number of registered professionals on a Practice Committee may, but need not, exceed the number of other members on the Committee and shall not in any case exceed that number by more than one.

(3) The Chairman of the Committee shall be a Council member.

(4) No one shall be a member of more than one Practice Committee and shall not be both a Screener and a member of a Practice Committee.

(5) The Council shall, subject to other provisions in this Order, have regard when selecting non-Council members for a Practice Committee, to the guidance issued by the Commissioner for Public Appointments.

(6) The panel of a Practice Committee considering an allegation or taking any other action under Part V shall comprise at least three members who shall be selected with due regard to the former, current or proposed professional field of the person concerned as the case may be and to the nature of the matters in issue, provided that—

- (a) at least one member is registered in that Part of the register in which, as the case may be, the person under consideration is or was registered or in respect of which he has made an application to be registered;
- (b) there is at least one lay member, who shall not be a registered medical practitioner;
- (c) where the health of the person is relevant to the case, there is at least one registered medical practitioner;
- (d) subject to sub-paragraph (f), the panel shall comprise both registrant and lay members none of whom is a Council member and the number of registrant members may exceed the number of lay members but may not exceed them by more than one;
- (e) no one who has been involved in the case in any other capacity may sit on the panel; and
- (f) the person presiding may but need not be a member of the Council.

Status: This is the original version (as it was originally made).

(7) Decisions of a Practice Committee shall be made by a majority vote of the members present and voting.

(8) In the event of a tie, the Chairman shall have an additional casting vote and in respect of a decision under Part V shall exercise his casting vote in favour of the person concerned.

(9) Except when it is performing functions under Part V a Practice Committee may exercise its powers even though there is a vacancy among its members.

(10) Apart from proceedings under Part V, no proceedings of a Practice Committee shall be invalidated by any defect in the appointment of a member.

(11) No person who is a member of the Council or a Committee by virtue of his membership of any profession may take part in any proceedings of a Practice Committee in any period during which he is the subject of any investigations, proceedings or a determination against him concerning his fitness to practise his profession.

SCHEDULE 2

Article 54

TRANSITIONAL PROVISIONS

The initial membership of the Council

1. When first constituted, the membership of the Council shall be determined in accordance with the provisions of this Schedule.

The transitional periods

2. In this Schedule—

“the first transitional period” means the period beginning with the coming into force of article 3 and ending on the date of coming into force of the first order made by the Privy Council under article 6(1);

“the second transitional period” means the period beginning with the day after the coming into force of the first order made by the Privy Council under article 6(1) and ending on the second anniversary of that date, unless ended earlier by the Privy Council on a proposal received by it from the Council.

The Members

3.—(1) During the transitional periods, the Council shall consist of—

- (a) 12 members appointed by the Privy Council (referred to in this Order as “practitioner members”);
- (b) 11 members who are appointed by the Privy Council (referred to in this Order as “lay members”); and
- (c) 12 members appointed by the Privy Council (referred to in this Order as “alternate members”).

(2) The Privy Council shall appoint an alternate member for each practitioner member.

(3) An alternate member shall have the same functions as a practitioner member but he may attend a Council meeting in his capacity as an alternate member and vote only if his corresponding practitioner member is unable to do so.

(4) Following consultation of persons who appear to it to be representative of the professions to which this Order relates, the Privy Council shall appoint practitioner and alternate members from among persons who are registered under the 1997 Act, or, if section 7 has been repealed, who were so registered immediately before that provision was repealed.

(5) It shall select four practitioner members from each of the following categories—

- (a) persons registered in Part 10 of the register maintained under section 7 of the 1997 Act;
- (b) persons registered in Part 11 of the register maintained under section 7 of the 1997 Act;
- (c) persons registered in any other Part of that register of whom the members may all be selected from the same Part or from different Parts.

(6) No person may be appointed as a practitioner member while he is the subject of fitness to practise investigations or proceedings whether under this Order or under the 1997 Act.

(7) Having consulted such persons as it considers appropriate, the Privy Council shall appoint lay members from among persons who are not and never have been on the register or the register kept under the 1997 Act and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Council in the performance of its functions.

(8) The members shall live or work wholly or mainly in the United Kingdom.

