

2004 No. 1763

**HEALTH CARE AND ASSOCIATED PROFESSIONS
NURSES AND MIDWIVES**

**Nursing and Midwifery Order 2001 (Legal Assessors)
Order of Council 2004**

Made - - - - - *7th July 2004*
Laid before Parliament *9th July 2004*
Coming into force - - *1st August 2004*

At the Council Chamber, Whitehall, the 7th day of July 2004.
By the Lords of Her Majesty's Most Honourable Privy Council.

Their Lordships, in exercise of the powers conferred on them by article 46(1) of the Nursing and Midwifery Order 2001(a), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004 and shall come into force on 1st August 2004.

(2) In this Order—

- “the Order” means the Nursing and Midwifery Order 2001;
- “Committee”, except in the title of a Committee, means one of the Committees mentioned in article 2 of this Order; and
- “hearing” does not include—
 - (a) any preliminary meeting held by a Committee pursuant to rule 18 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004(b) (preliminary meetings); or
 - (b) any private meeting of a Committee.

Hearings at which legal assessors' advice is to be given in the presence of the parties or their representatives

2. At a hearing before—

- (a) the Investigating Committee which relates to—
 - (i) an allegation under article 22(1)(b) of the Order or any matter which is treated as such an allegation in accordance with article 22(6) of the Order, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order under article 31 of the Order;
- (b) the Health Committee under Part V of the Order;
- (c) the Conduct and Competence Committee under Part V of the Order; or

(a) S.I. 2002/253. There are no relevant amendments.
(b) These Rules are scheduled to S.I. 2004/1761.

(d) the Council under article 37 of the Order,
any advice tendered by a legal assessor to the Council or a Committee shall, subject to article 3, be given in the presence of every party, or person representing a party, in attendance at the hearing.

Exceptions to article 2

3. Where the Council or a Committee—
 - (a) has begun to deliberate on its decision; and
 - (b) considers that it would be prejudicial to the discharge of its functions for the advice to be tendered in the presence of the parties or their representatives,the advice may be given in the absence of the parties or their representatives.

Procedure to be followed where advice is given in the absence of the parties or their representatives

4. Where advice is given in the absence of the parties or their representatives in accordance with article 3, the legal assessor shall—
 - (a) as soon as practicable after completion of the deliberations inform each of the parties (or their representatives) in attendance at the hearing of the advice he gave, together with any question which led to that advice; and
 - (b) subsequently record those matters in writing and give a copy to those parties or their representatives.

Copies of written advice for parties not present at a hearing

5. Copies of written advice, made for the purposes of article 4 shall be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing before the Council or the Committee.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order relates to advice given by legal assessors, appointed under article 34 of the Nursing and Midwifery Order 2001, to the Nursing and Midwifery Council or a Committee of the Council on questions of law arising at a hearing before the Council or a Committee. It provides that, except in specified circumstances, such advice must be given in the presence of the parties, or their representatives, in attendance at the hearing. Where it is not given in their presence, they must be notified of the advice given, and copies of the advice must also be made available to parties to the proceedings who do not attend, or are not represented at, the hearing.

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