

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

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- (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;

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- (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—

- (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.

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(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.

(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.

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(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 subparagraph (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.

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(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);

- (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

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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⁽¹⁾;

“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⁽²⁾, 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⁽³⁾;

“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;

⁽¹⁾ 1997 c. 24.

⁽²⁾ OJ No C241, 29.8.84, p.21. Norway did not ratify the Treaty.

⁽³⁾ OJ No L1, 1.1.95, p.1. See the Annex (XI) (D)(III)(I).

“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(4), 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;

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

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“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.