(9) There shall be at least one practitioner member and one alternate member from each part of the register, and the number of practitioner and alternate members from each part shall be equal.

(10) The practitioner and alternate members appointed in respect of each part of the register shall include at least one member from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

(11) The members who are not registered professionals shall include at least one member from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

Tenure of members

4. Unless he resigns or is removed in such circumstances as are set out in paragraph 8(2) of Schedule 1, each member shall hold office until the end of the second transitional period.

5. Where a member ceases to be a member, the Privy Council may replace him and the successor's term of office shall begin with the day after that on which the member ceases to be a member and end at the end of the second transitional period.

6. The Privy Council shall determine the duration, which may not exceed four years, of the first term of office for members whose appointments take effect on the ending of the second transitional period and shall ensure that—

- (a) the terms of office of equal proportions of registrant and lay members, being one quarter (or the nearest whole even number above one quarter) of the Council membership, expire at the end of one, two and three years respectively beginning with the day after the end of the second transitional period;
- (b) the terms of office of the remaining members expire at the end of four years beginning with the day after the end of the second transitional period; and
- (c) the terms of office of the registrant members appointed to any one national constituency expire at the same time.

Election Scheme

7. The Council shall provide in rules for an election scheme in accordance with the provisions of paragraph 2 of Part I of Schedule 1 to this Order no later than six months before the end of the second transitional period.

Appointment of first President

8. The first President of the Council shall be appointed by the Privy Council from among the members of the Council.

The register

9. During the first transitional period, the Council shall make—

- (a) proposals to the Privy Council for an order to be made under article 6(1);
- (b) rules under articles 5 and 7 and such other rules as are necessary for the proper operation of the register.

10. Until such date as the first order under article 6(1) is and the rules mentioned in paragraph 9 are in force (“the appointed day”) the Council shall—

- (a) perform the functions of maintaining the register under section 7 of the 1997 Act, and
- (b) determine applications under section 8 of the 1997 Act,

and if those provisions have been repealed, shall act under sub-paragraphs (a) and (b) as if they remained in force and as if references in that Act and subordinate legislation made under it to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“UKCC”) or to a National Board for Nursing, Midwifery and Health Visiting (a “National Board”) were to the Council.

11. Where on the appointed day there are outstanding applications for—

- (a) registration;
- (b) renewal of registration;
- (c) the recording of additional qualifications;
- (d) any entry in the register to be made, altered or restored,

the Council shall dispose of the application in accordance with the provisions of the 1997 Act, as if those provisions were still in force, or in such other manner as it considers just.

12. The entries in the register kept under the 1997 Act may be transferred to the register in accordance with articles 5 and 6 but, where the home address of a person registered under the 1997 Act appears in the register kept under that Act and the entry for that person is transferred to the register, his home address shall not be published in the register without the consent of that person.

The Registrar

13. The first Registrar may be appointed by the Secretary of State, and shall otherwise be appointed by the Council, on such terms and conditions as the body appointing him sees fit.

14. If the first Registrar ceases to hold office before a Registrar is appointed under article 4, the Secretary of State or the Council, as the case may be, may appoint a replacement.

Functions of the Council during the transitional period

15.—(1) During the transitional periods, and subject to any contrary provision in this Order, the Council shall, until the relevant provisions of this Order and subordinate legislation made under it come into force, exercise the functions of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“UKCC”) and of the National Boards for Nursing, Midwifery and Health Visiting (“the National Boards”) under sections 2, 3, 4, 5, 6, 14, 15, 20 and 21 of the 1997 Act and subordinate legislation made under that Act with such modifications as necessary and as if references to the UKCC and National Boards were to the Council.

(2) If the relevant provision has been repealed, it shall be treated for the purposes of sub-paragraph (1) as if it remained in force.

Fitness to practise proceedings

16.—(1) Until relevant rules under Part V come into force—

(a) where disciplinary proceedings—

(i) are pending before the UKCC or any of its committees; or

(ii) have begun but the body or committee dealing with the case has not communicated its decision to the person who is the subject of the proceedings,

that body or committee shall refer the proceedings to the Council and the Council shall dispose of the matter in accordance with the 1997 Act or, if the relevant provisions have been repealed, as if those provisions remained in force;

(b) where an allegation is received by the Council it shall dispose of the matter as if the 1997 Act remained in force; and in both cases

(c) references in the 1997 Act to the UKCC are to be treated as references to the Council.

17. An appeal—

(a) under section 12 of the 1997 Act which is pending or proceeding before any court on the date on which that section is repealed; or

(b) which is received by the Council before the relevant appeal provisions in the rules referred to in paragraph 16 are in force,

shall be dealt with as if section 12 remained in force.

Transitional provisions for local supervising authorities

18.—(1) Until rules made under article 42 come into force Local Supervising Authorities (“LSAs”) shall exercise their functions under section 15 of the 1997 Act and subordinate legislation made under it and, if that section or that subordinate legislation have been repealed, shall exercise those functions as if those provisions were still in force and as if references in that Act to the UKCC or to a National Board were to the Council.

(2) If at the date such rules come into force,

(a) disciplinary proceedings—

(i) are pending under the rules mentioned in section 15(2)(c) of the 1997 Act; or

(ii) have begun but the decision has not been communicated to the person who is the subject of the proceedings,

the matter shall be disposed of in accordance with the rules mentioned in head (i) or, if the relevant provisions have been repealed, as if those provisions remained in force or in such other manner as appears to the LSA to be just.

Transfer of staff and property

19. The Privy Council may by order make provision—

- (a) enabling persons who, when paragraph 3(1) of this Order (creation of Council) comes into force, hold office as members or staff of the UKCC and the National Boards to continue to hold office until those bodies are dissolved;
- (b) authorising the UKCC to make grants or loans to any person in connection with the implementation or preparations for the implementation of the Order.

20.—(1) The Privy Council may by order provide for the transfer from the old to the new employer of any—

- (a) eligible employee; and
 - (b) property, rights and liabilities.
- (2) In this paragraph—
- (a) “the new employer” means the Council; and
 - (b) “the old employer” means the UKCC.
- (3) In this paragraph and in paragraph 21—
- “an eligible employee” means a person who is employed under a contract of employment with the old employer; and
- “property” includes rights and interests of any description.

21.—(1) The Privy Council may by order provide for the transfer from the old to the new employer of any—

- (a) eligible employee; and
 - (b) property, rights and liabilities.
- (2) In this paragraph and in paragraph 25—
- (a) “the new employer” means, in relation to—
 - (i) England, the Secretary of State,
 - (ii) Wales, the National Assembly for Wales,
 - (iii) Scotland, the Scottish Ministers, and
 - (iv) Northern Ireland, the Northern Ireland Department of Health, Social Services and Public Safety,or any person or body established or authorised by any of them; and
 - (b) “the old employer” means a National Board.

22. An order made under paragraph 20(1)(a) or 21(1)(a) may be made by the Privy Council only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under the scheme.

23. An order made under paragraph 20(1)(a) or 21(1)(a) may apply to all, or any description of, employees or to any individual employee.

24.—(1) The contract of employment of an employee transferred under an order made under paragraph 20(1)(a) or 21(1)(a)—

- (a) is not terminated by the transfer; and
- (b) has effect from the date of the transfer as if originally made between the employee and the transferee.

(2) Without prejudice to the generality of sub-paragraph (1), where an employee is transferred under an order mentioned in that sub-paragraph—

- (a) all the rights, powers, duties and liabilities of the old employer under or in connection with the contract of employment are, by virtue of this paragraph, transferred to the transferee on the date of the transfer; and
- (b) anything done before that date by or in relation to the old employer in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.

(3) Sub-paragraphs (2)(a) and (b) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the old employer or the transferee that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the old employer is terminated immediately before the date of the transfer, but he is not to be treated for any purpose as having been dismissed by that employer.

(5) 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.

(6) In this paragraph—

“the date of the transfer” means the date of the transfer determined under an order made under paragraph 20(1)(a) or 21(1)(a) in relation to the employee; and

“the transferee” means the new employer to whom the employee is or would be transferred under that order.

25.—(1) An order made under paragraph 20(1)(b) or 21(1)(b) may provide for the new employer to—

- (a) prepare a statement of accounts in respect of the financial year to 31st March 2002;
- (b) submit a report on the performance of the old employer for the period since the last report under section 18(6) of the 1997 Act to 31st March 2002; or
- (c) carry out any other functions necessary or expedient consequent on the dissolution of the old employer.

(2) Section 18(3), (4), (5) and (7) of the 1997 Act shall apply as if they remained in force except that they shall apply as if the accounts or report, as the case may be, mentioned in paragraph (1) had been prepared by the old employer.

SCHEDULE 3

Article 40

THE COMPETENT AUTHORITY FOR CERTAIN EEA PURPOSES

1.—(1) The Council shall be the competent authority in the United Kingdom for the purposes of—

- (a) Directive [77/452/EEC](#) (mutual recognition of diplomas, certificates and other evidence of formal qualifications in nursing);
- (b) Directive [77/453/EEC](#) (coordination of provisions laid down by law, regulation or administrative action in respect of activities of nurses responsible for general care);

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- (c) Directive [80/154/EEC](#) (mutual recognition of diplomas, certificates and other evidence of formal qualifications in midwifery); and
 - (d) Directive [80/155/EEC](#) (coordination of provisions laid down by law, regulation or administrative action in respect of activities of midwives).
- (2) Accordingly, the Council shall as respects the United Kingdom perform (in addition to any functions provided for elsewhere) the following functions conferred by the Directives (the relevant article of those Directives being referred to in brackets where it is not otherwise mentioned)—
- (a) where the United Kingdom is the host State, the function of providing, where the Council see fit, the information referred to in the first paragraph of articles 6(3) and 7(2) of Directive 77/452 and 7(3) and 8(2) of Directive 80/154;
 - (b) where the Council receive such information, the function of verifying the accuracy of the facts, of deciding on the nature and extent of the investigation to be made and of informing the host State of action taken (as mentioned in the second paragraph of articles 6(3) and 7(2) of Directive 77/452 and 7(3) and 8(2) of Directive 80/154, such information to be provided within the period of three months beginning with the date on which the request for information was received);
 - (c) the function of receiving or (as the case may be) forwarding the information referred to in article 7(1) of Directive 77/452 or 8(1) of Directive 80/154;
 - (d) the function of ensuring the confidentiality of information forwarded under articles 6 and 7 of Directive 77/452 (articles 6(3) and 7(3)) and 7 and 8 of Directive 80/154 (7(4) and 8(3));
 - (e) the function of supplying the certificates referred to in the second and third indents of article 11(3) of Directive 77/452 and 13(3) of 80/154 in the case of a person established in the United Kingdom, and of withdrawing the former in the circumstances referred to in article 11(5) of Directive 77/452 and 13(5) of Directive 80/154; and
 - (f) the functions of requiring, in the event of justified doubts, confirmation of authenticity of diplomas, certificates and other evidence of formal qualifications granted by another EEA State and confirmation that a national of an EEA State seeking registration under this Act by virtue of a primary European qualification not granted in the United Kingdom has fulfilled the Directive's training requirements (article 16 of Directive 77/452 and article 17 of Directive 80/154).
- (3) In addition, in relation to United Kingdom qualifications the Council shall as respects the United Kingdom have the functions of a competent authority referred to in the following articles of Directive [77/452/EEC](#) and Directive [80/154/EEC](#)—
- (a) the function of issuing in respect of practice in the United Kingdom the certificate of effective and lawful practice referred to in article 4(1) of Directive 77/452 and article 5(1) and 5(2) of Directive 80/154;
 - (b) article 4(2) and 5(3) (issue of certificates of fulfilment of Directive training requirements in respect of qualifications which do not conform with the designations set out in the Directive);
 - (c) article 6(1) of Directive 77/452 and article 7(1) of Directive 80/154 (issue of certificates of good standing);
 - (d) article 8, second paragraph of Directive 77/452 and article 9, second paragraph of Directive 80/154 (issue of certificates of physical or mental health); and
 - (e) article 16 of Directive 77/452 and article 17 of Directive 80/154 (function of confirming authenticity of qualifications and of confirming that a person has fulfilled the Directive's training requirements).
- (4) The Council is hereby designated as respects the United Kingdom for the purposes set out in this regulation in accordance with article 17 of Directive [77/452/EEC](#) and article 18 of Directive

80/154/EEC (which requires member States to designate the authorities competent to issue or receive the diplomas, documents and other information referred to in that Directive).

(5) Subject to paragraph (6) below, the Secretary of State may give directions to the Council in connection with—

- (a) their functions under or by virtue of this regulation, and
- (b) any other functions of theirs which arise from Community obligations and which relate to United Kingdom or other European qualifications, or to registration under the Order by virtue of any qualifications;

and it shall be the duty of the Council to comply with any such directions.

(6) Directions given under paragraph (5) above may be as to matters of administration only.

SCHEDULE 4

Article 2

INTERPRETATION

In this Order, unless the context otherwise requires—

“the 1997 Act” means the Nurses, Midwives and Health Visitors Act 1997⁽⁷⁾;

“the Accession of Greece Act” means the Act annexed to the Treaty relating to the Accession of the Hellenic Republic to the European Community signed at Athens on the 28 May 1979;

“the Accession of Spain and Portugal Act” means the Act annexed to the Treaty relating to the Accession of the Kingdom of Spain and the Portuguese Republic to the European Community signed at Madrid and Lisbon on the 12 June 1985;

“the Accession of Austria, Finland and Sweden Act” means the Act annexed to the Treaty relating to the Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on the 24 June 1994⁽⁸⁾, as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the Accession of new Member States to the European Union⁽⁹⁾;

“alternate member” is a member of the Council appointed under Schedule 1, paragraph 1 or Schedule 2, paragraph 3;

“application for restoration” has the meaning given to it in article 33;

“approved course of education or training” means a course approved under article 15(6)(a);

“approved qualification” has the meaning given to it in articles 13 and 15;

“Community law” means any enforceable Community right or any enactment giving effect to a Community obligation;

“competent authority”, in relation to an EEA State, means the authority or body designated by that State as competent for the purposes of the Nursing Directive or, as the case may be, the Midwifery Directive;

“corresponding practitioner member” means the practitioner member appointed under Schedule 2 from the same part of the register and from the same country of the United Kingdom as the alternate member concerned;

⁽⁷⁾ 1997 c. 24.

⁽⁸⁾ OJ No C241, 29.8.84, p.21. Norway did not ratify the Treaty.

⁽⁹⁾ OJ No L1, 1.1.95, p.1. See the Annex (XI) (D)(III)(I).

Status: This is the original version (as it was originally made).

“corresponding registrant member” means the registrant member elected from the same part of the register and from the same country of the United Kingdom as the alternate member concerned;

“the Council” means the Nursing and Midwifery Council established under article 3;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on the 17 March 1993;

“EEA national” means a national of an EEA State;

“EEA State” means a Contracting Party to the EEA Agreement;

“exempt person” means any person who is not an EEA national but is, by virtue of a right conferred by article 11 of Council Regulation (EEC) 1612/68⁽¹⁰⁾, or any other enforceable Community right, entitled to be treated for the purposes of access to the nursing or midwifery profession, no less favourably than a national of such a State;

“lay member” means, in relation to the Council or a statutory committee any member who is not and never has been a registered nurse or a registered midwife;

“lay person” means, in relation to Screeners, a person who is not and never has been a member of a health or social care profession which is regulated under any enactment;

“licensing body” means a regulatory body which has the function of authorising persons to practise a health or social care profession;

“local supervising authority” means—

- (a) in England and Wales, Health Authorities;
- (b) in Scotland, Health Boards; and
- (c) in Northern Ireland, Health and Social Services Boards;

“Midwifery Directive” means Council Directive No. 80/154/EEC, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications in midwifery, as adapted, amended or extended by Council Directive 80/1273/EEC, the Accession of Spain and Portugal Act, Council Directives Nos. 89/594/EEC, 90/658/EEC and 2001/19/EC, the EEA Agreement and the Accession of Austria, Finland and Sweden Act;

“national”, in relation to an EEA State, means the same as it does for the purposes of the Community Treaties;

“national constituency” means England, Scotland, Wales or Northern Ireland;

“Nursing Directive” means Council Directive No. 77/452/EEC, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, as adapted, amended or extended by the Accession of Greece Act, Council Directive No. 81/1057/EEC, the Accession of Spain and Portugal Act, Council Directives Nos. 89/594/EEC, 89/595/EEC, 90/658/EEC and 2001/19/EC, the EEA Agreement and the Accession of Austria, Finland and Sweden Act;

“parties”, except in respect of article 53, means the Council and the person concerned except in respect of article 37 when it includes the Registrar;

“Practice Committees” means the Investigating Committee, the Conduct and Competence Committee and the Health Committee;

“practising” means working as a registered nurse or midwife;

“prescribed” means prescribed in rules made by the Council;

“the professions regulated under this Order” means the professions of nursing and midwifery;

“register” means the register established and maintained under article 5;

⁽¹⁰⁾ OJ No L257, 19.10.68, p.1 (amended by Council Regulation (EEC) No 312/76 OJ No L39, 14.2.76, p.2).

“registrant” means a member of the profession of nursing or midwifery who has been admitted to the register maintained under article 5;

“registrant member” has the meaning given to it in Schedule 1, paragraph 1(a);

“Registrar” means the person appointed under article 4;

“Screeners” means persons appointed under article 23;

“second Nursing Directive” means Council Directive [77/453/EEC](#) concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of nurses responsible for general care, as adapted, amended or extended by the Accession of Greece Act, Council Directive No. [81/1057/EEC](#), the Accession of Spain and Portugal Act, Council Directives Nos. [89/595/EEC](#) and [2001/19/EC](#), the EEA Agreement and the Accession of Austria, Finland and Sweden Act;

“second Midwifery Directive” means Council Directive [80/155/EEC](#), concerning the coordination of provisions laid down by law, regulation or administrative action relating to the taking up and pursuit of the activities of midwives, as adapted, amended or extended by the Accession of Spain and Portugal Act, Council Directives Nos. [89/594/EEC](#) and [2001/19/EC](#), the EEA Agreement and the Accession of Austria, Finland and Sweden Act;

“standards of proficiency” means the standards established by the Council under article 5(2);

“statutory committees” has the meaning given to it in article 3(10);

“United Kingdom country” means England, Scotland, Wales or Northern Ireland.

“visitors” means persons appointed under article 16.

SCHEDULE 5

Article 54

CONSEQUENTIAL AMENDMENTS TO PRIMARY LEGISLATION

The Parliamentary Commissioner Act 1967 (c. 13)

1. In Schedule 2 to the Parliamentary Commissioner Act 1967 (Departments etc. subject to investigation), the entry relating to the English National Board for Nursing, Midwifery and Health Visiting shall be omitted.

Medicines Act 1968 (c. 67)

2. In section 58 of the Medicines Act 1968 (medicinal products on prescription only)—

(a) for subsection (1)(d) there shall be substituted—

“(d) registered nurses or midwives who are of such a description and comply with such conditions as may be specified in the order”;

(b) in subsection (4)(a), for the words “a registered nurse, midwife or health visitor,” there shall be substituted “a registered nurse or midwife,”.

The Fair Trading Act 1973 (c. 41)

3. In Schedule 4 to the Fair Trading Act 1973 (services excluded from section 14)—

(a) for paragraph 6 there shall be substituted—

“6. The services of registered nurses or midwives in their capacity as such.”; and

(b) in paragraph 7 “midwives,” shall be omitted.

The House of Commons Disqualification Act 1975 (c. 24)

4. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), the entry relating to the Chairman of any of the National Boards for Nursing, Midwifery and Health Visiting mentioned in section 5 of the Nurses, Midwives and Health Visitors Act 1997 or any member of those Boards appointed at a salary, shall be omitted.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

5. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), the entry relating to the Chairman of the National Board for Nursing, Midwifery and Health Visiting for Northern Ireland or member of that Board appointed at a salary, shall be omitted.

National Health Service Act 1977 (c. 49)

6. In section 41 of the National Health Service Act 1977 (arrangements for pharmaceutical services), in paragraph (cc), for the words “registered nurse, midwife or health visitor” there shall be substituted “registered nurse or midwife”.

The Interpretation Act 1978

7. In Schedule 1 to the Interpretation Act 1978 (words and expressions defined), for the definition of “Registered” in relation to nurses, midwives and health visitors there shall be substituted—

““Registered” in relation to nurses and midwives, means registered in the register maintained under article 5 of the Nurses and Midwives Order 2001 by virtue of qualifications in nursing or midwifery, as the case may be.”.

The Registered Homes Act 1984 (c. 23)

8. In section 42 of the Registered Homes Act 1984 (tribunal for appeals relating to nursing homes (including maternity homes) and mental nursing homes) in subsection (4)(a), for “the Nurses, Midwives and Health Visitors Act 1997” there shall be substituted “the Nursing and Midwifery Order 2001.”.

The Video Recordings Act 1984 (c. 39)

9. In section 3 of the Video Recordings Act 1984 (exempted supplies), in subsection (11), for “the Nurses, Midwives and Health Visitors Act 1997”, there shall be substituted “the Nursing and Midwifery Order 2001”.

Children Act 1989 (c. 41)

10. In the Children Act 1989—

- (a) in section 45 (duration of emergency protection orders and other supplemental provisions), in subsection (12), for the words “registered health visitor” there shall be substituted “registered midwife”;
- (b) in section 48 (powers to assist in discovery of children who may be in need of emergency protection), in subsection (11), for the words “registered health visitor”, there shall be substituted “registered midwife”; and
- (c) in section 102 (power of constable to assist in exercise of certain powers to search for children or inspect premises) in subsection (3), for the words “registered health visitor”, there shall be substituted “registered midwife”.

The Registered Homes (Northern Ireland) Order 1992 (S.I.1992/3204 (NI 20))

11. In Article 32 of the Registered Homes (Northern Ireland) Order 1992, paragraph (2)(b), for “section 7 of the Nurses, Midwives and Health Visitors Act 1997” there shall be substituted “article 5 of the Nursing and Midwifery Order 2001”.

The Value Added Tax Act 1994 (c. 23)

12. In Part II of Schedule 9 to the Value Added Tax Act 1994 (exempt supplies of goods and services), for item 1(d) in Group 7 (health and welfare), there shall be substituted “the register of qualified nurses and midwives maintained under article 5 of the Nursing and Midwifery Order 2001”.

Employment Rights Act 1996 (c. 18)

13. In section 55 of the Employment Rights Act 1996 (right to time off for ante-natal care), in each of subsections (1)(b) and (2)(a) for “registered health visitor”, there shall be substituted “registered nurse”.

Data Protection Act 1998 (c. 29)

14. In section 69 of the Data Protection Act (meaning of “health professional”), in section (1), for subsection (e), there shall be substituted—

“(e) a registered nurse or midwife”.

Government of Wales Act 1998 (c. 38)

15. In Part III of Schedule 4 to the Government of Wales Act 1998 (public bodies subject to reform by the Assembly which may only gain functions), paragraph 17 shall be omitted.

The Health Act 1999 (c. 8)

16. In the Health Act 1999—

- (a) in section 60 (regulation of health care and associated professions), in subsection (2), in paragraph (b), for “the Nurses, Midwives and Health Visitors Act 1997” there shall be substituted “the Nursing and Midwifery Order 2001”; and
- (b) in Schedule 3 (regulation of health care and associated professions), in paragraph 8 (certain functions not to be transferred from regulatory body), in sub-paragraph (3) “or the Nurses, Midwives and Health Visitors Act 1997” shall be omitted.

Freedom of Information Act 2000 (c. 36)

17. In Schedule 1 to the Freedom of Information Act 2000 (public authorities), in Part VI (other public bodies and offices: general)—

- (a) the entries for the English National Board for Nursing, Midwifery and Health Visiting and the Welsh National Board for Nursing, Midwifery and Health Visiting shall be omitted; and
- (b) the entry for the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, shall be omitted and “The Nursing and Midwifery Council.” shall be inserted in the appropriate place.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the regulation of nurses and midwives and creates a regulatory body, the Nursing and Midwifery Council, which is required to set standards of education, training, conduct and performance and to put in place arrangements to ensure that they are met (article 3). It provides for the Council to keep a register of qualified nurses and midwives and creates four statutory committees: the Investigating Committee, Conduct and Competence Committee, Health Committee and Midwifery Committee (article 3(9)). The Order replaces the regulatory system provided for by the Nurses, Midwives and Health Visitors Act 1997.

The Order provides for the Council to set standards and requirements to be satisfied before a person may be admitted to the register (article 5) and to deal with applications for registration, renewal of registration or readmittance in accordance with Part III and rules made under it. Articles 13 and 14 indicate the qualifications on which registration may be based. The register is to be published (article 8).

The Order provides in Part IV for the Council to establish standards of education and training necessary for admission to the register; to make arrangements to ensure that those standards are met; and to approve qualifications, courses and institutions which meet its standards (articles 15 to 18). The Council may also provide for post-registration training and require a nurse or midwife who has not practised for some time to undertake additional training (article 19). The Order provides for the Council to liaise with educational institutions (article 3 and Part IV).

Part V provides for the Council to establish and keep under review standards of conduct, performance and ethics expected of registrants and prospective registrants; to issue guidance on these matters and to make arrangements to ensure that action is taken when the fitness to practise of a nurse or midwife is impaired by reason of misconduct, lack of competence or ill-health (articles 21 and 22). Part V sets out the procedure to be followed in investigating whether the fitness to practise of a registrant is impaired. Preliminary consideration may be given by Screeners and the Investigating Committee (articles 22 to 24 and 26) and if it appears that there is a case to answer the matter will be considered by the Conduct and Competence Committee or the Health Committee (article 29). There is also provision to investigate whether an entry on the register has been fraudulently procured or incorrectly made and for the Investigating Committee to take action if it has (article 26(7)). Orders and decisions of the Practice Committees may be reviewed (articles 26(12) and 30). The Committees may, where they consider it to be in the public interest or in the interest of the registrant concerned, make interim orders to take effect before a final decision is given in a case or pending an appeal (article 31). Rules are to be made for the procedure to be followed by the Committees and the Council in considering cases referred to them (article 32(2), relevant parts of which are applied to the Investigating Committee and the Council by articles 26 and 37 respectively). A person who has been struck off the register may apply to be restored to it and article 33 sets out the procedure to be followed and the circumstances in which the application may be granted. The Council shall appoint legal assessors (article 34) and may appoint medical and registrant assessors (articles 35 and 36) to assist those considering, amongst others, registration and fitness to practise issues.

Part VI relates to appeals. A person may appeal to the Council from a decision of the Registrar concerning registration and article 37 sets out the procedure to be followed. Article 38 provides that appeals from decisions of the Health Committee or Conduct and Competence Committee are

to the High Court (or, in Scotland, the Court of Session), and, from the Investigating Committee or Council, to the county court (or, in Scotland, the sheriff).

Part VII and Schedule 3 apply to qualifications to be recognised under EC law as it applies in the States which are party to the agreement on the European Economic Area (the “EEA”) and the Order implements the Directives on nursing and midwifery (Directives 77/452 and 77/453—nurses—and 80/154 and 80/155—midwives—as amended).

Part VIII relates to the Midwifery Committee whose role is to advise the Council on matters which affect midwifery. It provides for rules to be made regulating midwifery practice and for supervision of midwives by local supervising authorities.

Part IX provides for certain actions to be offences. These are, principally, where a person falsely represents himself as being registered or having professional qualifications or uses a title to which he is not entitled; or, although not falling within the specified categories, attends a woman in childbirth.

Part X contains provisions on miscellaneous matters such as consultation by the Council before it makes rules (article 47); approval by the Privy Council of rules and the procedure which applies (articles 47 and 48); the powers of the Privy Council to take action if it considers that the Council has failed to perform its functions (article 49) and to hold an inquiry into any matter connected with the exercise by the Council of its functions (article 53). The Council is required to publish annual reports (article 50) and to keep proper accounts (article 52).

Schedule 1 provides for the constitution of the elected Council; provisions relating to the election scheme and the procedure of the Council and statutory committees.

Article 54 and Schedule 2 relate to transitional provisions including the conduct of business before an elected Council comes into being. Schedule 4 relates to interpretation. Consequential amendments to primary legislation are set out in Schedule 5.